



City of La Quinta

CITY / SA / HA / FA MEETING DATE: May 6, 2014

ITEM TITLE: APPROVE ART PURCHASE AGREEMENT WITH MARIE BARBERA FOR DESIGN AND INSTALLATION OF A SCULPTURE AT THE EISENHOWER DRIVE AND CALLE SINALOA ROUNDABOUT

AGENDA CATEGORY:

BUSINESS SESSION: 1

CONSENT CALENDAR:

STUDY SESSION:

PUBLIC HEARING:

RECOMMENDED ACTION:

Approve an Art Purchase Agreement with Marie Barbera for the design and installation of a sculpture at the Eisenhower Drive and Calle Sinaloa roundabout and authorize the City Manager to execute the agreement.

EXECUTIVE SUMMARY:

- A request for proposals (RFP) was sent to artists for the design and installation of a sculpture for the Eisenhower Drive and Calle Sinaloa roundabout.
- Ms. Marie Barbera was the artist selected by the Community Services Commission for recommendation to the City Council.
- The artwork is a bronze sculpture of a Cahuilla mother and child holding baskets (Attachment 1).
- An Art Purchase Agreement has been developed to design, create, and install the sculpture (Attachment 2).

FISCAL IMPACT:

The Art Purchase Agreement for the project is \$81,360. Funding is available for this project in the Art in Public Places Fund.

BACKGROUND/ANALYSIS:

The City Council approved an RFP to be distributed to artists for the design and installation of a sculpture located at the Eisenhower Drive and Calle Sinaloa Roundabout. The Cove Neighborhood Association has been involved with this

project since inception and requested that it include a figurative historic Cahuilla theme. The RFP was sent out because this is specialized art work and the size and scope of the work would not be available at the La Quinta Arts Festival.

At the March 10, 2014 Community Services Commission meeting, three artists presented their designs and outlined how the art project was to be completed. Artists were ranked on experience, approach to the project, project schedule, qualifications, and written and verbal presentation. Ms. Barbera, who participated in the 2014 La Quinta Arts Festival, was selected by the Commission for her extensive experience in Native American sculptures and the quality of her work. Ms. Barbera's sculptures have been commissioned in several states including Arizona, Colorado and Ohio (see Attachment 3). This project would be the first public artwork by Ms. Barbera in the Coachella Valley.

The sculpture, in copper and bronze patinas, will stand approximately seven feet tall and three feet wide. It will be placed on the south side of the existing pony wall, integrated into the three palm trees.

ALTERNATIVES:

Should the Council wish to seek additional artists, staff would issue another RFP.

Report prepared by: Edie Hylton, Community Services Director

Report approved for submission by: Frank J. Spevacek, City Manager

Attachments: 1. Cahuilla mother and child holding baskets Maquette
 2. Art Purchase Agreement
 3. Artist Information



ART PURCHASE AGREEMENT

THIS ART PURCHASE AGREEMENT (the "Agreement") is entered into this ____ day of _____ 2014, by and among THE CITY OF LA QUINTA, a California municipal corporation ("City"), and MARIE BARBERA ("Artist").

RECITALS

A. The stated goal of the Cultural Resources Element of the general plan is to provide enrichment of the community by adequate cultural and recreational facilities and activities. To implement this goal, the general plan further states that the cultural resources of a city encompass those facilities and programs which refresh, enhance or recreate people's bodies and spirits. Community parks, recreational activities, historic resources, library facilities and art festivals are included in this classification. The art in public places program is intended to achieve this purpose by providing visual art throughout the city.

B. The City Council has previously determined that visually pleasing and high quality public art enhance the public safety and welfare of La Quinta residents and visitors. For the benefit of its citizens and visitors, the City Council is commissioning the creation and installation of certain artwork (the "Artwork") by the Artist to be located in the roundabout of the intersection of Eisenhower Drive and Calle Sinaloa (the "Site Location"):

NOW, THEREFORE, in consideration of the performance by the parties of the mutual promises, covenants, and conditions contained hereinafter, the parties hereto agree as follows:

ARTICLE I. SCOPE OF SERVICES AND PAYMENT

1.1 Scope of Design and Fabrication Services. Subject to the terms and conditions set forth in this Agreement, Artist shall (i) prepare, or cause to be prepared, conceptual design plans for the Artwork, including setting forth details and samples of the materials to be used and composition of the proposed Artwork; (ii) based on the conceptual design plans approved by City, develop working drawings which shall be incorporated into the Schedule of Performance attached hereto as **Exhibit B**; and (iii) fabricate and install the Artwork as more particularly described in the Scope of Design Build Services and the Schedule of Performance attached hereto as **Exhibit A** and **Exhibit B**, respectively, and incorporated herein by this reference. Artist shall perform his/her obligations in strict conformance with the terms and conditions set forth in this Agreement and shall take all other actions necessary and incidental to the performance of said obligations.

1.2 Periodic Review. City shall have the right to review the Artwork at reasonable times during the fabrication thereof. Artist shall submit regular progress narratives, including photographs, to City as required by the Schedule of Performance set forth in **Exhibit B**. The narratives shall clearly state the percentage of the Artwork completed to date and provide an estimated completion date.

1.3 Materials and Labor. Artist shall furnish all tools, equipment, apparatus, labor, services, materials and transportation necessary to perform the Design and Fabrication Services more fully described in **Exhibit A** and to install the Artwork, together with any appurtenances thereto, in a good and workmanlike manner in the Site Location(s) as more fully described in said **Exhibit A** or reasonably inferable therein. If Artist fails to furnish the labor, materials,

equipment, and or services necessary to perform all work and labor as herein provided in the manner herein set forth in good and workmanlike manner, Artist shall, in addition to any other penalties provided in the Agreement, be liable to City for all losses or damages that City may suffer as a result of such failure, including any additional costs incurred by City in obtaining such material or labor from other sources.

1.4 Change Orders. Artist shall strictly adhere to the Scope of Design Build Services set forth in Exhibit A, unless a change there from is authorized in writing by City. Artist shall present any and all significant changes to the Artwork not permitted by or in substantial conformity with the approved working drawings and the Scope of Design Build Services set forth in Exhibit A to City in writing in advance for its review and approval. If City grants such approval, the terms of said change shall be memorialized in a written change order signed by both parties hereto prior to commencement of said revised work. For the purposes of this section, a "significant change" is any change in the scope, design, color, size, material, texture, or site location which affects installation, scheduling, site preparation, or maintenance for the Artwork or the schematic concept of the Artwork as represented in the schematic drawings, the approved working drawings, and the Scope of Design Build Services set forth in Exhibit A.

1.5 Working Environment. Artist shall, at all times, maintain a safe work area and provide safe access to both the Artwork and the sites wherein the Artwork is located prior to installation at the Site Location for inspection of the Artwork by City and its representatives.

1.6 Testing and Inspections. Where specifications require the Artwork to be specially tested or approved, Artist shall not perform such testing, or cause such testing to be performed, until (1) Artist has first provided timely notice to City that the Artwork is ready for inspection and/or testing, and (2) City has inspected and approved of the Artwork or consented to said testing in writing. Artist shall, at its sole cost and expense, perform all work required to comply with scheduled inspections and testing, and any requests for corrections City or other inspection authorities make as a result of such inspections or testing.

1.7 Post-Creation Obligations.

a. Upon completion of the Artwork, and at all times during creation and installation of the Artwork, the Artist shall comply with all applicable statutes, ordinances, and regulations of any governmental agency having jurisdiction over Artist or the Artwork.

b. Artist shall ensure that the Artwork is installed in a safe manner, and is designed to withstand the forces of nature it is expected to be exposed to during its lifetime, including, but not limited to, wind, rain and sun as reasonable for artwork of a similar nature. Artist is not responsible for repair or replacing the Artwork due to vandalism, earthquake or other casualty.

1.8 Post-Installation Obligations.

a. Artist shall be available at such reasonable time or times as may be agreed between City and Artist to attend any and all inauguration, ground breaking, or presentation ceremonies upon completion of the Artwork.

b. City shall have the right to arrange for publicity for the completed Artwork by local media and publications and as otherwise as may be determined by City, in its sole

and absolute discretion, following installation.

c. Upon installation of the Artwork, Artist shall provide City with written instructions for appropriate maintenance and preservation of the Artwork.

1.9 Final Acceptance. Artist shall advise City in writing when Artist believes that installation of the Artwork at the Site Location is complete. Following receipt of such notice, City shall promptly cause the installed Artwork to be inspected. Within five (5) working days following completion of such inspection(s), City shall either (i) provide Artist with reasonably specific written objections, and a list of necessary corrections to the installed Artwork that Artist must complete, or (ii) notify Artist of its acceptance of the Artwork by issuing a Notice of Completion in the form attached hereto as Exhibit D. Said Notice of Completion shall be evidence of the satisfactory completion and installation of the Artwork in conformity with this Agreement, subject to the indemnification, representations, and further performance obligations set forth in this Agreement.

1.10 Risk of Loss. Artist shall bear the risk of loss or damage to the Artwork during fabrication and installation until City issues the Notice of Completion indicating its acceptance of the Artwork as provided in Section 1.9. Upon Artist's receipt of the Notice of Completion, the risk of loss or damage to the Artwork shall be borne by City. Prior to City's issuance of the Notice of Completion, Artist shall take such measures as are necessary to protect the Artwork from loss or damage, through insurance or other adequate security, and to maintain the Artwork until final acceptance by City.

1.11 Compensation to Artist. City agrees to pay Artist for the Artwork the compensation set forth in Exhibit C. The total compensation to be paid to Artist shall not exceed **\$81,630 (Eighty One Thousand Six Hundred Thirty Dollars)**. The parties agree that said compensation represents full payment to Artist for the design, fabrication and installation of the Artwork, including compensation for all professional services and reimbursement for expenses, and City shall have no additional financial obligations under this Agreement.

ARTICLE II. TIME OF PERFORMANCE

2.1 Time. Artist shall perform his/her obligations under this Agreement in a punctual and diligent manner and in accordance with the Schedule of Performance attached hereto as Exhibit B. In the event Artist fails to perform fully any and all of its obligations under this Agreement, then City may, at its option, after first giving fifteen (15) days written notice to cure to Artist, provide any such labor and materials as may be necessary for the completion of the Artwork. In the event Artist fails to cure within the fifteen (15) day period, City may deduct the cost of said labor and materials and all costs incurred in finishing the work, if applicable, from any money then due or thereafter to become due to Artist under this Agreement until the work undertaken by City is completely finished. Upon completion of the work, if the unpaid balance of the amount to be paid to Artist under this Agreement exceeds the expenses incurred by City in securing labor and materials from other sources and/or in finishing Artist's work, such excess shall be paid to Artist. Conversely, if the expenses incurred by City as described above exceed the unpaid balance due to Artist, then Artist shall promptly pay to City the amount by which such expenses exceed the remaining unpaid balance. The expenses incurred by City, as herein provided, shall be chargeable to and paid by Artist.

ARTICLE III. WARRANTIES

3.1 Title. Artist represents and warrants that: (a) the Artwork is solely the result of the artistic effort of the Artist and Artist is the creator and owner of the Artwork design; (b) that the Artwork is unique and original and does not infringe upon any copyright; (c) that the Artwork, or a duplicate thereof, has not been accepted for sale elsewhere; (d) that to the best of his/her knowledge the Artwork is not presently subject to claims of ownership, lien or encumbrance or to common law or statutory copyright claims of any other person, institution, or domestic or foreign government; and (e) that the Artwork is free and clear of any and all encumbrances and/or monetary liens. Artist covenants to defend, indemnify and hold City, and City's elected and appointed officials, officers, employees, servants, attorneys, volunteers, and agents harmless from any loss, claim or liability in any way related to a claim that that the Artwork violates federal, state or local laws, or any contractual provisions, relating to copyrights, trade names, licenses, franchises, patents or other means of protecting interests in products or inventions. Artist shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked materials, equipment, devices or processes used on or incorporated in the Artwork produced under this Agreement. In case such materials, equipment, devices or processes are held to constitute an infringement and their use is enjoined, Artist shall, at his/her expense, either (a) secure for City the right to continue exhibiting the Artwork by suspension of any injunction or by procuring a license or licenses for City; or (b) modify the Artwork so that it becomes non-infringing. The covenant and warranties set forth in this Section 3.1 shall survive the termination of this Agreement.

3.2 Quality and Condition. Artist represents and warrants, except as otherwise disclosed to City in writing, that: (a) the fabrication of the Artwork will be performed in a workmanlike manner; (b) the Artwork, as fabricated and following installation, will be free of patent and latent defects in material and workmanship, including any defects or qualities which cause or accelerate deterioration of the Artwork; and (c) reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by Artist to City. The warranties described in this Section 3.2 shall survive for a period of one (1) year after acceptance of the Artwork as evidenced by a Notice of Completion issued in accordance with Section 1.9, except the representation and warranty concerning latent defects shall survive for a period of three (3) years from the acceptance of the Artwork. City shall give written notice to Artist of any observed and claimed breach with reasonable promptness. Artist shall, at the request of City, and at no cost to City, cure reasonably and promptly the breach of any such warranty which is curable by Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or refabrication of the Artwork).

ARTICLE IV. LOCATION AND DISPLAY OF ARTWORK

4.1 Location/Display. Notwithstanding any other provision of this Agreement, Artist hereby acknowledges and agrees that City shall have sole and absolute discretion on the determination of the location and placement of the Artwork at the Site location. Artist further acknowledges and agrees that City may determine to remove the Artwork in its sole and absolute discretion.

ARTICLE V. PARTY REPRESENTATIVES

5.1 City Representative. For the purposes of this Agreement, City's representative shall be the Director of Community Services, or such other person as the Director designates in writing (hereinafter the "City Representative"). It shall be Artist's responsibility to assure that the City

Representative is kept informed of the progress of the performance of the services and obligations more particularly described in **Exhibit A**, and Artist shall refer any decisions which must be made by City to the City Representative. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the City Representative.

5.2 **Artist Representative.** For the purposes of this Agreement, Marie Barbera ("Artist") is the sole principal and representative of Artist authorized to act in his/her behalf with respect to the services specified herein and make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of Artist were a substantial inducement for City to enter into this Agreement. Therefore, Artist shall be responsible during the term of this Agreement for performing or directing all activities of Artist and devoting sufficient time to personally perform or supervise, as appropriate, the services hereunder. Artist may not assign all or any of his/her obligations under this Agreement without the prior written approval of City except artist may have Frank Barbera and licensed subcontractors assist in the installation of the Artwork at the Site Location.

ARTICLE VI. OWNERSHIP OF ARTWORK; REPRODUCTION RIGHTS

6.1 **Ownership of Artwork.** Title to the Artwork and any construction drawings, plans, or other work product generated pursuant to this Agreement shall pass to and vest in City upon (i) the commencement of the installation process and the full payment of the compensation described in **Exhibit C** or (ii) Termination of the Agreement as provided in Article X hereinafter.

6.2 **Title to Intellectual Property.** Upon issuance of the Notice of Completion, title to all copyright and other intellectual property rights in the Artwork shall also pass to and vest in City. City shall have all rights under the Copyright Act of 1976, 17 U.S.C. Sections 101 *et seq.*, and all other rights in and to the Artwork, including ownership and possession. Artist shall retain no rights in the Artwork and shall have no rights under the Copyright Act of 1976, 17 U.S.C. Sections 101 *et seq.* In view of the intention that the Artwork shall be unique, Artist shall not make any duplicates or reproductions of the final artwork, nor shall Artist grant permission to others to do so. The parties recognize that City alone may grant such approval. City and its assigns may make reproductions of the Artwork for commercial purposes, including but not limited to reproductions used in posters, advertising, brochures, media publicity, and catalogues, provided that these rights are exercised in a tasteful and professional manner. All proceeds from such reproductions shall belong to the City. All reproductions of the Artwork by City shall include a credit to Artist and identify the location of the Artwork.

ARTICLE VII. ADDITIONAL ARTIST OBLIGATIONS

7.1 **Artist's Address.** Artist shall notify City of any change in address. City shall take reasonable effort(s) to locate Artist when matters arise relating to the Artist's rights under this Agreement.

7.2 **Surviving Covenants.** The covenants and obligations set forth in this Article VIII shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest, and City's covenants do attach and run with the Artwork and shall be binding to and until twenty (20) years after the death of the Artist unless otherwise stated herein. Upon the death of the Artist, the representative of Artist's estate shall assume the surviving covenants and obligations of Artist set forth in this Article VIII.

7.3 Independent Contractor. Artist is, and shall at all times remain as to City, a wholly independent contractor. Artist shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act as an agent of City. Neither City nor any of its agents shall have control over the conduct of Artist or any of Artist's employees (if any), except as set forth in this Agreement. Artist shall not, at any time, or in any manner, represent that it or any of its officers, agents or employees are in any manner employees of City. Artist agrees to pay all required taxes on amounts paid to Artist under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Artist shall fully comply with the workers' compensation law regarding Artist and its employees (if any). Artist further agrees to indemnify and hold City harmless from any failure of Artist to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any fees due to Artist under this Agreement any amount due to City from Artist as a result of Artist's failure to promptly pay to City any reimbursement or indemnification arising under this Section 7.3.

ARTICLE VIII. ARTIST'S RIGHTS

8.1 Identification. The Artist shall place her signature on the adjacent column identifying Artist, the title of the Artwork and the year of completion, and shall reasonably maintain such notice in good repair for as long as the Artwork is displayed.

8.2 Maintenance. The parties recognize that maintenance of the Artwork on a regular basis is essential to the integrity of the Artwork. Until such time as City determines it no longer wishes to display the Artwork, the City shall maintain the Artwork.

8.3 Repairs and Restoration.

a. City shall have the right to determine, after consultation with a professional art conservator, when and if repairs and restoration to the Artwork will be made. At City's option, Artist, during Artist's lifetime, may be given the opportunity to make or personally supervise significant repairs and restorations and shall be paid a reasonable fee for any such services, provided that City and Artist mutually agree in writing, prior to the commencement of any significant repairs or restorations, upon Artist's fee for such services. City shall have no obligation to utilize the services of Artist in this respect if it chooses to have the repairs and restoration done by other professionals. No fees shall be paid to Artist for repair or restoration due to a breach of the representations and warranties set forth herein.

b. All repairs and restorations shall be made in accordance with recognized principles of conservation.

8.4 Maintenance, Alteration and Removal of the Artwork.

a. City shall maintain Artwork in a manner that City determines appropriate in its sole discretion. All decisions regarding alterations to, or relocation or removal of, the Artwork are within the sole and absolute discretion of the City.

b. If any alteration is made to the Artwork without the consent of Artist, Artist shall have the right to direct the City to remove Artist's name from the Artwork. In connection herewith, Artist hereby acknowledges and agrees that Artist is familiar with

the federal Visual Artists Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 *et seq.*), and the rights and protection afforded Artist thereunder. Artist, on behalf of him/herself and on behalf of his/her successors, heirs, and assigns, hereby waives, releases and disclaims any rights, demands or claims as may arise at any time and under any circumstances against City, and its elected and appointed officials, officers and employees arising under the federal Visual Artists Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 *et seq.*), and any other local, state, federal or international laws that convey rights of the same nature, or any other type of moral right protecting the integrity of works of art to the fullest extent permitted by law. Without limiting the generality of the foregoing, Artist expressly waives any rights under the federal Visual Artists Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 *et seq.*), and any other local, state, federal or international laws relating to the location, placement, or removal and disposal of the Artwork.

c. The parties acknowledge and agree that because the Artwork is being installed at the roundabout located at Eisenhower Drive and Calle Sinaloa that is owned by the City, it will not be possible to preserve the Artwork if the City determines that it no longer wishes to have the Artwork on display at that Site Location. By way of example, the parties recognize that it would not be feasible or practical to relocate the Artwork after it is installed. For this reason, the parties agree that City shall have the right at any time and for any reason, to remove, destroy, or otherwise dispose of the Artwork, and Artist shall have no right to notice of such actions. City shall have no obligation to preserve the Artwork if it determines it no longer wishes to display the Artwork. In addition, should City transfer property containing the Site Location to a third party, all obligations of City under this Agreement shall terminate.

8.5 Permanent Record. The City shall maintain a record of this Agreement and of the location and disposition of the Artwork.

ARTICLE IX. ASSIGNMENT OR TRANSFER

9.1 Artist shall not assign or transfer any interest in this Agreement without the prior written consent of City. If the assignment is approved the parties shall enter an assignment and assumption agreement. Any attempt by Artist to assign, transfer, or subcontract any rights, duties, or obligations arising hereunder without city's prior written consent shall be null, void and of no effect.

ARTICLE X. TERMINATION

10.1 City may, at its option, by written notice to Artist, terminate this Agreement either upon the failure by Artist to perform any of its obligations hereunder in accordance with the terms hereof or any other breach by Artist of the terms of this Agreement, and such failure or breach continues uncured for fifteen (15) days following notice thereof from City to Artist ("Termination"). Upon Termination, except as provided in this Article X, all parties shall be released from all further obligations and liability hereunder. Effective upon a Termination, the Artwork, or so much thereof or has then been completed, shall be transferred to and shall belong to City. In such event City will remove Artist's name from the Artwork.

ARTICLE XI. INSURANCE AND INDEMNIFICATION.

11.1 Insurance. Prior to commencing any work under this Agreement, and throughout the duration of the term of this Agreement, Artist shall procure and maintain, at its sole cost, and submit concurrently with its execution of this Agreement, insurance as described herein. All insurance coverage required by this Agreement shall be placed with insurers authorized to do business in the State of California with an A.M. Best and Company rating level of A- or better, Class VI or better, unless otherwise approved by City's Risk Manager in writing.

11.1.1. Minimum Coverage. Insurance shall include the following (or broader) coverage:

a. Insurance Services Office Commercial General Liability coverage "occurrence" form CG 00 01 or its equivalent with an edition date prior to 2004 and with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

11.1.2. Required Endorsements. Liability insurance policies required to be provided by Artist hereunder shall contain or be endorsed to contain the following provisions:

a. City, its employees, officials, agents and member agencies shall be covered as additional insureds. Coverage shall apply to any and all liability arising out of the Work or related to the Contract. Additional insured status under the general liability requirement shall be provided on Insurance Services Office Form CG 20 10 with an edition date prior to 2004, or its equivalent. Additional insured status for completed operations shall be provided either in the additional insured form or through another endorsement such as CG 20 37 with an edition date prior to 2004.

b. General liability insurance shall apply to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability. Coverage will not be limited to City's vicarious liability.

c. Liability coverage shall be primary and non-contributing with any insurance maintained by City.

d. Each policy required hereunder, and the associated evidence of coverage (including employer's liability policies), shall provide that coverage shall not be suspended, voided, canceled or reduced in coverage or in limits except after prior written notice has been given to City. Such provision shall not include any limitation of liability of the insurer for failure to provide such notice.

e. No liability insurance coverage provided to comply with this Agreement shall prohibit Artist, or Artist's employees, or agents, from waiving the right of recovery prior to a loss. Artist waives its right of recovery against City.

11.1.3. Verification of Coverage. Artist shall deposit with City within fifteen (15) days of Notice to Proceed of the Contract certificates of insurance evidencing the

coverage required hereunder and all required endorsements.

11.1.4. No Waiver or Obligation. There shall be no recourse against City for payment of premiums or other amounts with respect to the insurance required to be provided by Artist hereunder. Any failure, actual or alleged, on the part of City to monitor compliance with these requirements will not be deemed as a waiver of any rights on the part of City. City has no additional obligations by virtue of requiring the insurance set forth herein. In the event any policy of insurance required under this Agreement does not comply with these requirements or is canceled and not replaced, City has the right but not the duty to obtain the insurance it deems necessary and any premium paid by City will be promptly reimbursed by Artist or City will withhold amounts sufficient to pay premium from Artist payments.

11.1.5. Prompt Notice. Artist agrees to provide immediate notice to City of any claim or loss against Artist arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

11.1.6. Subcontractors. Artist shall include all subcontractors, if any, as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor approved by City. All coverages for subcontractors, if any, shall be subject to all of the requirements stated herein unless otherwise approved in advance in writing by City's Risk Manager.

11.2 Indemnification.

11.2.1. Indemnification. To the fullest extent permitted by law, Artist shall indemnify, protect, defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all liability, claims, suits, actions arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, actual attorney fees incurred by City, court costs, interest, defense costs including fees of expert Artists or expert witnesses incurred in connection therewith and any other costs or expenses of any kind whatsoever incurred in relation to, as a consequence of or arising out of or in any way attributable, in whole or in part, to Artist's performance of this Agreement. All obligations under this provision are to be paid by Artist as City incurs them.

11.2.2 Exception to Artist's Obligation to Indemnify. Without affecting the rights of City under any provision of this Agreement or this section, Artist shall not be required to indemnify and hold harmless City as set forth above for liability attributable to the sole fault of City, provided such sole fault is determined by agreement between the parties or by the findings of a court of competent jurisdiction. This exception will apply only in instances where City is shown to have been solely at fault and not in instances where Artist is solely or partially at fault or in instances where City's fault accounts for only a percentage of the liability involved. In those instances, the obligation of Artist will be all-inclusive and City will be indemnified for all liability incurred, even though a percentage of the liability is attributable to conduct of City.

11.2.3 Artist Acknowledgment. Artist acknowledges that its obligation pursuant to this section extends to liability attributable to City, if that liability is less than the sole fault of City.

11.2.4 Indemnity Provisions for Subcontractors. Artist agrees to obtain executed indemnity agreements with provisions identical to those set forth here in this section from each and every subcontractor, sub tier Artist or any other person or entity involved by, for, with or on behalf of Artist in the performance of this Agreement. In the event Artist fails to obtain such indemnity obligations from others as required here, Artist agrees to be fully responsible according to the terms of this section.

11.2.5 No Waiver; Survival. Failure of City to monitor compliance with the requirements of this Section 11.2 imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. Artist's obligation to indemnify and defend City as set forth herein is binding on the successors, assigns, or heirs of Artist and shall survive the termination of this Agreement or this section.

11.3 Remedies. In addition to any other remedies City may have if Artist fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement.
- b. Order Artist to stop work under this Agreement and/or withhold any payment(s) which become due to Artist hereunder until Artist demonstrates compliance with the requirements hereof.
- c. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to any other remedies City may have. The above remedies are not the exclusive remedies for Artist's failure to maintain or secure appropriate policies or endorsements. Nothing herein contained shall be construed as limiting in any way the extent to which Artist may be held responsible for payments of damages to persons or property resulting from Artist's or its subcontractors' performance of work under this Agreement.

ARTICLE XII. GENERAL PROVISIONS

12.1 Notices. All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given (a) upon the delivery or receipt thereof, as the case may be, if delivered personally or recognized overnight courier service; or (b) on the third business day following deposit in the United States mail, sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses set forth below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section. All notices shall be addressed as follows:

CITY:
City of La Quinta
Attn: Community Services Director
78495 Calle Tampico
La Quinta, CA 92253

ARTIST:
Marie Barbera
21395 Via Del Parque
Yorba Linda, CA 92887
Email : clay888259@aol.com

12.2 Nondiscrimination. In the performance of the services under this Agreement, neither Artist nor City shall discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation. In addition, Artist shall comply with the equality of employment opportunity provisions of State and local laws and regulations as presently existing or hereafter amended.

12.3 Entire Agreement. This Agreement and all exhibits attached hereto and incorporated herein by specific reference, embodies the entire integrated agreement and understanding between the parties hereto. There are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby, except as set forth herein above.

12.4 Modification. This Agreement and each of the terms embodied herein may be amended, altered, changed, or modified only by a written instrument signed by each party hereto and approved by appropriate action of City.

12.5 Waiver. No waiver of performance by any party hereto shall be construed as or operate as a waiver of any subsequent default of any terms, covenants and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

12.6 Governing Law; Venue. This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of California. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, any party hereto may institute legal action to seek specific performance of the terms of this Agreement, to recover damages, or to obtain any other remedy, at law or in equity, consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Riverside, or in the Federal District Court in the district of California which includes Riverside County.

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

12.8 Severance. If a court of competent jurisdiction determines that any provision(s) of this Agreement is invalid, void, or illegal, such provision(s) shall be severed from the Agreement and shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

12.9 Substitution. Whenever in the specifications of materials or process the Scope of Services indicates or specifies materials or processes by patent or proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of the material and/or process desired, and shall be deemed to be followed by the words "OR EQUAL," and Artist may offer any material or process which shall be equal in every respect to that so indicated or specified. Artist shall not offer any substitute material or process if a substitute so offered by Artist is not found to be equal to that so indicated or specified by name, if one only be so specified or named, or, if more than one be so specified or named, then such one as shall be specified in the proposal, or if none be so specified, then such one as shall be required by City.

12.10 Effective Date. Unless a different date is provided in this Agreement, the Effective Date shall be the latest Date of Execution, hereinafter set forth below the names of the signature hereto. Should Artist fail to enter a Date of Execution, the Effective Date shall be the Date of Execution by City.

12.11 Force Majeure. In addition to specific provisions of Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, supernatural causes, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other party, acts or failure to act of any public or governmental agency or entity, including, without limitation, unreasonable delays in the processing and issuance of required permits for the installation of the Artwork by Artist (except that any act or failure to act of City shall not excuse performance by City) or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. Notwithstanding the foregoing, market and economic conditions shall not entitle Artist to an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten (10) days of knowledge of the commencement of the cause. In addition, times of performance under this Agreement may be extended by mutual written agreement by City and Artist.

[THIS SPACE INTENTIONALLY LEFT BLANK]

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

CITY:

CITY OF LA QUINTA, a California Municipal Corporation

By: _____

FRANK J. SPEVACEK, City Manager

ATTEST:

SUSAN MAYSELS, City Clerk
City of La Quinta, California

APPROVED AS TO FORM:

M. KATHERINE JENSON, City Attorney
City of La Quinta, California

ARTIST:

MARIE BARBERA

By: _____

Marie Barbera

Title: _____

Artist

EXHIBIT A

SCOPE OF DESIGN BUILD SERVICES

I. SCOPE OF WORK

- a. Artist shall furnish all labor, material, tools, equipment, etc., required to design the Artwork in accordance with the quality level and intent of the concept drawings as prepared by Artist and approved by the City, along with all governing agency requirements and code criteria.
- b. Artist is responsible for submitting all required documents relating to the Artwork design so that all required approvals may be obtained in a timely manner.
- c. Artist shall immediately notify the City in writing of any cost impact or schedule impact whether increase or decrease, resulting from any modifications to the design. Any redesign fees or any other costs incurred by the Artist shall not be charged to the City unless the City has agreed to such charge in writing.
- d. Artist shall complete the design in sufficient scale and detail as required by the City for approval.
- e. Artist's design shall be subject to approval by the City.
- f. Artist is not authorized to utilize the Site Location to display artworks (other than the Artwork which is the subject of this Agreement), and is not authorized to conduct any sales activities at the Site Location.
- g. Should the City wish to create reproductions of the Artwork, Artist shall cooperate with the City's efforts, and shall execute any necessary consent forms, waivers, or other required documentation. The City owns all rights with regarding to the Artwork, including the right of reproduction in the form of miniature replicas of the sculpture, photographs, prints and posters, and has the right to sell these items.

II. GENERAL ITEMS OF INCLUSION:

As a further clarification to the plans and specifications, the work shall include but not necessarily be limited to the following:

- a. Artist shall examine or cause to be examined all supporting and adjacent surfaces and record any defects to the City prior to installing any material. The installation of any material constitutes the Artist's complete acceptance of all substrates as compatible with the work under this Agreement.
- b. Any work not provided for in this Agreement must be authorized by the City prior to the installation of such work.
- c. Artist is responsible for all repairs or replacement of any existing property or work which is damaged as a result of the performance of the work under this Agreement. Artist shall keep his work area in a neat and orderly manner, consistent with the

operation of the Site Location, which will be open to the public during the installation. The Artist shall be responsible for all necessary signage or barricades to protect the Artwork and the general public during the installation.

- d. Artist shall provide for all unloading and bracing for the Artwork, and shall ensure that the area in which he is working is maintained in a safe and orderly manner.

III. SPECIFIC ITEMS OF INCLUSION

- a. Artist will fabricate two bronze figurative statues of a mother and child that will depict a 1920's style. Faces will have features as depicted in the original proposal. Each figure will hold a woven basket of the time period. The sculpture will stand 6'5" to 7 feet in height.
- b. Patina will be of traditional bronze and copper colors.
- c. The sculpture will be placed on a ¼ inch fabricated pedestal with a black powder coated finish. The pedestal will be attached to a 5'x5' 8" slab of concrete or as recommended by the City's Structural Engineer.
- d. The height of the pedestal will be determined by the Community Services Director and Traffic Engineer.
- e. The Artist and any other individuals working on this project at the site location will be required to obtain an encroachment permit with the Public Works department, at no cost to Artist, prior to installation.
- f. Artist shall be required to possess a City of La Quinta business license.

EXHIBIT B

SCHEDULE OF PERFORMANCE

SCHEDULING:

The project will take approximately six months to complete once instructed to proceed.

REVIEWS:

The Community Services Director will have regular visits and shall receive written progress reports from the Artist.

The project may be reviewed by Traffic Engineer as deemed appropriate. Any comments made by the Traffic Engineer shall be addressed by the Artist.

EXHIBIT C

SCHEDULE OF COMPENSATION

SCHEDULE OF PAYMENT TO ARTIST BY CITY:

City shall pay Artist within seven (7) days of execution of
this Agreement a deposit in the amount of: **\$27,210**

City shall pay Artist within seven (7) days of inspection of the
completed clay maquette **\$27,210**

Final payment shall be made within seven (7) days of Artist's
receipt of the Notice of Completion **\$27,210**

Total Not to Exceed: **\$81,630**

EXHIBIT D

NOTICE OF COMPLETION FOR ARTWORK

Piece of Artwork: _____

WHEREAS, by that certain Art Purchase Agreement dated _____, 2014 ("Agreement"), THE CITY OF LA QUINTA, a California municipal corporation ("**City**") contracted with MARIE BARBERA ("**Artist**") to provide certain "Artwork" (as defined in the Agreement); and,

WHEREAS, as referenced in the Agreement, City shall furnish Artist with a Notice of Completion upon completion of the fabrication and installation of the Artwork; and,

WHEREAS, such certificate shall be conclusive determination of satisfactory completion of the fabrication and installation of the Artwork, as required by the Agreement, has been satisfactorily completed.

NOW, THEREFORE, the parties hereto certify as follows:

1. As provided in the Agreement, City does hereby certify that the fabrication and installation of the Artwork has been fully performed and completed.
2. Nothing contained in this instrument shall modify in any other way any executory portions of the Agreement.

IN WITNESS WHEREOF, City has executed this certificate this _____ day of _____, 201__.

CITY OF LA QUINTA, a California
Municipal Corporation

By: _____

February 9, 2014

City of La Quinta
Community Services Department
78-495 Calle Tampico
La Quinta, California 92253

Edie Hylton,
Community Services Director:

Along with my submitted clay Marquette, you will find my proposal for the design and construction and my rendition of said sculpture.

You will find dimensions, composition, dress, description and patina of said piece of art, titled at this time "Mother and Child of La Quinta. You will also find as requested, construction of the pedestal, itemize costs, sketches, and schedule of completion and payment schedule.

I have also included photo examples of my past commissions of larger than life size sculpture located in cities and universities across the county and also in private homes. My career in art is mainly known for the Native American Culture, of which I have enjoyed creating over 30 years. I am familiar with the American Indian history, culture, dress and most important, accuracy.

Thank you for this opportunity to submit my work to your city. I would be honored to be considered in this project.

Respectfully,

A handwritten signature in cursive script that reads "Marie Barbera".

Marie Barbera
21395 Via Del Parque
Yorba Linda, Ca. 92887
760 518 4428
Clay 888259@aol.com
www.mbarbera.com

La Quinta Proposal of Mother and Child by Marie Barbera

Dimensions Approximately 6' 4" to 7'

Composition will depict the culture and life style of the Cahullia Indian of the 1920's.

Dress will depict 1920 (gingham style). The dresses will be highly detailed with folds and ruffles and buttons for both mother and child.

Mother and Child will be barefooted and will have long flying black hair. Each will hold a weaved basket of the time, as shown on clay Marquette submitted to the Community Services Department of the city La Quinta.

Faces will have features of the Cahullia Indian as shown on the sketch submitted to the community service dept.

Patina will be of traditional bronze or of a copper green, of which is preferable ascetically, but optional.

The sculpture will stand on a 4' x 4' fabricated ¼ steel pedestal, as shown on sketch, with a black powder coating, of which can be of any color finish.



M. Backus ©
M. Mathew



Marie & Child





RIO VERDE ARIZONA

Cost Breakdown:

City permits:		\$500.00
Electrical permit		130.00
Electrical	(3 spot lights)	1800.00
Masonry	(approx)	1200.00
Foundry:		
Mold for mother and child		\$12,000.00
Bronze casting for mother and child		15,000.00
4' x4' fabricated steel box (¼" thickness w/black Powder coating)		3,000.00
Transportation & installation assistance		
Forklift provided		6,000.00
Design, material and labor of sculpture		42,000.00
Total of Project:		\$ 81,630.00

La Quinta Proposal of Mother and Child time and payment Schedule:

Labor:	Approximately	2 ½ to 3 months
Foundry:	Approximately	2 months
Complete to installation (Approx)		5 to 6 months

Expected Payment Schedule:

1/3 deposit on commencing of project

1/3 on inspection and acceptance of completed clay

1/3 at time and date of completion and installation