



# County of Santa Cruz

0449

## PARKS, OPEN SPACE & CULTURAL SERVICES

979 17 th AVENUE, SANTA CRUZ, CA 95062

(831) 454-7900 FAX: (831) 454-7940 TDD: (831) 454-7978

BARRY C. SAMUEL, DIRECTOR

October 4, 2001

AGENDA: November 20, 2001

### BOARD OF SUPERVISORS

County of Santa Cruz  
701 Ocean Street  
Santa Cruz, CA 95060

SUBJECT: PUBLIC ART FOR HESTWOOD PARK AND JIM KEEFE SKATE  
PARK

Dear Members of the Board:

As your Board knows, the Parks Department is anticipating construction of Hestwood Park and Jim Keefe Skate Park (formerly known as Highlands Skate Park). On December 5, 2000, your Board approved the annual Public Art Plan which included public art components for both of these Parks. The County Arts Commission formed an Art Selection Panel for Hestwood Park, chaired by Commissioner Roy Holmberg and an Art Selection Panel for the Jim Keefe Skate Park, chaired by Commissioner Shirlee Byrd.

Each panel developed a Call to Artists (Exhibits 1 & 2) and sent it to all colleges and high schools in Santa Cruz County, all Arts Commissions in the County and to the Cultural Council for distribution to its mailing list. Press releases announcing the Calls to Artists were sent to local newspapers.

## BOARD OF SUPERVISORS

AGENDA: November 20, 2001

## PUBLIC ART FOR HESTWOOD PARK AND JIM KEEFFE SKATE PARK

Page 2 of 3

The Hestwood Park Art Selection Panel met first and reviewed the two responses it received to its Call to Artists. The panel selected a piece by artist James Aschbacher, a Santa Cruz resident whose folk art is displayed in several places in the County. His proposed art project for Hestwood Park is of a series of colorful and playful animal cutouts to be attached to the fence behind the play structure (Exhibit 3). The panel decided that the cutouts would be a very welcome addition to the park and unanimously voted to forward its recommendation to the Arts Commission.

Several weeks later, the Jim Keefe Skate Park Art Selection Panel met and reviewed the single submission it received in response to its Call to Artists, also by James Aschbacher. The panelists were very enthusiastic about the skateboarder totem pole Mr. Aschbacher proposed (Exhibit 4). They felt the totem, significantly different from any public art piece in the County park system, would define the area and be very attractive to youngsters. Therefore, the panel voted unanimously to recommend the piece to the Arts Commission.

At the October 1, 2001 meeting of the Arts Commission, the Commissioners reviewed the recommendations of both Art Selection Panels. The Commissioners felt that both pieces were very nice and would enhance the recreational experience at both parks. As a result, the Arts Commission recommends that your Board approve the selection of James Aschbacher as the public artist for both Hestwood Park and the Jim Keefe Skate Park.

The Arts Commission also had a lengthy discussion about the merits of having an artist represented in the Public Art Collection more than once. The Commissioners decided to request your approval to develop a policy, for your Board's adoption, providing guidelines for an artist being represented in multiple county park public art projects.

The budget for the Hestwood Park art component is \$4,600 and the budget for the Jim Keefe Skate Park art component is \$4,000. Attached for your consideration are two contracts for the creation of the public art components for Hestwood Park (Exhibit 5) and the Jim Keefe Skate Park (Exhibit 6).

## BOARD OF SUPERVISORS

AGENDA: November 20, 2001

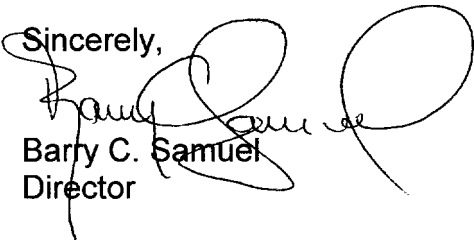
## PUBLIC ART FOR HESTWOOD PARK AND JIM KEEFFE SKATE PARK

Page 3 of 3

It is therefore RECOMMENDED that your Board:

1. Approve the selection of James Aschbacher as the artist for the Hestwood Park and Jim Keefe Skate Park art projects;
2. Approve the art projects as presented;
3. Approve the two contracts with Mr. Aschbacher for a total of \$8,600 for the creation of the skateboarder totem pole and animal cutouts and authorize the Parks Director to sign the contracts on behalf of the County and;
4. Direct the Arts Commission to develop a policy, for the Board of Supervisors review and approval, with regard to artists being represented in multiple county park art projects.

Sincerely,



Barry C. Samuel  
Director

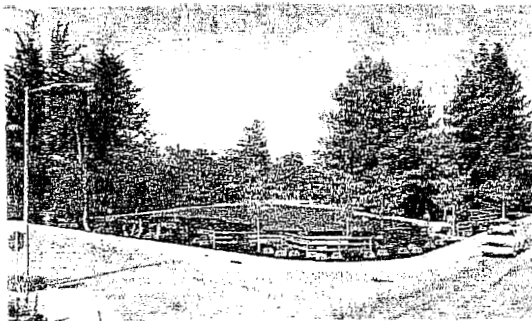
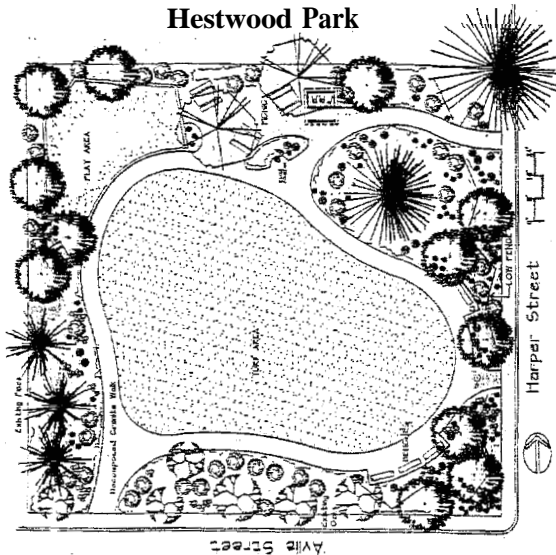
RECOMMENDED:



**SUSAN A. MAURIELLO**  
County Administrative Officer

cc: CAO, County Counsel, Parks, Auditor, RDA, Arts Commission, Parks Commission

# EXHIBIT 1



Santa Cruz County Parks  
979 17th Ave  
Santa Cruz, CA 95062

COUNTY OF SANTA CRUZ  
DEPARTMENT OF PARKS, OPEN SPACE & CULTURAL SERVICES

## CALL TO ARTISTS Public Art Project Santa Cruz, California

An artist will be selected to create a site-specific public art component for Hestwood County Park, Live Oak, Santa Cruz County. Ideally the art component will reflect the Live Oak community. Proposals for this project may seek to incorporate and enhance one or more of the elements planned for the park, such as: paving fencing, drinking fountains, entry trellis, benches, signage, bike racks, etc.

The 34,600 budget for the public art component could be augmented by the funds allocated for a specific element if the artist chooses to incorporate one into the project.

### DEADLINE:

The deadline for the receipt of submission materials is:

Tuesday, July 10, 2001 at 5:00 P.M.

**ELIGIBILITY:** The project is open to professional experienced artists.

**APPLICATION:** The application materials must include the following:

- 1) A current resume detailing professional artistic accomplishments and references.
- 2) Up to sixteen 35 mm slides of recent relevant work. Slides must be labeled with the artist's name, numbered according to an annotated slide list, indication of top of slide, and placed in a 9" x 11" plastic slide sheet.
- 3) The annotated, typewritten slide list should include the following information: slide number, media, size, title, date, cost, and brief description of artwork if necessary.
- 4) A preliminary written statement, not to exceed one typewritten page, which addresses the artist's approach to this project, as well as conceptual drawings of the proposed project.
- 5) A self-addressed, stamped envelope with sufficient postage for the return of slides.

**PROJECT ESTIMATED TIME LINE:**

July 10, 2001	Submission must be received by 5:00 p.m. on this date
July 2001	Public art selection panel to meet and review submissions
September 2001	Selection Panel to recommend finalist to Am Commission
September 2001	Am Commission to Approve finalist
October 2001	Board of Supervisors to select the Public Art Project
October 2001	Board of Supervisors to award a contract to the artist
Nov - April 2002	Construction
April 2002	Installation

**FOR MORE INFORMATION PLEASE CONTACT:**

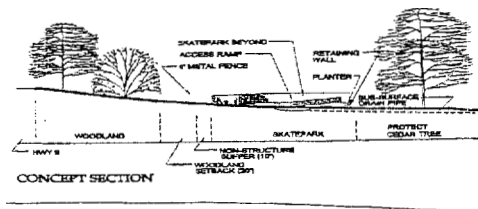
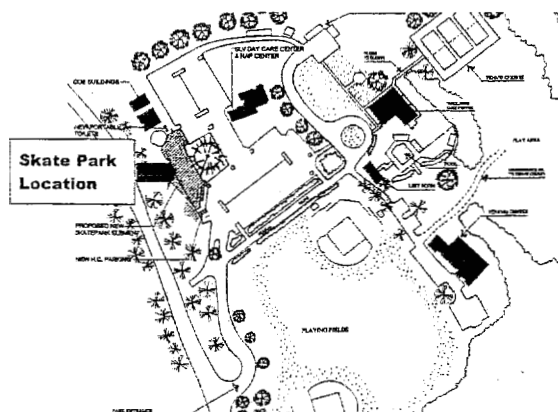
Barry C. Samuel, Director, Santa Cruz County Department of Parks  
979 17<sup>th</sup> Avenue, Santa Cruz, CA 95062 (831) 454-7900

## LOCATION MAP



# EXHIBIT 2

Highlands County Park



Santa Cruz County Parks  
979 17th Ave.  
Santa Cruz, CA 95062

COUNTY OF SANTA CRUZ  
DEPARTMENT OF PARKS, OPEN SPACE & CULTURAL SERVICES

## CALL TO ARTISTS

Public Art Project  
Santa Cruz, California

An artist will be selected to create a site-specific public art component for the Highlands Skate Park, 3en Lomond, Santa Cruz County. The budget for the public art component is \$4 000. Proposals for this project may incorporate and enhance one or more of the elements planned for the park, such as fencing, drinking fountains, benches, signage, bike racks, etc. If one of the park elements is chosen, the funds budgeted for the public art component will be augmented by the funds allocated for the specific element that the artist chooses to incorporate into the plan. Artists may also choose to create a free-standing piece or one which does not incorporate or enhance any feature already in the park plans.



## DEADLINE:

Friday August 24, 2001 at 5:00 P.M.

**ELIGIBILITY:** The project is open to professional experienced artists

**APPLICATION:** The application materials must include the following,

- 1) A current resume detailing professional artistic accomplishments and references.
- 2) Up to sixteen 35 mm slides of recent relevant work. Slides must be labeled with the artist's name, numbered according to an annotated slide list, indication of top of slide, and placed in a 9" x 11" plastic slide sheet.
- 3) The annotated, typewritten slide list should include the following information: slide number, media, size, title, date, cost, and brief description of artwork if necessary.
- 4) A preliminary written statement, not to exceed one typewritten page, which addresses the artist's approach to this project, as well as conceptual drawings of the proposed project.
- 5) A self-addressed, stamped envelope with sufficient postage for the return of slides.

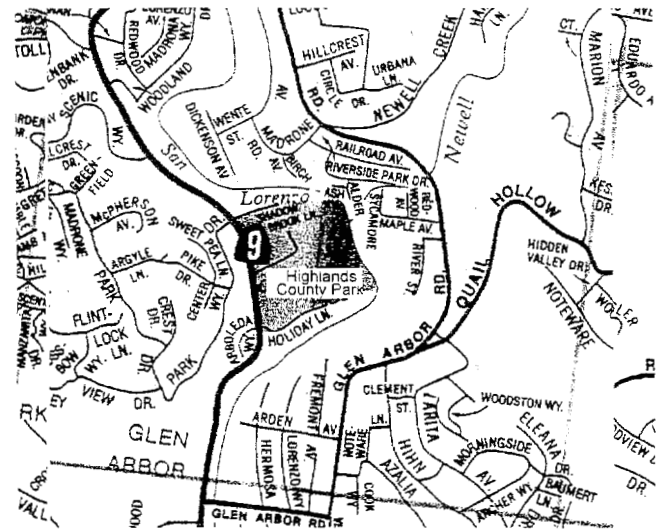
**PROJECT ESTIMATED TIME LINE:**

August 24, 2001	Submission must be received by 5.00 p.m. on this date
August 2001	Public art selection panel to meet and review submissions
September 2001	Selection Panel to recommend finalist to Arts Commission
September 2001	Arts Commission to Approve finalist
October 2001	Board of Supervisors to select the Public Art Project
October 2001	Board of Supervisors to award a contract to the artist
Nov - April 2002	Construction of Skate Park
April 2002	Installation of artwork

**FOR MORE INFORMATION PLEASE CONTACT:**

Barry C. Samuel, Director, Santa Cruz County Department of Parks  
979 17<sup>th</sup> Avenue, Santa Cruz, CA 95062 (831) 454-7900

**Location Map**



**DEADLINE:** The deadline for the receipt of submission materials is:

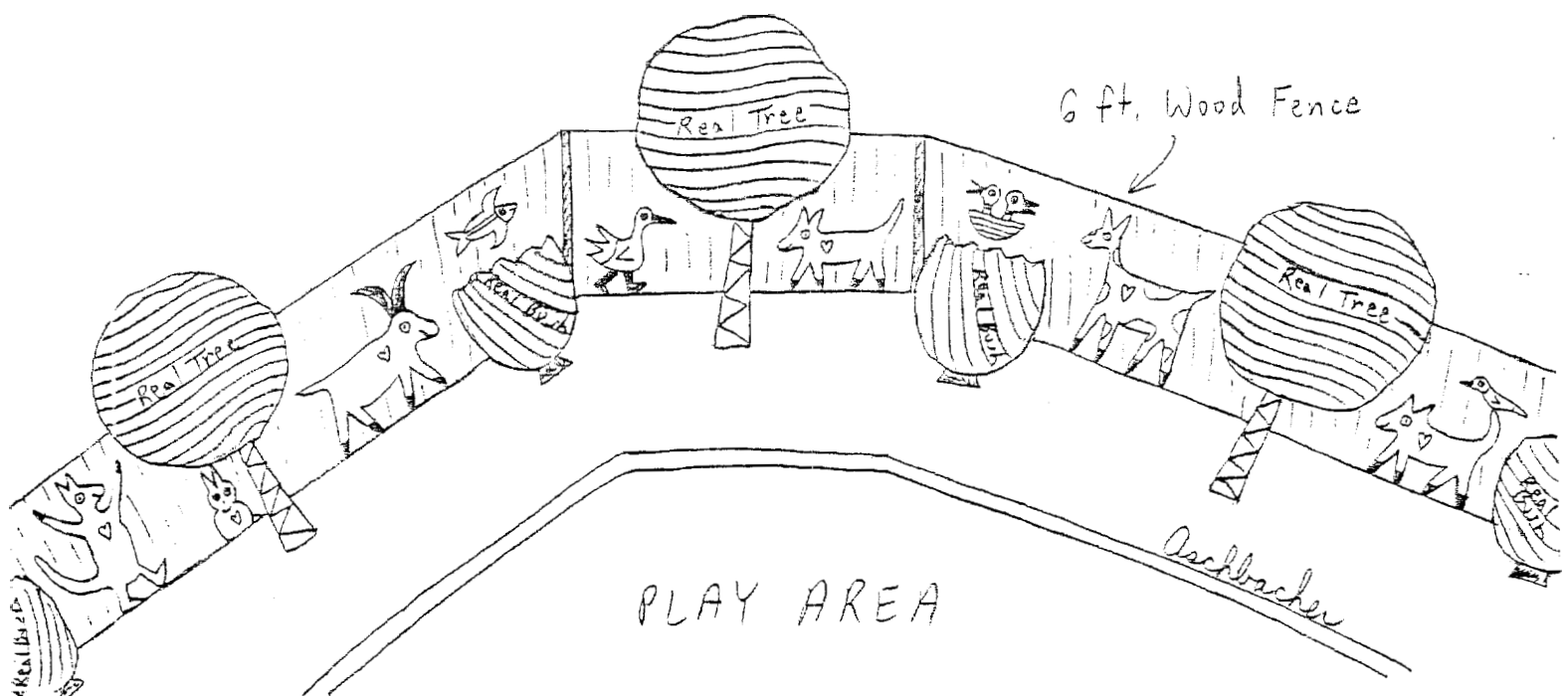
Friday August 24, 2001 at 5:00 P.M.

HESTWOOD PARK  
ART PROPOSAL

Behind the Play Area, I envision a dozen or so animal cut-outs "strolling" among the trees and bushes. These brightly-colored creatures will range from 1 foot to 5 feet tall **and** be painted in acrylics on sign-painter's board. According to park planner Michael Scheele, there will be a 6-foot wooden fence behind the Play Area to which the animal cut-outs can be mounted. This playful promenade of animals should enliven the Play Area of the park.

The animal cut-outs will be sealed with an anti-graffiti guard called Trilon, which also protects the surface from the elements.

Total cost: \$4,600.





# Graffiti Release™

0457

Blocks 99% UV Light Transmission\*

Non Yellowing, UV Resistant, Graffiti Proof Clear Coating

## SELECTION DATA

### DESCRIPTION:

**D460** Graffiti Release is an extremely high performance two part air dry urethane graffiti resistant coating. It has extremely good semigloss retention, is non yellowing and resists many chemicals (acids, alkalis and solvents). Graffiti Release has a reduced gloss (semigloss) for better outdoor viewing and a chemical additive that allows for easy removal of graffiti. Also, it has excellent hardness, good flexibility, high resistance to abrasion, ultra violet light inhibiting properties, moisture and salt water spray. It can provide a baked like quality finish and has low solvent emissions. It may be applied by brush, roller, conventional electrostatic, airless, air assisted airless and plural component equipment. Also, it has direct adhesion to most plastic surfaces that normally require a primer.

### USES:

Formulated for interior and exterior metal, wood, plastic, masonry and graphic arts surfaces. Typically used on murals, business signs, outdoor advertising, floor graphics, sculpture and marine graphics. Graffiti Release can be applied over properly prepared steel, aluminum, plastic and wood surfaces. And may be applied to cured alkyd type enamels and artists acrylics without alligatoring.

### ADVANTAGES:

- Graffiti resistant clear.
- Excellent hardness and abrasion resistance.
- Good flexibility.
- Ultraviolet inhibiting.
- Resistant to most solvents.
- Non yellowing.
- Lifting or wrinkling will not occur when Graffiti Release is applied to well cured (one week) Danacolors Bulletin Enamel.

### DISADVANTAGES:

- Two part mix may present some loss of coating if not all is used at the time of application.

## PHYSICAL PROPERTIES

**VOC:** [mixed 3:1] ..... 335 g/l = (2.8 lbs./gal.)

### APPEARANCE:

Semigloss (low sheen) @ 60" ..... 45 ± 2

**WEIGHT PER GALLON:** [mixed] ..... 8.2 ± 1 lbs.

**FLASH POINT:** [mixed] [setaflash] ..... 60" F.

**PACKAGE VISCOSITY:** [mixed] ..... 65 - 90 KU

### SOLIDS:

[mixed @ 3:1]  
By Weight ..... 57 ± 1%

By Volume ..... 44 ± 1%

### COVERAGE:

Theoretical at 1 mil DFT ..... 700 sq.ft./gal.

Theoretical at 2 mils DFT ..... 350 sq.ft./gal.

Required Minimum DFT ..... 2 mils

[Spread rate is for unreduced catalyzed product and is dependent on surface texture to be painted and method of application.]

### DRY SCHEDULE: [at 50% RH and 2 mils DFT] <sup>1</sup>

	65° F.	75° F.	90° F.	194° F. <sup>2</sup>
<b>Tack Dry</b>	1 hr	30 mins	15 mins	N/A
<b>Touch</b>	8 hrs	4 hrs	3 hrs	N/A
<b>Handle</b>	16 hrs	8 hrs	6 hrs	40 mins
<b>Full Cure</b>	30 hrs	24 hrs	16 hrs	40 mins
<b>Recoat <sup>3</sup></b>	45 mins	15 mins	5 mins	2 mins

<sup>1</sup> Accelerated drying time available with Tylon 40-133 Promoter

<sup>2</sup> Forced cured.

<sup>3</sup> Or after 24 hours and sanding before recoating.

### RESISTANCE TESTS:

Resistance data will be found in column two on the other side of this data sheet.

### ORDER NUMBER AND COLOR:

D460 ..... 100% Clear

D460B ..... Hardener

### PACKAGING:

1 gallon kit per case [UPS] ..... 10 lbs.

2 gallon kit per case [truck] ..... 23 lbs.

[Gallon kit contains ¾ full gallon & 1 full quart of hardener.]

5 gallon kit [¾ resin + 1 gal. & 1 qt. hardener] ..... 55 lbs.

Continued ►►►

TRIANGLE COATINGS, INC.

Tel: 510-895-8000

800-895-8000

Fax: 510-895-8800

www.tricoat.com

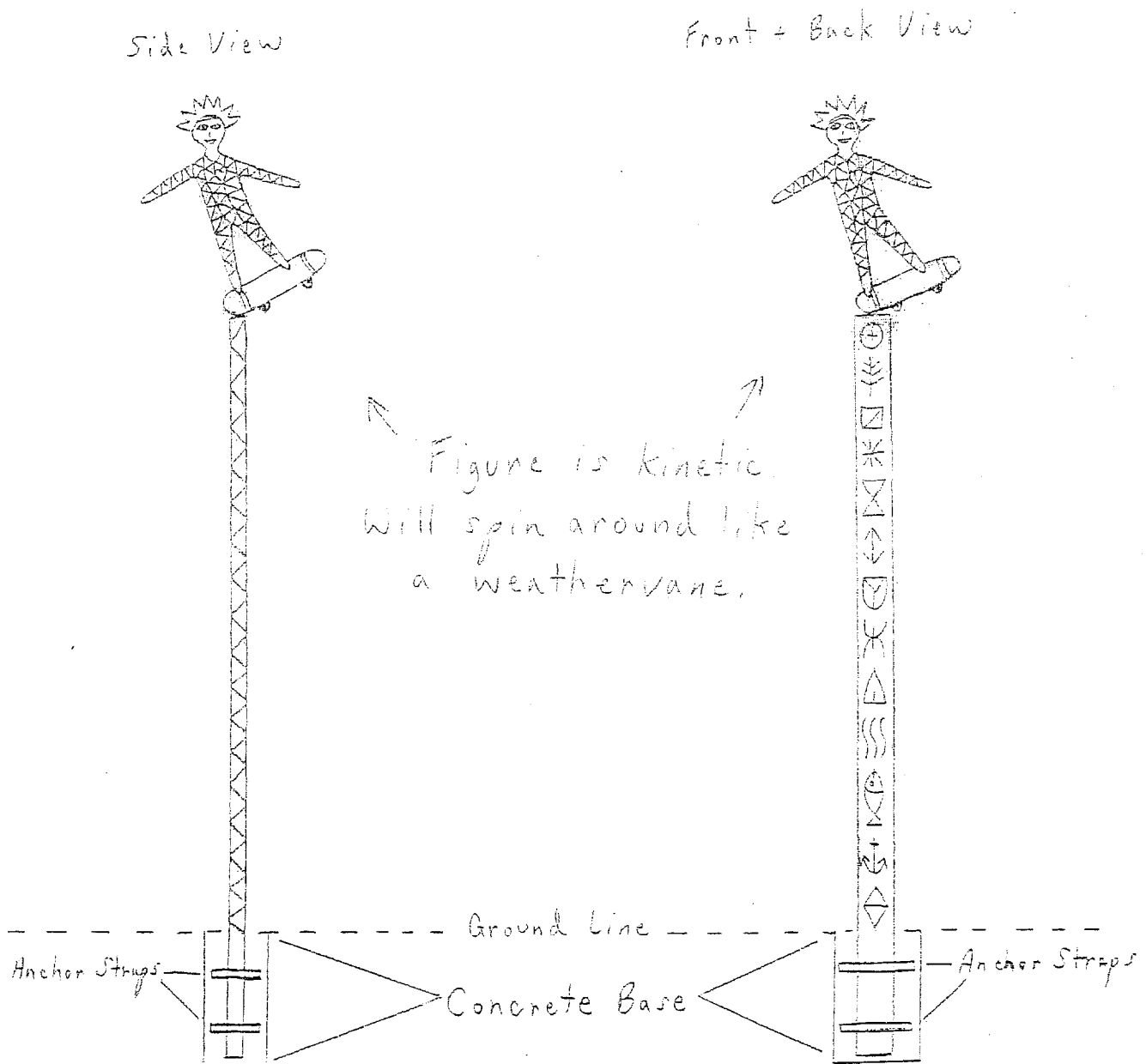
TRIANGLE



0458

I propose installing a Celebration Totem at the new Highlands Skate Park. The Totem would be one solid piece of wood, 4 inches thick, 10 inches wide and 16 feet high. The weather proofed totem, treated with ACZA, would be anchored three feet into the ground by a poured cement base. Topped with a wooden cut-out figure of a skateboarder, the totem will stand 15 feet above the ground.

I will decorate the Totem with my trademark painted glyphs on the wide (10") sides. The narrow (4") sides will be brightly painted with a triangle design. The two sided skateboarding figure on top will be kinetic, rotating on a base much like a weathervane so it will move in the wind. The entire Totem will be coated with the anti-graffiti guard Triion, which also protects the surface from the elements. Total Cost: \$4,000.



Previously called Trilon.

Product # ..... D460

0459

# Graffiti Release<sup>III</sup> Blocks 99% UV Light Transmission\*

## Non Yellowing, UV Resistant, Graffiti Proof Clear Coating

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PACKAGE VISCOSITY: [mixed] ..... 65 - 90 KU

#### SOLIDS: [mixed @ 3:1]

By Weight ..... 57 ± 1%

By Volume ..... 44 ± 1%

#### COVERAGE:

Theoretical at 1 mil DFT ..... 700 sq.ft./gal.

Theoretical at 2 mils DFT ..... 350 sq.ft./gal.

Required Minimum DFT ..... 2 mils

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Forced cured.

Or after 24 hours and sanding before recoating.

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#### ORDER NUMBER AND COLOR:

D460 ..... 100 % Clear

D460B ..... Hardener

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[Gallon kit contains ¾ full gallon & 1 full quart of hardener.]

5 gallon kit [¾ resin + 1 gal. & 1 qt. hardener] ..... 55 lbs.

Continued IIII➡

TRIANGLE COATINGS, INC.

Tel: 510-895-8000

800-895-8000

Fax: 510-895-8800

www.tricoat.com

TRIANGLE™



# EXHIBIT 5

P.O. Contract No. \_\_\_\_\_

0460

## INDEPENDENT ARTIST AGREEMENT HESTWOOD PARK

THIS CONTRACT is entered into this \_\_\_th day of \_\_\_\_\_ 200\_, by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and James Carl Aschbacher, hereinafter called ARTIST.

Whereas, the COUNTY established a Percent for Arts Program on April 2, 1991 requiring that up to 2% of the construction cost of a project be used to integrate public art into the project, enhancing the development of those public sites; and

Whereas, the ARTIST has been selected pursuant to procedures adopted by the COUNTY  
The parties agree as follows:

1. **DUTIES.** ARTIST agrees to create and install a dozen animal cut-outs, ranging from one foot to five feet in height, to be painted in acrylic paint on sign painter's board. Nine will be mounted on the wooden fence behind the play area and three will be mounted on the privacy screen in front of the restroom building at Hestwood Park.

2. **COMPENSATION.** In consideration for ARTIST accomplishing said result, COUNTY agrees to pay ARTIST \$4,600.00. Payment shall be made in two installments: \$2,000.00 upon signature of contract and \$2,600.00 upon installation of animal cut-outs for a total amount not to exceed \$4,600.

It is understood that total compensation for all services, deliverables and travel in this Contract shall not exceed \$4,600.00.

All requests for payment shall be submitted to the County of Santa Cruz Department of Parks, Open Space, and Cultural Services, attn: Barry Samuel, Director, 979 17<sup>th</sup> Avenue, Santa Cruz, California 95062 and must be accompanied by a detailed invoice.

COUNTY agrees to exercise due diligence in the payment of invoices received from the ARTIST provided no claims have been made against the WORK. If a claim(s) has/have been filed against the WORK within 45 days of acceptance, final payment will be withheld until COUNTY can ascertain the basis and amount of said claim. COUNTY will consider and determine the claim(s) and it will be the responsibility of the ARTIST to furnish information and details as may be required by the COUNTY to determine the facts or contentions involved in the claim(s). Failure to submit such information within 60 days of being notified by the COUNTY will be sufficient

action for denying final payment. Furthermore, COUNTY may use final payment to pay any outstanding claim(s).

3. **TERM.** The term of this contract shall be six (6) weeks from the date of execution of this Contract or until the WORK described herein is completed, whichever occurs first. This Contract may be extended upon mutual consent by both parties.

4. **RIGHT, TITLE AND INTEREST TO THE WORK.**

- A. All work produced under this CONTRACT shall be the property of the COUNTY. All documents including, but not limited to, reproducible copies of tracings, drawings, estimates, field notes, investigations, design analysis and studies which are prepared in the performance of the creation of the WORK are to be and remain the property of the COUNTY and are to be delivered to the Department of Parks, Open Space and Cultural Services at 979 Seventeenth Avenue, Santa Cruz, CA 95062.
- B. Upon final payment to the ARTIST, all right, title and interest in the work shall become vested in the COUNTY. The ARTIST will retain all right, title and interest to any designs which are rejected by the COUNTY, as well as any incidental designs resulting from the work.
- C. The ARTIST hereby grants the COUNTY the exclusive right to display the WORK and to loan the WORK to other persons or institutions with authority to display and publicize. The ARTIST reserves all copyrights in the WORK, the preliminary design and any incidental works made in the creation of the WORK. The ARTIST agrees to not unreasonably refuse the COUNTY permission to reproduce the WORK for non-commercial purposes. The COUNTY agrees to give the ARTIST credit in all reproductions of the WORK.

5. **ADDITIONAL SERVICES.** If authorized by COUNTY, the ARTIST will provide additional services or items (those provided beyond the basic WORK or services as described herein) which shall be paid by a negotiated fee for such item(s) or service(s).

6. **EARLY TERMINATION.** Either party hereto may terminate this contract at anytime by giving 30 days written notice to the other party. In the event the ARTIST abandons the WORK, defaults on any terms of this Contract or otherwise causes it to be terminated without cause prior to final acceptance of the WORK, the ARTIST shall not be owed or paid any further compensation by the COUNTY, and shall remit to the COUNTY all sums of money previously paid under the terms of this Contract, with the exception of those sums of money

previously paid for the fabrication of the WORK, if ARTIST turns over a completed WORK to the COUNTY for installation. In the event the COUNTY terminates this Contract without cause, the COUNTY shall only pay the ARTIST for work completed and materials purchased towards fabrication of the art up to the effective date of the termination.

**7. INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.**

ARTIST shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 8 and 9 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the ARTIST'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of ARTIST and third persons.

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to ARTIST and ARTIST'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

8. **INSURANCE.** ARTIST, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be excess of ARTIST'S insurance coverage and shall not contribute to it.

If ARTIST utilizes one or more subcontractors in the performance of this Agreement, ARTIST shall obtain and maintain Independent ARTIST'S Insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each subcontractor equivalent to that required of ARTIST in this Agreement, unless ARTIST and COUNTY both initial here \_\_\_\_\_ / \_\_\_\_\_

A. Types of Insurance and Minimum Limits

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the ARTIST has no employees and certifies to this fact by initialing here J.C.A.

(2) Automobile Liability Insurance for each of ARTIST'S vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by \_\_\_\_\_).

ARTIST'S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by ARTIST is not a material part of performance of this Agreement and ARTIST and COUNTY both certify to this fact by initialing here

\_\_\_\_\_/

(3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, c) broad form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$\_\_\_\_\_ combined single limit, if, and only if, this Subparagraph is initialed by ARTIST and COUNTY \_\_\_\_\_/

#### B. Other Insurance Provisions

(1) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, ARTIST agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. ARTIST may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

(2) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contained the following clause:

"The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insurance as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz."

(3) All required insurance policies shall be endorsed to contain the following clause:

"This insurance shall not be canceled until after thirty (30) days prior written notice has been given to:

Parks, Open Space and Cultural Services  
Attn: Barry Samuel, Director

979 17<sup>th</sup> Avenue  
Santa Cruz, CA 95062

(4) ARTIST agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to:

Parks, Open Space and Cultural Services  
Attn: Barry Samuel, Director  
979 17<sup>th</sup> Avenue  
Santa Cruz, CA 95062

9. **EQUAL EMPLOYMENT OPPORTUNITY.** During and in relation to the performance of this Contract, ARTIST agrees as follows:

A. The ARTIST shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: Recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The ARTIST agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

B. If this Agreement provides compensation in excess of \$50,000 to ARTIST and if ARTIST employs fifteen (15) or more employees, the following requirements shall apply:

(1) The ARTIST shall, in all solicitations or advertisements for employees placed by or on behalf of the ARTIST, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy or any other non-merit factor unrelated to job duties. In addition, the ARTIST shall make a good faith effort to consider Minority-, Women-, Disabled-Owned Business Enterprises in ARTIST'S solicitation of goods and services. Definitions for Minority-, Women-, Disabled-Owned Business Enterprises are available from the COUNTY General Services Purchasing Division.

(2) The ARTIST shall furnish COUNTY Affirmative Action Office information and reports in the prescribed reporting format (PER 4012)



identifying the sex, race, physical or mental disability, and job classification of its employees and the names, dates and methods of advertisement and direct solicitation efforts made to subcontract with Minority-, Women-, Disabled-Owned Business Enterprises.

(3) In the event of the ARTIST'S non-compliance with the non-discrimination clauses of this Agreement or with any of the said rules, regulations, or orders said ARTIST may be declared ineligible for further agreements with the COUNTY.

(4) The ARTIST shall cause the foregoing provisions of this Subparagraph B to be inserted in all subcontracts for any work covered under this Agreement by a subcontractor compensated more than \$50,000 and employing more than fifteen (15) employees, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

10. **INDEPENDENT ARTIST STATUS.** ARTIST and COUNTY have reviewed and considered the principal test and secondary factors below and agree that ARTIST is an independent contractor and not an employee of COUNTY. ARTIST is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. ARTIST is not entitled to any employee benefits. COUNTY agrees that ARTIST shall have the right to control the manner and means of accomplishing the result contracted for herein.

**PRINCIPAL TEST:** The ARTIST rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

**SECONDARY FACTORS:** (a) The extent of control which, by contract, COUNTY may exercise over the details of the work is slight rather than substantial; (b) ARTIST is engaged in a distinct occupation or business; (c) In the locality, the work to be done by ARTIST is usually done by a specialist without supervision, rather than under the direction of any employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The ARTIST rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which ARTIST is engaged is of limited duration rather than indefinite; (g) The method of payment of ARTIST is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) ARTIST and COUNTY believe they are creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors which indicate that ARTIST is an independent contractor.

11. **TITLE AND RISK OF LOSS.** Title to the WORK passes to the COUNTY upon final acceptance of the completed WORK by the COUNTY. The ARTIST is not responsible for damage occurring during installation of the WORK through the negligence by the COUNTY's general contractor. The ARTIST bears the risk of damage to or loss of the WORK until the title passes to the COUNTY and shall take all necessary measures to protect the WORK from loss or damage until final acceptance. ARTIST is entitled to full payment for the accepted WORK upon submittal of final invoice to the COUNTY.
12. **NON-ASSIGNMENT OR TRANSFER.** The personal skill, judgment and creativity of the ARTIST is an essential element of this Contract. Therefore, although the parties recognize that the ARTIST may employ qualified personnel to work under ARTIST's supervision, the ARTIST shall not assign, transfer or subcontract the creative and artistic portions of the WORK to another party without the prior written consent of the COUNTY.
13. **ACKNOWLEDGMENT.** ARTIST shall acknowledge in all reports and literature that the Santa Cruz County Board of Supervisors has provided funding to the ARTIST.
14. **SUCCESSORS AND ASSIGNS.** The COUNTY and the ARTIST each binds themselves, partners, successors, assigns and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants of this Contract. Neither the COUNTY nor the ARTIST shall assign, sublet or transfer an interest in this Contract without the written consent of the other. In no event shall any contractual relation be created between any third party and the COUNTY.
15. **NO KICK-BACK.** The ARTIST warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingent fee and that no member of the COUNTY Council, or an employee of the COUNTY of Santa Cruz has any interest, financially or otherwise, in the ARTIST's business.
16. **RETENTION AND AUDIT OF RECORDS.** ARTIST shall retain records pertinent to this Contract for a period of not less than five (5) years after final payment under this Contract or until a final audit report is accepted by the COUNTY, whichever occurs first. ARTIST hereby agrees to be subject to the

examination and audit by the Santa Cruz County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Contract.

17. **PRESENTATION OF CLAIMS.** Presentation and processing of any or all claims arising out of or related to this Contract shall be made in accordance with the provisions contained in Chapter 1.05 of the Santa Cruz County Code, which by this reference is incorporated herein.

By their signatures to the Contract, each of the undersigned certifies that it is his or her considered judgment that the ARTIST engaged under this Contract is in fact an independent contractor.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

COUNTY OF SANTA CRUZ

ARTIST: James Carl Aschbacher

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

By: James Carl Aschbacher  
 Print Name: James Carl Aschbacher  
 Address: 1345 Dougmar Drive  
 City/State: Santa Cruz, Ca. 95062  
 Telephone: (831) 475-8218

APPROVED AS TO INSURANCE:

By: [Signature]  
 Risk Management 12/1/01

APPROVED AS TO FORM:

By: Marice Costa  
 County Counsel

DISTRIBUTION:

County Administrative Office, Auditor-Controller, County Counsel, Risk Management, Parks, ARTIST, General Services

# EXHIBIT 6

P.O. Contract No. \_\_\_\_\_

0468

## INDEPENDENT ARTIST AGREEMENT HIGHLANDS PARK SKATE PARK

THIS CONTRACT is entered into this \_\_\_\_th day of \_\_\_\_\_, 200\_\_, by and between the COUNTY OF SANTA CRUZ, hereinafter called COUNTY, and James Carl Aschbacher, hereinafter called ARTIST.

Whereas, the COUNTY established a Percent for Arts Program on April 2, 1991 requiring that up to 2% of the construction cost of a project be used to integrate public art into the project, enhancing the development of those public sites; and

Whereas, the ARTIST has been selected pursuant to procedures adopted by the COUNTY. The parties agree as follows:

1. **DUTIES.** ARTIST agrees to create and install a Celebration Totem, eighteen (18) feet in height, ten (10) inches wide and four (4) inches thick, to be painted in acrylic paint and topped with a rotating two-sided skateboarding figure.

2. **COMPENSATION.** In consideration for ARTIST accomplishing said result, COUNTY agrees to pay ARTIST \$4,000.00. Payment shall be made in two installments: \$2,000.00 upon signature of contract and \$2,000.00 upon installation of the totem for a total amount not to exceed \$4,000.00.

It is understood that total compensation for all services, deliverables and travel in this Contract shall not exceed \$4,000.00.

All requests for payment shall be submitted to the County of Santa Cruz Department of Parks, Open Space, and Cultural Services, attn: Barry Samuel, Director, 979 17<sup>th</sup> Avenue, Santa Cruz, California 95062 and must be accompanied by a detailed invoice.

COUNTY agrees to exercise due diligence in the payment of invoices received from the ARTIST provided no claims have been made against the WORK. If a claim(s) has/have been filed against the WORK within 45 days of acceptance, final payment will be withheld until COUNTY can ascertain the basis and amount of said claim. COUNTY will consider and determine the claim(s) and it will be the responsibility of the ARTIST to furnish information and details as may be required by the COUNTY to determine the facts or contentions involved in the claim(s). Failure to submit such information within 60 days of being notified by the COUNTY will be sufficient action for denying final payment. Furthermore, COUNTY may use final payment to pay any

outstanding claim(s).

0469

3. **TERM.** The term of this contract shall be six (6) weeks from the date of execution of this Contract or until the WORK described herein is completed, whichever occurs first. This Contract may be extended upon mutual consent by both parties.

4. **RIGHT, TITLE AND INTEREST TO THE WORK.**

- A. All work produced under this CONTRACT shall be the property of the COUNTY. All documents including, but not limited to, reproducible copies of tracings, drawings, estimates, field notes, investigations, design analysis and studies which are prepared in the performance of the creation of the WORK are to be and remain the property of the COUNTY and are to be delivered to the Department of Parks, Open Space and Cultural Services at 979 Seventeenth Avenue, Santa Cruz, CA 95062.
- B. Upon final payment to the ARTIST, all right, title and interest in the work shall become vested in the COUNTY. The ARTIST will retain all right, title and interest to any designs which are rejected by the COUNTY, as well as any incidental designs resulting from the work.
- C. The ARTIST hereby grants the COUNTY the exclusive right to display the WORK and to loan the WORK to other persons or institutions with authority to display and publicize. The ARTIST reserves all copyrights in the WORK, the preliminary design and any incidental works made in the creation of the WORK. The ARTIST agrees to not unreasonably refuse the COUNTY permission to reproduce the WORK for non-commercial purposes. The COUNTY agrees to give the ARTIST credit in all reproductions of the WORK.

5. **ADDITIONAL SERVICES.** If authorized by COUNTY, the ARTIST will provide additional services or items (those provided beyond the basic WORK or services as described herein) which shall be paid by a negotiated fee for such item(s) or service(s).

6. **EARLY TERMINATION.** Either party hereto may terminate this contract at anytime by giving 30 days written notice to the other party. In the event the ARTIST abandons the WORK, defaults on any terms of this Contract or otherwise causes it to be terminated without cause prior to final acceptance of the WORK, the ARTIST shall not be owed or paid any further compensation by the COUNTY, and shall remit to the COUNTY all sums of money previously paid under the terms of this Contract, with the exception of those sums of money previously paid for the fabrication of the WORK, if ARTIST turns over a

completed WORK to the COUNTY for installation. In the event the COUNTY terminates this Contract without cause, the COUNTY shall only pay the ARTIST for work completed and materials purchased towards fabrication of the art up to the effective date of the termination.

7. **INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.** ARTIST shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 8 and 9 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the ARTIST'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of ARTIST and third persons.

B. Any and all Federal, State and Local taxes, charges, fees, or contributions required to be paid with respect to ARTIST and ARTIST'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

8. **INSURANCE.** ARTIST, at its sole cost and expense, for the full term of this Agreement (and any extensions thereof), shall obtain and maintain at minimum compliance with all of the following insurance coverage(s) and requirements. Such insurance coverage shall be primary coverage as respects COUNTY and any insurance or self-insurance maintained by COUNTY shall be excess of ARTIST'S insurance coverage and shall not contribute to it.

If ARTIST utilizes one or more subcontractors in the performance of this Agreement, ARTIST shall obtain and maintain Independent ARTIST'S Insurance as to each subcontractor or otherwise provide evidence of insurance coverage for each subcontractor equivalent to that required of ARTIST in this Agreement, unless ARTIST and COUNTY both initial here \_\_\_\_/\_\_\_\_

**A. Types of Insurance and Minimum Limits**

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the ARTIST has no employees and certifies to this fact by initialing here J.C.A..

(2) Automobile Liability Insurance for each of ARTIST'S vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by ARTIST'S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined

single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by ARTIST is not a material part of performance of this Agreement and ARTIST and COUNTY both certify to this fact by initialing here

\_\_\_\_\_/\_\_\_\_\_  
 \_\_\_\_\_

(3) Comprehensive or Commercial General Liability Insurance coverage in the minimum amount of \$1,000,000 combined single limit, including coverage for: (a) bodily injury, (b) personal injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.

(4) Professional Liability Insurance in the minimum amount of \$\_\_\_\_\_ combined single limit, if, and only if, this Subparagraph is initialed by ARTIST and COUNTY \_\_\_\_\_/\_\_\_\_\_

#### B. Other Insurance Provisions

(1) If any insurance coverage required in this Agreement is provided on a "Claims Made" rather than "Occurrence" form, ARTIST agrees to maintain the required coverage for a period of three (3) years after the expiration of this Agreement (hereinafter "post agreement coverage") and any extensions thereof. ARTIST may maintain the required post agreement coverage by renewal or purchase of prior acts or tail coverage. This provision is contingent upon post agreement coverage being both available and reasonably affordable in relation to the coverage provided during the term of this Agreement. For purposes of interpreting this requirement, a cost not exceeding 100% of the last annual policy premium during the term of this Agreement in order to purchase prior acts or tail coverage for post agreement coverage shall be deemed to be reasonable.

(2) All required Automobile and Comprehensive or Commercial General Liability Insurance shall be endorsed to contained the following clause:

"The County of Santa Cruz, its officials, employees, agents and volunteers are added as an additional insurance as respects the operations and activities of, or on behalf of, the named insured performed under Agreement with the County of Santa Cruz."

(3) All required insurance policies shall be endorsed to contain the following clause:

"This insurance shall not be canceled until after thirty (30) days prior written notice has been given to:

Parks, Open Space and Cultural Services  
 Attn: Barry Samuel, Director  
 979 17<sup>th</sup> Avenue

Santa Cruz, CA 95062

(4) ARTIST agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide COUNTY on or before the effective date of this Agreement with Certificates of Insurance for all required coverages. All Certificates of Insurance shall be delivered or sent to:

Parks, Open Space and Cultural Services  
Attn: Barry Samuel, Director  
979 17<sup>th</sup> Avenue  
Santa Cruz, CA 95062

9. **EQUAL EMPLOYMENT OPPORTUNITY.** During and in relation to the performance of this Contract, ARTIST agrees as follows:

A. The ARTIST shall not discriminate against any employee or applicant for employment because of race, color, religion, national origin, ancestry, physical or mental disability, medical condition (cancer related), marital status, sexual orientation, age (over 18), veteran status, gender, pregnancy or any other non-merit factor unrelated to job duties. Such action shall include, but not be limited to, the following: Recruitment; advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training (including apprenticeship), employment, upgrading, demotion, or transfer. The ARTIST agrees to post in conspicuous places, available to employees and applicants for employment, notice setting forth the provisions of this non-discrimination clause.

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By their signatures to the Contract, each of the undersigned certifies that it is his or her considered judgment that the ARTIST engaged under this Contract is in fact an independent contractor.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

COUNTY OF SANTA CRUZ

ARTIST: James Carl Aschbacher

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

By: James Carl Aschbacher  
James Carl Aschbacher

APPROVED AS TO INSURANCE:

Address: 1345 Dougmar Drive  
Santa Cruz, CA 95062

By: Janet McKinley 10-15-2001  
Risk Management

Telephone: 831-475-8218

APPROVED AS TO FORM:

By: Marie Costa  
County Counsel

DISTRIBUTION:

County Administrative Office, Auditor-Controller, County Counsel, **Risk Management**, Parks, ARTIST, General Services