September 14, 2004

TO: Mayor and City Council

FROM: Pamela Sloan, Director of Parks and Recreation

SUBJECT: RESOLUTION: AUTHORIZING A CONTRACT WITH ARTISTS BRIAN LACZKO AND JOHANNA POETHIG TO DESIGN, FABRICATE AND INSTALL GLEASON PARK GATEWAY ARTWORK

RECOMMENDATION

The Public Art Advisory Committee (PAAC) recommends the City Council adopt a resolution authorizing a contract with artists Brian Laczko and Johanna Poethig of Oakland, in the amount of $45,000 for art services to design, fabricate and install Gleason Park gateway artwork. The public art gateway is a part of the infrastructure project for the entire Gleason Park area. The gateway will be located at the corner of Sonora and California Streets. The design uses glass blocks imbedded in cement with photos mounted behind them in the interior.

DISCUSSION

Background

In March, 2003, the Public Art Advisory Committee approved the selection of Brian Laczko and Johanna Poethig from the approved artist pool for the Gleason Park Gateway Project which at that time was a $20,000 project. In November 2003, The Project Manager, Victor Machado requested that the Public Art Advisory Committee increase the budget for the public art project to $50,000 to make a really impressive art statement at the entrance to Gleason Park. The budget was increased to $50,000, but the project was put on hold until 2004. The public art gateway is a part of the infrastructure project for the entire Gleason Park area.

Present Situation

The Beacon Gateway will be located at the corner entrance of Sonora and California Streets. The design uses glass blocks imbedded in cement with photos mounted behind them in the interior. The pillar is lit from the inside using the existing electrical and light planned for the site. There will be a locked access door at the base of the pillars so that bulbs can be changed. The wrought iron flames at the top of the pillars bring movement and expression to the art work as well as forming the “arch” to the gateway, the tile work adds accent and color and the interior images will be historic photos of Little Manila and the area. They will be transferred onto a permanent material such as tile or metal and
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fastened into the glass block with a welded metal frame. This project will be coordinated with the General Contractors' work at the site, Callander and Associates.

Findings

Ordinance No. 04592-CS, effective December 3, 1992, amended the Stockton Municipal Code regarding bidding, contracting, and purchasing procedures. Among its provisions are exceptions to competitive bidding requirements for contracts of $26,607 or more in cases where the City Council has approved findings which support and justify exceptions to the competitive bidding process. The circumstances in which findings can be made include negotiated contracts following solicitations of competitive proposals (Request for Proposals process).

FINANCIAL SUMMARY

There are sufficient funds in the Public Art Program Fund Account 306-7032-610 for this project.

Respectfully submitted,

PAMELA SLOAN
DIRECTOR OF PARKS AND RECREATION

PS:pb

Attachments

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APPROVED:

MARK LEWIS, CITY MANAGER
Sample of Past Work

Rochambeau Park

Johanna Poethig

Facing Ramp/Pillars from basketball and tennis courts

1/2" = 1 foot

6' foot base

north

8' 6" including ball and base

south

7' 10" including ball and base

6' foot base
Resolution No. __________

STOCKTON CITY COUNCIL

RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF STOCKTON
AND BRIAN LACZKO AND JOHANNA POETHIG, TO DESIGN, FABRICATE, AND
INSTALL THE RECOMMENDED PUBLIC ART FOR THE GLEASON PARK
GATEWAY ARTWORK IN THE AMOUNT OF $45,000

WHEREAS, on April 23, 2002, the City Council adopted Resolution No. 02-0220,
approving findings, declaring an exception to the competitive bidding process and
authorizing the use of the Request for Qualification ("RFQ") process for eight public art
projects; now, therefore,

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF STOCKTON, AS
FOLLOWS:

1. That the proposal submitted by Brian Laczko and Johanna Poethig, to
design, fabricate, and install the recommended artwork for the Gleason Park gateway
artwork is hereby accepted.

2. That the City Manager of the City of Stockton is hereby authorized and
directed to execute the "Agreement Between The City of Stockton and Brian Laczko
and Johanna Poethig, for Artwork – Edna Gleason Park" between the City of Stockton
and Brian Laczko and Johanna Poethig to design, fabricate, and install the
recommended artwork for the Gleason Park gateway artwork, in the amount of $45,000,
on behalf of the City of Stockton, a copy of which is attached hereto as Exhibit "A" and
by reference made a part hereof.

3. That the City Manager is hereby authorized and directed to take all other
actions necessary to carry out the intent and purpose of this resolution.

PASSED, APPROVED, and ADOPTED ____________________________

ATTEST:

GARY A. PODESTO
Mayor of the City of Stockton

KATHERINE GONG MEISSNER
City Clerk of the City of Stockton

City Atty Review ____________
Date September 1, 2004
AGREEMENT BETWEEN THE CITY OF STOCKTON
AND BRIAN LACZKO AND JOHANNA POETHIG FOR ARTWORK,
EDNA GLEASON PARK

This Agreement is made and entered into on ____________________, by and
between the CITY OF STOCKTON, a municipal corporation, hereinafter referred to as
the "CITY," and BRIAN LACZKO and JOHANNA POETHIG, individuals hereinafter
collectively referred to as the "ARTISTS."

NOW, IN CONSIDERATION of the mutual terms, conditions, promises,
covenants and payments hereinafter set forth, CITY and ARTISTS agree as follows:

ARTICLE 1. DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms
and provisions which follow, the definitions and identifications set forth below are
assumed to be true and correct and are agreed upon by the parties.

1.1 COUNCIL: The City Council of the City of Stockton, California, which is
the governing body of the Stockton City government created by the Stockton City
Charter.

1.2 ARTISTS: Brian Laczko and Johanna Poethig, the business entity
selected to perform services pursuant to this Agreement.

1.3 CONTRACT ADMINISTRATOR: The Contract Administrator shall be the
Public Art Manager of the City of Stockton. In the administration of this Agreement, as
contrasted with matters of policy, all parties may rely upon instructions or
determinations made by the Contract Administrator.

1.4 CITY: The City of Stockton, a municipal corporation in the State of
California.

1.5 NOTICE TO PROCEED: A written notice directing ARTISTS to proceed
with performance of the scope of work describing the Project, issued by the Contract
Administrator.

1.6 PROJECT: Edna Gleason Park rehabilitation project, as outlined in
Exhibit A.

1.7 ARTWORK: The completed form of artwork created by ARTISTS,
including all activities undertaken to complete the performance of the scope of work for
the Project, in conformity with the design of the proposed WORK as submitted by
ARTISTS and selected by CITY.
ARTICLE 2. PREAMBLE

ARTISTS were selected pursuant to the Public Art Master Plan process as approved by the City Council in June, 2000. Negotiations pertaining to the services to be performed by ARTISTS were undertaken between ARTISTS and a committee pursuant to Chapter 3, sections 3-095 through 3-099, of the Stockton Municipal Code and this Agreement incorporates the understandings arrived at during such negotiation.

ARTICLE 3. SCOPE OF WORK

3.1 ARTISTS shall furnish all services as described in Exhibit A of this Agreement, attached and incorporated by this reference, as the “Scope of Work” for the Project, subject to the provisions of Article 4, below.

3.2 CITY shall be responsible for providing ARTISTS, without cost, copies of designs, drawings, reports, and other relevant data needed by ARTISTS in order to design and execute the Work.

3.3 ARTISTS shall provide monthly progress reports and/or deliverables, as provided in the Scope of Work, to Contract Administrator in a manner acceptable to the Contract Administrator.

ARTICLE 4. CHANGES IN SCOPE AND ADDITIONAL WORK

4.1 ARTISTS shall, whenever required during the term of this Agreement by the terms of this agreement or at the request of the Contract Administrator, present to CITY in writing, drawing or other appropriate media for further review and approval any significant changes in the scope, design, color, size, material, utility and support requirements, texture, or location of the site or of the Work. A significant change is any change which affects the installation. Scheduling, maintenance of the Work, site preparation or concept of the Work as represented in the original approved design.

4.2 ARTISTS shall perform the services called for in Exhibit A. ARTISTS and CITY agree that ARTISTS shall retain artistic control of their services in the performance of the services under this Agreement, subject only to the limitations imposed in Exhibit B and this Agreement.

4.3 Notwithstanding the provision of Section 4.2 immediately above, CITY may, at any time, request ARTISTS in writing to: revise portions of the services that he/she has previously completed in a satisfactory manner; delete portions of the Scope of Work which have yet to be performed; perform additional work beyond the Scope of Work provided in Exhibit A; or make other changes within the general Scope of Work to be performed under this Agreement. In the event of such a written request, the ARTISTS may, but shall not be obligated to agree to any such request.
4.3.1. In the event the request for change is agreed to by ARTISTS, this Agreement shall be amended, in writing, specifying the agreed changes, including, but not limited to, a description of services, addition or reduction of budget, payment schedule and timetable.

4.3.2. In the event that ARTISTS does not agree to the request, CITY shall be entitled, in CITY's sole discretion, to terminate the Agreement for cause pursuant to Article 12 and neither party shall thereafter be obligated to perform pursuant to this Agreement.

4.4 No services for which additional compensation will be charged shall be provided by ARTISTS without the prior written authorization by CITY.

4.5 CITY reserves the right to make such alterations as may be deemed necessary or advisable and to require such extra work as may be required for the proper completion of the Project contemplated by ARTISTS. Any such changes will be set forth in an amendment which will specify, in addition to the work done in connection with the change made, adjustments of contract time, if any, and the basis of compensation for such work. An amendment shall not become effective until approved by the City Manager or the City Council. Individual and cumulative amendments which exceed $25,757 plus ten percent (10%) of the initial contract price over $100,000 require City Council approval. Amendments not meeting the above criteria require approval by the City Manager.

ARTICLE 5. RESPONSIBILITIES OF ARTISTS

5.1 ARTISTS agree that an essential element of this Agreement is the skill and creativity of ARTISTS. ARTISTS shall not assign the creative or artistic portions of the Work to another party for the production of the Work without the written consent of CITY. Failure to conform to this provision may be cause for termination of this Agreement, at the sole discretion of CITY. Subject to section 15.13, below, any other person or entity utilized by ARTISTS as a subcontractor be identified in Exhibit B.

5.2 ARTISTS shall be responsible for providing services described in Exhibit B including, but not limited to, the quality and timely completion of the services. ARTISTS shall be responsible for designing the Artwork so that it can be constructed without exceeding the approved overall budget for the Project. ARTISTS shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his/her Work.

5.3 In the event the services of ARTISTS are integrated into, combined, or otherwise coordinated with services by third parties not within the control of ARTISTS, ARTISTS shall not be responsible for such third party services. If any part of ARTISTS' Work depends for proper execution or results upon the work of CITY, or a third party responsible to CITY, ARTISTS shall, prior to proceeding with his or her Work, promptly report to CITY any apparent discrepancies or other defects in such other work which
renders it unsuitable for proper execution and results by ARTISTS. ARTISTS shall not be responsible for any liability or failure to fulfill his/her obligations because of such discrepancies or defects, subject to confirmation by the Contract Administrator and timely notice provided by ARTISTS. Failure of ARTISTS to report a discrepancy or defect shall constitute an acceptance of the CITY'S or third party's work as fit and proper to receive ARTISTS' Work. Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore. Nothing in this section shall limit the responsibility of ARTISTS to take all reasonable steps to coordinate his/her Work with the work of CITY or of a third party on the project.

5.4 ARTISTS are responsible for the design, execution, fabrication, transportation, installation and inspection of an Artwork, in which the following provisions shall apply:

5.4.1. ARTISTS shall, if and when working on CITY property, supervise such clean-up as may be reasonably requested by CITY. At the close of ARTISTS' Work, ARTISTS shall remove his/her equipment, excess materials, etc., promptly and as requested by CITY.

5.4.2. CITY and any third party contractor on the project shall notify ARTISTS of their operation, construction and maintenance schedules in and around the area where ARTISTS' Work is to be performed. ARTISTS shall perform his/her services in a manner and time so as not to cause interference with any of the operations, construction, or maintenance of CITY or third party contractor. In the event of a conflict between the schedules of the contractor and/or CITY and ARTISTS, the conflict will be resolved by CITY. If the resolution of the conflict results in a significant delay of the performance of ARTISTS, ARTISTS shall have the right to renegotiate this Agreement to compensate him or her for any additional costs or expenses caused by the delay.

5.4.3. ARTISTS shall complete the fabrication and installation of the Work in substantial conformity with the attached Exhibit A, Scope of Work.

5.5 ARTISTS shall supply CITY with (a) his/her current professional resume; (b) eight 35-mm color slides of the completed Work; (c) four black and white or color 8" x 10" glossy photographic prints of the Work; (d) detailed information concerning the materials used in the creation of the Work; and (e) a detailed maintenance program and schedule for the Work.

ARTICLE 6. RESPONSIBILITIES OF CITY

6.1 CITY shall assist ARTISTS by placing at ARTISTS' disposal all public information it has available pertaining to the Project.

6.2 CITY shall perform in a timely way each and every activity as set forth in the Scope of Services. If delays occur when deliverables of ARTISTS are dependent
upon the CITY's timeliness, ARTISTS's schedule of performance shall be adjusted accordingly.

6.3 CITY shall:

6.3.1. Arrange for access so that ARTISTS may enter upon public property as required for ARTISTS to perform the services under this Agreement;

6.3.2. Give prompt written notice to ARTISTS whenever CITY observes or otherwise becomes aware of any development that affects the scope or timing of ARTISTS' services;

6.3.3. Arrange appointments, meetings, and/or consultations as needed for ARTISTS to fulfill his/her obligations under this Agreement

ARTICLE 7. WARRANTIES/STANDARDS

7.1 ARTISTS warrants that: (a) the design or Work being commissioned is the original product of his/her own creative efforts; (b) that the Work is original; and (c) that ARTISTS shall not sell or reproduce the Work, or allow others to do so without the prior written consent of CITY.

7.2 ARTISTS shall guarantee their Work to be free from faults of material and workmanship for a period of one (1) year after installation and final acceptance by the CITY. ARTISTS shall deliver the Work to CITY free and clear of any liens from any source whatsoever. These guarantees shall apply only to that Work which is entirely that of ARTISTS or persons responsible to ARTISTS, as installed, and shall not apply to materials or workmanship of projects in which the Work of ARTISTS is integrated or combined, or to materials purchased, acquired, or installed by a person or entity not responsible to ARTISTS.

7.3 ARTISTS shall faithfully perform the Work required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the Work described in this Agreement.

ARTICLE 8. COMPENSATION AND TIME OF PERFORMANCE

8.1 ARTISTS shall be paid for completion of services satisfactorily rendered pursuant to this Agreement in accordance with the terms herein, Exhibits A, B, C and D, and subsequent adjustments, changes or additions as specifically provided for in this Agreement. Such payment shall be full compensation for Work performed and services rendered, by ARTISTS and all subcontractors of ARTISTS, including without limitation, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals including transportation of the Work to the designated site.
8.2 The amount and schedule of payments to ARTISTS are contained in the attached Exhibit C, Compensation and Schedule of Payments, provided that such payments shall not exceed a maximum amount of Forty Five Thousand Dollars ($45,000), subject only to adjustments, changes or additions as specifically provided for in this Agreement ("Total Price").

8.3 In the event ARTISTS incurs costs in excess of the Total Price, ARTISTS shall pay such excess from their own funds, and CITY shall not be required to pay any part of such excess, and ARTISTS shall have no claim against CITY on account thereof.

8.4 ARTISTS shall submit invoices and receipts to CITY according to the schedule provided for in Exhibit C, to be in the form requested by CITY.

8.5 In the event CITY determines that the Work for which it has been invoiced does not meet the contract specifications and that it intends to withhold payment, the CITY shall provide detailed written notice to ARTISTS within fifteen (15) days after receipt of invoice, specifying the failure of performance for which CITY intends to withhold payment. ARTISTS shall thereafter meet contract standards to the satisfaction of CITY or advise CITY that he/she disputes CITY's determination that the specifications have not been met.

8.6 CITY shall pay all invoices that meet contract specifications within thirty (30) days after receipt of invoice.

8.7 No payment to ARTISTS for any work performed or services rendered shall constitute a waiver or release by CITY of any claims, rights or remedies it may have against ARTISTS under this Agreement or by law, nor shall such payment constitute a waiver, remission, or discharge by CITY of any failure or fault of ARTISTS to satisfactorily perform the Work as required under this Agreement.

8.8 The services to be required of ARTISTS under this Agreement shall be completed in accordance with the schedule for completion of the Work as proposed by ARTISTS and approved by CITY, provided that such time limits may be extended or otherwise modified by written agreement between ARTISTS and CITY.

8.9 If, when ARTISTS complete fabrication or procurement of the Work in accordance with the approved schedule and notifies CITY that the Work is ready for installation, ARTISTS is delayed from installing the Work within the time specified in the schedule as a result of the construction on the Site not being sufficiently complete to reasonably permit installation of the Work, or CITY otherwise does not make the Site available to ARTISTS in accordance with the approved schedule, CITY shall promptly reimburse ARTISTS for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is made available to ARTISTS for installation of the Work.
8.10 Except as provided in section 8.9, ARTISTS shall bear any transportation and storage costs resulting from the completion of the Work prior to the time provided in the schedule for installation of the Work.

8.11 CITY shall grant a reasonable extension of time to ARTISTS in the event that there is a delay on the part of CITY in performing its obligations under this Agreement or in completing the underlying capital project, or if conditions beyond ARTISTS' control or due solely to Acts of God render timely performance of ARTISTS' services impossible or unduly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions and providing notice of the existence of any such circumstance is provided to the other party not less than ten (10) days after the initiation of such circumstance.

8.12 For any delay in the installation of the Work beyond the schedule provided for under this Agreement caused by factors reasonably under ARTISTS' control, CITY agrees to accept one hundred dollars ($100.00) per day as liquidated damages for such delay.

\[ \text{ARTIST'S Initials} \quad \text{BY} \quad \text{ARTIST'S Initials} \]

**ARTICLE 9. ARTIST'S RIGHTS**

9.1 CITY shall, at its expense, prepare and install at appropriate locations, after consultation with ARTISTS, a plaque or sign, identifying the ARTISTS, the title of the Work and the year of completion, and any other information agreed to between the parties and shall reasonably maintain such notice in good repair against damages due to normal wear and tear over time, vandalism, and the elements.

9.2 CITY recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. CITY shall reasonably assure that the Work is properly maintained and protected, taking into account the recommendations of ARTISTS as stated in the maintenance program provided by ARTISTS.

9.3 CITY agrees that it shall not intentionally damage, alter, modify, change or substantially relocate the Work of ARTISTS without first conferring with ARTISTS and taking reasonable measures to obtain the prior written approval of ARTISTS to the proposed modification, change or substantial relocation.

9.4 Notwithstanding ARTISTS' refusal to provide (or CITY's failure for any reason to otherwise obtain) ARTISTS' written approval provided for in Section 9.3 above, CITY, in its sole discretion, shall have the right to remove any Work of art providing the following terms and conditions are met.

9.4.1. The removal proposal shall first be submitted to and considered by the Public Art Advisory Committee and the Stockton Arts Commission. Following review and consideration of the removal proposal by the Public Art Advisory
Committee and the Arts Commission, a recommendation on removal shall be submitted to the City Council.

9.4.2. The City Council shall have the right to decide that a Work of art shall be removed. The decision to remove shall not be made by the City Council until the recommendation required in Section 9.4.1 is received and considered by the City Council.

9.4.3. In the event that the City Council shall decide to remove the Work, ARTISTS shall have: the first right of refusal to purchase his/her Work, providing it stands alone and is not integrated into a larger artwork, building or structure and can be removed without expense to CITY; the right to have his/her name removed from the Work; and, the election to keep the plaque installed pursuant to Section 9.1.

9.5 CITY shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Work will be made. During ARTISTS' lifetime, ARTISTS shall have the right to approve all major repairs and restorations; provided, however, that ARTISTS shall not unreasonably delay, withhold or condition approval for any repair or restoration of the Work. If ARTISTS unreasonably fails, delays or conditions to approve any repair or restoration, CITY shall have the right to make or supervise significant repairs and restorations. In the event that CITY makes repairs or restorations not approved by ARTISTS, ARTISTS shall have the right, at his/her sole election, to have ARTISTS' names and association with the Work severed. To the extent practical, ARTISTS, during ARTISTS' lifetimes, shall be given the reasonable opportunity to make or supervise significant repairs and restorations and shall be paid a reasonable fee for any such services, provided that CITY and ARTISTS shall agree, in writing, prior to the commencement of any significant repairs or restorations, upon ARTISTS' fee for such services.

9.6 All repairs and restorations, whether performed by ARTISTS or CITY, or by third parties responsible to ARTISTS or CITY, shall be made in accordance with professionally recognized principles of conservation of artworks.

ARTICLE 10. COPYRIGHTS

10.1 ARTISTS shall retain all copyright and all other rights in and to any Artwork(s) created under this Agreement, provided that ARTISTS hereby grants to CITY an irrevocable license to graphically depict the Artwork for any non-commercial purpose whatsoever. For the purposes of this limitation, the graphic depiction of the Artwork(s) on materials designed to promote CITY shall be deemed to be a non-commercial use. CITY shall not be responsible for any third party infringement of ARTISTS' copyright.

10.2 If, for any reason, the approved design is not implemented, all rights to the proposed Artwork shall be retained by ARTISTS.
10.3 ARTISTS agrees that all Work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the State of California and the United States. ARTISTS hereby represents and warrants that the Work does not, and ARTISTS has not and will not, utilize any protected patent, trademark or copyright in performance under this Agreement unless and until ARTISTS has obtained proper permission and all releases and other necessary documents. If ARTISTS specifies any material, equipment, process or procedure which is protected, ARTISTS shall disclose such patents, trademarks and copyrights in the construction drawings and technical specifications, such listing to be appended to this Agreement and shall be incorporated by this reference.

10.4 ARTISTS agrees to release, indemnify, defend and save harmless CITY, its officers and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind resulting from the performance under this Agreement which infringes upon any patent, trademark or copyright or other right protected by law.

ARTICLE 11. TIME FOR PERFORMANCE

11.1 The provisions of this Agreement and the compensation for ARTISTS' services provided for in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project.

11.2 Prior to beginning the performance of the services under this Agreement, ARTISTS must receive a written Notice to Proceed.

11.3 In the event ARTISTS is unable to complete the above services because of delays resulting from untimely issuance of a "Notice to Proceed," or from untimely review and approval by CITY, and such delays are not the fault of ARTISTS, CITY shall grant a reasonable extension of time for completion.

11.4 ARTISTS shall complete the services required in Exhibit B within three months from the date of approval of the contract by City Council unless such time is extended in writing by the parties.

ARTICLE 12. TERMINATION

12.1 Either party may terminate this Agreement with or without cause by providing thirty (30) days notice, in writing, to the other party. Upon the expiration date of said notice, this Agreement shall become of no further force or effect whatsoever and each of the parties shall be relieved and discharged from all rights and further duties and responsibilities under this Agreement.

12.2 In the event that the Agreement is terminated by CITY without cause, CITY shall pay the ARTISTS for all Work performed and services rendered up to the
effective date of the termination. CITY shall have no rights to the ARTISTS' creative Work, designs or unfinished Artwork(s).

12.3 In the event that this Agreement is terminated by ARTISTS without cause, ARTISTS shall promptly reimburse CITY for all payments made under this Agreement prior to the termination by ARTISTS.

12.4 In the event that CITY determines that ARTISTS has substantially failed to fulfill his/her obligations as provided under this Agreement, CITY shall provide ARTISTS with written notice detailing the specific obligations which CITY claims ARTISTS has failed to fulfill and notifying ARTISTS that he/she is deemed to be in breach of the Agreement. If the breach is not cured or if CITY and ARTISTS cannot agree on a schedule for curing the breach, the Agreement will be deemed terminated on a date specified by CITY which will be no sooner than ten (10) days from the date of issuance of the notice. In the event that this Agreement is so terminated by CITY, ARTISTS shall promptly reimburse CITY for all payments made under this Agreement prior to the termination by CITY.

12.5 If, because of the death, or any other catastrophic occurrence, it becomes impossible for ARTISTS to render services or perform under this Agreement, the Agreement shall be terminated, upon written notice to CITY and with the concurrence of CITY. Such a termination shall be treated as a termination without cause.

ARTICLE 13. INSURANCE

ARTISTS shall at all times during the term of this contract with CITY maintain in force those insurance policies and bonds as designated in the attached Exhibit D and will comply with all those requirements as stated herein.

ARTICLE 14. EQUAL OPPORTUNITY EMPLOYMENT

14.1 ARTISTS agrees that it will not discriminate against any employee or applicant for employment under this Agreement on the basis of race, color, religion, gender, age, national origin, creed, marital status, or the presence of any sensory, mental or physical handicap or on any other basis prohibited by local, state or federal law, in employment or application for employment or in the administration of this Agreement.

14.2 ARTISTS agree to comply fully with all applicable federal, state, or local laws, ordinances, executive orders and regulations which prohibit discrimination.

14.3 ARTISTS shall comply with Title I and Title II of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and in state and local government services in the course of providing any services funded in whole or in part by CITY.
ARTICLE 15. MISCELLANEOUS

15.1 RECORDS:

ARTISTS shall keep such records and accounts and require any and all subcontractors to keep records and accounts as may be necessary in order to record complete and correct entries as to personnel days charged to this engagement and any expenses for which ARTISTS is to be reimbursed pursuant to Exhibit C. Such books and records will be available at all times, during normal business hours, for examination and audit by CITY and shall be kept for a period of three (3) years after the completion of all Work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by CITY of any fees or expenses based upon such entries.

15.2 INDEPENDENT CONTRACTOR:

ARTISTS are an independent contractor under this Agreement. Personal services provided by ARTISTS shall be by ARTISTS or employees of ARTISTS, and not as officers, employees, or agents of CITY. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to the activities of ARTISTS under this Agreement shall be those of ARTISTS.

15.3 SUBCONTRACTORS:

In the event ARTISTS, during the course of performance under this Agreement, requires the service of any subcontractors or other professional associates in connection with services or activities covered by this Agreement, ARTISTS has identified in the exhibits to this Agreement, or if changes or additions are requested by ARTISTS, ARTISTS must secure the prior written approval of CITY’s Contract Administrator. ARTISTS shall directly pay any such subcontractor and is solely responsible for assuring subcontractor(s) provide proof of insurance and provided in Article 13, above. ARTISTS are solely responsible for evaluation of the qualifications, expertise and selection of any subcontractor(s), for supervision of and payment of any and all subcontractors. CITY shall in no way be liable to or responsible for the acts or activities of any subcontractor.

15.4 ASSIGNMENT:

This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by ARTISTS, without the prior written consent of CITY.
15.5 **MODIFICATIONS:**

No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

15.6 **CONFORMITY WITH LAW AND SAFETY:**

ARTISTS shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable Federal, State, municipal and local safety regulations. All services performed by ARTISTS shall be in accordance with these laws, ordinances, codes and regulations. ARTISTS shall indemnify, defend and save CITY harmless from any and all liability, fines, penalties and consequences from any noncompliance or violations of such laws, ordinances, codes and regulations.

Accidents: If death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, ARTISTS shall immediately notify the City Risk Manager's Office by telephone. ARTISTS shall promptly submit to CITY a written report, in such form as may be required by CITY of all accidents or losses which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of ARTISTS' employee(s) and/or subcontractors, if any; (3) name and address of ARTISTS' liability insurance carrier; and (4) a detailed description of the incident or accident and whether any of CITY'S equipment, tools, material or staff were involved.

15.7 **CONFLICT OF INTEREST:**

No officer, member, or employee of CITY and no member of their governing boards, councils or commissions shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of these provisions shall be considered a material breach of this Agreement.

15.8 **USE OF CITY PROPERTY:**

ARTISTS shall not use CITY premises, property (including equipment, instruments and supplies) or personnel for any purpose other than the performance of his/her obligations under this Agreement.

15.9 **TIME:**

Both parties recognize that time is of the essence in the performance of the provisions of this Agreement.
15.10. **RESOLUTION OF DISPUTES, FORUM, ATTORNEYS' FEES:**

The laws of the State of California shall govern the interpretation of and the resolution of disputes under this Agreement. Any dispute arising from this Agreement shall be adjudicated in the courts of San Joaquin County in the State of California. If any claim, at law or otherwise, is made by either party to this Agreement, the prevailing party shall be entitled to its costs and reasonable attorneys' fees, including the costs of house counsel.

15.11 **NOTICES:**

All notices, requests, demands and other communications hereunder shall be deemed given only if in writing signed by an authorized representative of the sender and delivered by personal service, by facsimile with a hard copy mailed first class, postage prepaid, or when sent by a courier or express services guaranteeing overnight delivery to the receiving party with a receipt/signature required, and addressed to the respective party as follows:

To CITY: City of Stockton  
Attn: Peter Waller, or Robyn Burror, Contract Administrator  
Parks and Recreation Department  
6 E. Lindsay Street  
Stockton, California 95202

To: Johanna Poethig  
6542 Whitney Street  
Oakland CA 94609  
Telephone: (510)655-0441

Brian Laczko  
3758 Grand Avenue, #28  
Oakland, CA 94610  
Telephone: (510)763-3268

15.12 **ALL PRIOR AGREEMENTS SUPERSEDED:**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements or understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
15.13 **SEVERABILITY:**

In the event any portion of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications, shall not be affected.

15.14 **AUTHORITY TO EXECUTE:**

The undersigned represent and warrant they are each duly authorized by the parties to execute this Agreement.

**IN WITNESS THEREOF,** the parties have caused this Agreement to be executed as of the date stated above.

CITY OF STOCKTON, a municipal corporation

By ____________________________
MARK LEWIS, ESQ.
CITY MANAGER
"CITY"

ARTISTS

By: ____________________________
BRIAN LACZKO
8/20/04

By: ____________________________
JOHANNA POETHIG
8/20/04
"ARTISTS"

ATTEST:

By: ____________________________
KATHERINE GONG MEISSNER
CITY CLERK

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: ____________________________
LORI S. WHITTAKER
DEPUTY CITY ATTORNEY

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EXHIBIT A
SCOPE OF WORK
Edna Gleason Park
Public Art Element Contract
Laczko/Poethig 2004

Gateway "Beacon"

Description of Project:

The location for the gateway will be at the corner entrance of Sonora and California Streets. The design uses glass blocks imbedded in cement with photos mounted behind them in the interior. The pillar is lit from the inside using the existing electrical and light planned for the site. This proposal also takes advantage of the previous plans for pillars at this site by having the GC put in the footings, steel structure, concrete and painted stucco as part of their overall contract. There will be a locked access door at the base of the pillars so that bulbs can be changed. The wrought iron flames at the top of the pillars are each unique, bringing more movement and expression to the artwork. The exterior tile work will add accent colors and images to the pillars. The interior images will be chosen from historic photos of Little Manila and the area. They will be transferred onto a permanent material such as tile or metal ad fastened onto the glass block with a welded metal frame.

Preliminary Plan:
May 2004: Meetings with Callandar Associates Ben Woodside, Nikki Wu and Program Manager Robyn Burror: determine site, evaluate current plans for site, review public art funding and discuss historical and cultural approach to neighborhood.
Deliverables: Preliminary sketches, budget to include fabricaton and installation. Schematic design.

June 2004: Preliminary plans to PAAC for approval. Design and inclusive budget

Illustrated Public Art Master Plan for Gleason Park and Neighborhood to be used in project development phase.
EXHIBIT B
COMPENSATION AND SCHEDULE OF PAYMENTS

1. As consideration and payment for services provided, CITY shall pay to ARTISTS a sum of Forty Five Thousand Dollars ($45,000) for completion of all services described in the Scope of Work.

2. Additional services approved by CITY and rendered by ARTISTS, if any shall be compensated as agreed upon by CITY and ARTISTS. Payment for such additional services and related expenses shall be made within thirty (30) days of receipt of invoice and after completion and acceptance of said work by CITY.

3. Payment for services will be made on the following basis:

   30% of the compensation will be remitted upon issuance of the Notice to Proceed.

   30% of the compensation will be remitted at the completion of the 50% benchmark: the completion of the pillar preparation, as determined by the Contract Administrator.

   30% of the compensation will be remitted upon the completion and installation of the gateway "beacon" and acceptance of the work.

   All payments made will be in such sum as shall make the aggregate of payment equal to ninety percent (90%) of the proportional contract price, upon the basis of the progress certificate of the Contract Administrator as to the amount of work done and the proportional amount of the contract price; and all the remaining part of the contract price shall be paid at the expiration of thirty-five (35) days after the completion of said work and the certification by the Contract Administrator of such completion.

   Pursuant to section 22300 of the Public Contract Code, the ARTISTS will be permitted, at their request and sole expense, to substitute securities for any monies withheld by the CITY to ensure performance under the contract. Said securities will be deposited either with the CITY or with a state or federally chartered bank as escrow agent. Securities eligible for this substitution are those listed in Section 16430 of the California Government Code or bank or savings and loan certificates of deposit. The CONTRACTOR shall be the beneficial owner of any securities substituted for monies withheld and shall receive any interest earned.
4. Invoices
Invoices shall be in the form and level of detail, as required by the Contract Administrator, so as to permit a reasonable evaluation of the work completed.

Invoices shall be sent by ARTISTS to the attention of:

Robyn Burror
Public Art Manager/ Contract Administrator
Parks and recreation Department
6 E. Lindsay Street
Stockton, California 95202

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**BUDGET**

- **Elements**
  - Wood sub-forms $2,000
  - Metal supports/ Framing for photos $5,000
  - Lighting Installed $4,000

- **Finish**
  - Wrought Metal Flames $7,500
  - Glass Block and Tilework $5,000
  - Historic Photos/Screen Transfer $6,000

- **Fees**
  - Engineering $750
  - Insurance $1,000
  - Design Fee $5,000
  - Artist Fees(15%) $6,700
  - Contingency $2,000

**Total** $45,000

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**PAYMENTS**

- **1st Payment**
  - Due at execution of the Contract $15,000
  - 30% $15,000
  - 10% retention $1,500
  - Billable $13,500

- **2nd Payment**
  - Due at benchmark in the Scope of Work, requires Public Art Manager Approval.
  - $15,000
  - $1,500
  - $13,500

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<td>3rd Payment</td>
<td>After installation and approval by City of Stockton</td>
<td>$15,000 $1,500 $13,500</td>
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<tr>
<td>4th Payment</td>
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EXHIBIT C
INSURANCE REQUIREMENTS

ARTIST shall procure and maintain for the duration of the agreement insurance against all claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the ARTIST, its agents, representatives or employees.

Minimum Limits of Insurance

ARTIST shall maintain insurance limits not less than:

1. General liability: $1,000,000 per occurrence for bodily injury, personal injury and property damage.

   If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate limit shall be twice the required occurrence limit.

2. Automobile Liability: $1,000,000 per accident for bodily injury and property damage.

3. Workers' Compensation: As required by State law.

Deductibles and Self-Insured Retention

Any deductibles or self-insured retention must be declared to and approved by CITY.

Other Insurance Provisions

The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

1. CITY, its officers, officials, employees, and volunteers are to be covered as additional insured on general liability and automobile liability policies as respects: liability out of activities performed by or on behalf of ARTIST; premises owned, occupied or used by ARTIST; and automobiles owned, leased, hired or borrowed by ARTIST. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees or volunteers.

2. For any claims related to the project, ARTIST's insurance coverage shall be primary insurance as respects CITY, its officers, officials, employees and volunteers.
3. Any insurance or self-insurance maintained by CITY, its officers, officials, employees or volunteers shall be excess of ARTIST’s insurance and shall not contribute with it.

4. Any failure to comply with the reporting or other provisions of the policies shall not affect coverage provided to CITY, its officers, officials, employees or volunteers.

5. ARTIST’s insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer’s liability.

6. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to CITY.

**Subcontractors**

Before permitting any subcontractors to perform work under this Agreement, ARTIST shall require subcontractors to furnish satisfactory proof that insurance has been issued and is maintained similar to that provided by ARTIST as may be applied to each subcontractor’s work.

**Acceptability of Insurers**

Insurance is to be placed with insurers that are admitted insurance carriers in the State of California, or must otherwise be approved by CITY.

**Verification of Coverage**

ARTIST shall furnish CITY with original endorsements of effective coverage for policies on which CITY is included as an additional insured as required by this Exhibit, and shall furnish original certificates of insurance for all other required policies. The endorsements are to be signed by the person authorized by the insurer to bind coverage on its behalf. All endorsements and certificates are to be received and approved by CITY before work commences.

Upon request, ARTIST shall furnish CITY a certified copy of any or all policies of insurance covering the work required under this Agreement.