

**CITY OF OAKLAND**  
**AGENDA REPORT**

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
2009 JUL -2 AM 10:11

TO: Office of the City Administrator  
ATTN: Dan Lindheim  
FROM: Cultural Arts & Marketing Division  
DATE: July 14, 2009

**RE: A Resolution Authorizing The City Administrator To Negotiate And Execute A Professional Services Agreement With Wowhaus For Public Art Design, Fabrication And Installation Services For The Oakland Watershed Art Marker Project In An Amount Not To Exceed Eighty-Seven Thousand Dollars (\$87,000) In Measure DD Public Art Funds.**

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**SUMMARY**

This resolution authorizes the City Administrator to negotiate and execute a professional services agreement with Wowhaus, consisting of artists Ene Osteraas-Constable and Scott Constable, of Oakland, California, to create a prototype art marker and to fabricate and install a series of markers based on this prototype at various key locations in the Oakland watershed systems. The Oakland Watershed art markers will identify and celebrate the role of the watershed systems of Oakland, including creeks, lakes, and the estuary, to meet the goals of the Oakland Watershed Program and Measure DD Oakland Trust for Clean Water & Safe Parks. The contract amount is not to exceed \$87,000.

In response to a Request for Qualifications distributed to artists in the nine San Francisco Bay Area counties, the City received a total of 59 eligible applications for this public art project. On February 20, 2009, five finalists were selected for interviews. On March 20, 2009, the finalists made detailed presentations on their qualifications, interests and approaches to an eight-member panel convened by the City. The panel selected the Oakland-based artist team Wowhaus to be the most qualified applicant and recommended that they receive the project commission.

**FISCAL IMPACTS**

The Measure DD Oakland Watershed Art Marker public art project was approved by City Council in the 2009 Public Art Annual Plan (Resolution No. 81795 C.M.S.) as a part of Measure DD Bond program public art improvements. This professional services agreement will not exceed \$87,000 for design development, fabrication and installation of the final artwork, and is fully funded through City of Oakland percent for art funds (per Ordinance Number 11066 C.M.S.) in Measure DD.

Staff proposes to allocate \$20,000 from Measure DD Series A Bond public art funds [Measure DD Capital Improvement Fund (5320), Capital Project Management Organization (92242), Lake Merritt (C241621)] and \$22,000 from Measure DD Series A Bond public art funds [Measure DD Capital Improvement Fund (5320), Capital Project Management Organization (92280), Creeks/Waterway (C244821)]. The remaining \$45,000 will come from Measure DD Series B Bond funds to be issued in late 2009 for Creeks and Waterway projects. In the event the issuance

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Life Enrichment Committee  
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of the Measure DD Series B Bond is delayed and not in time for the payment of the remainder of the artist team's contract (for fabrication and installation of the work), funding will be advanced from existing Measure DD Series A project funds that have not been spent or from projects which are on hold, and will be recovered from the Series B Bond when funds become available.

Future maintenance costs for the public art project will be minimal. Any extraordinary maintenance requirements that may arise will be managed by the Public Art Program from its art maintenance fund account.

## **BACKGROUND**

Funds authorized through the voter-approved Measure DD Oakland Trust for Clean Water & Safe Parks have been allocated for Oakland Watershed improvements, including creek renovation and water quality projects. Oakland is home to 15 main creeks and over 40 smaller tributaries, all of which play a vital role in the City's health and well-being. These waterways provide plant and wildlife habitat, stormwater transport, flood management and water cleansing functions as well as valuable recreational and aesthetic benefit for Oakland residents. Although historically contiguous from the Oakland Hills to the San Francisco Bay, all of Oakland's creeks are now partially or extensively buried or diverted into culverts and storm drains. Their lack of visibility in certain areas of the city reduces overall understanding of their role and value.

To enhance the historic, cultural, aesthetic and interpretive potential of the often-overlooked creeks system and the City's "crown jewel," Lake Merritt, \$87,000 was allocated to commission an artist or artist team to create a prototype of an interpretive artwork marker that will identify the location of creek nodes and draw attention to the value of the creek habitats that exist throughout the City. The selected artist team will also fabricate and install a series of three to five markers based on the prototype at various celebrated locations in Oakland.

The Public Art Program released a Request for Qualifications seeking a qualified artist or artist-team for the Measure DD Oakland Watershed Art Marker Project. The selection panel met in a two-phase process. The first phase included selection of five finalists and one alternate from the eligible pool of 59 applicants and the second phase included interviews with the five finalists and a commission recommendation.

Voting members of the selection panel were local arts professionals Winifred Day (art consultant) and Edina Tanovic (artist and design company owner) and community representative Richard Kaufman (Friends of Sausal Creek and former art dealer). Chairing the meeting (a non-voting function) was Deborah Lozier, Oakland artist and member of the Public Art Advisory Committee (PAAC). The other non-voting advisors to the panel were Lesley Estes and Kristin Hathaway from the City's Watershed Program and Public Art Program project managers Christin Hablewitz and Kristen Zaremba.

If approved by City Council, the artist team will consult and collaborate closely with Oakland Watershed Program staff, Public Art Program Staff, project design review committee members, local community representatives and other project stakeholders in the development of the Oakland Watershed Marker. City staff will make certain that Wowhaus are in compliance with City policies before the Professional Services Agreement is executed.

## **PROJECT DESCRIPTION**

The intent of the project is for the artwork marker design to become an iconic symbol representing the citywide watershed awareness program. Encompassing the built environment as well as open creek locations, the placement of each marker will invite discovery of the next, while building watershed awareness. The artwork prototype will be owned by the City of Oakland and may be replicated in the future, as funding becomes available for the identification of additional creek habitats and nodes throughout the city. The selected artist team will consult and collaborate closely with the project stakeholders from the Oakland Watershed Program, the Public Art Program and the greater community to develop an art marker that truly celebrates and identifies the Oakland Watershed systems.

## **KEY ISSUES AND IMPACTS**

On April 6, 2009, the PAAC approved the panel's recommendation and forwarded the recommendation to the Cultural Affairs Commission, which approved it on April 27, 2009. Public Art Program staff then directed the artist team to proceed with preliminary design development for the creation of an iconic Oakland watershed art maker.

Materials used for the artwork markers will be durable, resistant to vandalism, and appropriate for heavy public use. The markers will be designed to require minimal or no maintenance beyond routine cleaning. Any extraordinary maintenance requirements that may arise will be managed by the Public Art Program from its art maintenance fund account.

## **SUSTAINABLE OPPORTUNITIES**

Economic: The public artwork integrated into the watershed environments will enhance and enrich the visual environment of Oakland, thereby strengthening the economic value of the community. This project will have lasting economic impact by providing Oakland art fabricators and installers future work in the duplication of additional watershed art markers as funds become available.

Environmental: The artwork will have no adverse impact on the surrounding community. Public art staff will ensure the risk of vandalism will be very limited, as the artist will be required to fabricate all the elements out of materials suitable for exterior environments, without surfaces, edges or protrusions subject to vandalism.

Social Equity: The aesthetically enhancing public artwork will be designed to identify and celebrate the Oakland watershed systems, adding to the quality of life for residents of and visitors to Oakland. The artist's designs will reflect the Oakland Watershed Program goals and involve the community the creation to bolster community pride in the City.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

The public art will be accessible and visible to viewers from many vantage points. The artwork will be ADA compliant, and will not create a tripping hazard for senior citizen access.

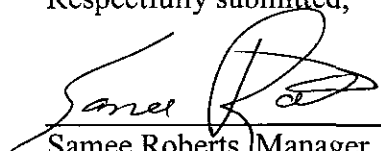
**RECOMMENDATION**

The Cultural Affairs Commission recommends that the City Council authorize the City Administrator to negotiate and execute a Professional Services Agreement with Wowhaus for public art design, fabrication and installation services for the Measure DD Oakland Watershed Art Marker project, in an amount not to exceed eighty-seven thousand dollars (\$87,000).

**ACTION REQUESTED OF THE CITY COUNCIL**

That Council approves the resolution authorizing the City Administrator to negotiate and execute a Professional Services Agreement with Wowhaus for public art design, fabrication and installation services for the Oakland Watershed Art Marker Project, in an amount not to exceed eighty-seven thousand dollars (\$87,000).

Respectfully submitted,

  
\_\_\_\_\_  
Samee Roberts, Manager  
Cultural Arts & Marketing Division

Report prepared by: Steven Huss,  
Cultural Arts Programs Coordinator

APPROVED AND FORWARDED TO THE  
LIFE ENRICHMENT COMMITTEE:

  
\_\_\_\_\_  
Office of the City Administrator

## **Schedule A**

# **SCOPE OF WORK/OUTLINE OF SERVICES TO BE PERFORMED**

## **I. PROJECT DESCRIPTION, LOCATION OF ARTWORK & TASKS**

### **Description:**

Contractor (Wowhaus) consisting of Ene Osteraas-Constable and Scott Constable shall finalize artwork design concepts for an interpretive public art marker that celebrates and identifies the role of the watershed systems of Oakland, including creeks, lakes, and the estuary. The artist team will create a prototype of the permanent art marker and will fabricate and install the first series of markers (3 to 5) based on this prototype at various key locations in the Oakland watershed systems. Final artwork designs will be reviewed by City staff, the Public Art Advisory Committee, and other project stakeholders before approval is made in writing by the Public Art Project Manager.

### **Location:**

The Artwork (3 to 5 watershed art markers) will be located in approved key locations in the Oakland watershed system and determined collectively by contractor, public art and watershed program staff. Contractor and/or staff will obtain any required permits and/or approvals.

### **Task 1: Off-Site Elements –Contractor shall:**

- Meet with the City staff (public art and watershed program), community representatives and other project stakeholders as determined by contractor and Public Art Manager to finalize prototype design, budget for the project and project progress.
- Develop detailed scale drawings of artwork, fabrication and installation methods and obtain engineering review, if required.
- Present final designs to Public Art Advisory Committee and other project stakeholders for final approval.
- Purchase materials for all proposed artwork.
- Fabricate or cause to be fabricated all artwork.
- Prepare all materials with protective and anti-graffiti coatings as needed.

### **Task 2: On-Site Elements –Contractor shall:**

- Coordinate final artwork delivery and installation schedule with Public Art staff and other project stakeholders prior to transportation.
- Transport artwork elements to sites.
- Prepare the sites for installation.
- Oversee installation of all artwork elements.

- Inspect artworks for any damage occurring during transport and installation and repair or touch up as needed.
- Document all artworks as specified below.

### **Task 3: Supplemental Materials**

To be delivered to Public Art Project Manager Prior to Final Payment, see Submittals Checklist form for a complete list of submittals, attached.

- A manual for the City's public art collection management program that includes materials specifications and describes routine maintenance needs, recommendations for care of the artwork elements, and other considerations for upkeep of the project.
- A series of high-resolution digital photographic images of the completed public art project in situ, including a minimum of two different images per specific element and two views of the overall project.
- A brief (one to two pages) narrative description of the public art project, including the Contractor's themes and concepts and other information that will enhance public enjoyment and understanding of the project and the artist's work.

## **II. SCHEDULE OF PERFORMANCE**

Contractor shall perform work according to the following schedule. Contractor shall not commence Contractor's Services until this Agreement is fully executed and City issues a notice to commence work.

| <i>Activity</i>                      | <i>Date</i>                   |
|--------------------------------------|-------------------------------|
| Final Design Development and Designs | September 2009- December 2009 |
| Fabrication of Off-Site Elements:    | January 2010 – July 2010      |
| Completion of Installation:          | September 2010                |
| Final Contract Completion:           | December 2010                 |

The parties agree that the schedule of performance set forth above may, by mutual agreement, be modified in writing without the necessity of a formal amendment to this Agreement.

The schedule for payment will occur in accordance with the milestones set forth below. In the event that City accepts the Artwork, one or more payments set forth in the **Schedule of Payment** may occur following the completion date for the Artwork as set forth above or as may be modified in writing by the parties.

## **III. COMPENSATION**

1. Fee. Contractor's fee for design, fabrication and installation of Artwork, including all expenses relating thereto, shall not exceed the sum of eighty-seven thousand dollars (\$87,000). This fee includes but is not limited to the following

costs: Labor of assistants; materials, communication and other direct and indirect costs; travel expenses of the Contractor for site visits and supervision of work; and fabrication, installation, and transportation costs.

2. Interim Payments. City agrees to pay Contractor in installments as set forth in the schedule below and in accordance with the terms of Section 23 of this Agreement.

3. Payment Schedule.

1<sup>st</sup> payment, upon execution of this Agreement, for continuing design development and completion of final designs (10%): \$8,700

2<sup>nd</sup> payment, at commencement of fabrication phase, upon evidence of purchase or commitment to purchase materials (50%): \$43,500

3<sup>rd</sup> payment, at completion of fabrication phase, following progress review and approval by Public Art Project Manager (30%): \$26,100

4<sup>th</sup> payment, upon City's issuance of the Notice of Acceptance, plus thirty (30) days (10%): \$8,700

4. Reimbursables. City will not make any additional payment for Contractor's expenses.

5. Notwithstanding the foregoing, Contractor expressly acknowledges that approval of work to permit an interim payment is solely for the benefit of Contractor. Unless and until the City issues a Notice of Acceptance for the Artwork, no interim approval shall constitute acceptance or approval of the Artwork by City nor shall it be construed as a waiver of City's right to require that the Artwork conform strictly to the Final Proposal and to the Plans.

6. Pursuant to California Revenue and Taxation Code Section 6365, the Artwork is exempt from sales taxes imposed under the California Revenue and Taxation Code.

FILED  
OFFICE OF THE CITY CLERK  
OAKLAND  
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Approved as to Form and Legality

Oakland City Attorney's Office

## OAKLAND CITY COUNCIL

Resolution No. \_\_\_\_\_ C.M.S.

Introduced by Councilmember \_\_\_\_\_

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**A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO NEGOTIATE AND EXECUTE A PROFESSIONAL SERVICES AGREEMENT WITH WOWHAUS FOR PUBLIC ART DESIGN, FABRICATION AND INSTALLATION SERVICES FOR THE OAKLAND WATERSHED ART MARKER PROJECT IN AN AMOUNT NOT TO EXCEED EIGHTY-SEVEN THOUSAND DOLLARS (\$87,000) IN MEASURE DD PUBLIC ART FUNDS**

**WHEREAS**, Measure DD, the Oakland Trust for Clean Water and Safe Parks Fund, includes funding for the watershed systems including Lake Merritt, creeks and estuary; and

**WHEREAS**, professional artistic design services are needed to develop a public art component for the project; and

**WHEREAS**, an extensive outreach effort to solicit qualified artist candidates resulted in responses from fifty-nine eligible artists; and

**WHEREAS**, in February 1989, the City of Oakland adopted a Public Art Ordinance (No. 11086 C.M.S.) and an Oakland Redevelopment Agency Resolution (No. 89-8 C.M.S.) authorizing the allocation of 1.5% of City capital improvement project costs for the commissioning of public artwork; and

**WHEREAS**, it is the intent of the Public Art Ordinance and the Oakland Redevelopment Agency Resolution to provide a means for the City to commission artists to create artwork that enlivens, enhances, and enriches the visual environment of the City of Oakland; and

**WHEREAS**, on February 20, 2009 and March 20, 2009, an eight-member selection panel consisting of community members, artists, arts professionals, project representatives and City staff met to select an artist to create a public art project for the Oakland Watershed Art Marker Project, and unanimously recommended the artists of Wowhaus; and

**WHEREAS**, on April 6, 2009, the Public Art Advisory Committee voted to accept the recommendation of the selection panel and approve the commission of Wowhaus for the Oakland Watershed Art Maker Project; and

**WHEREAS**, the City of Oakland finds that this contract is professional in nature and will not result in a loss of employment or salary by any person having permanent status in the competitive service; and



**WHEREAS**, funding for the permanent artwork project in the amount of \$20,000 is available within the Measure DD Series A Bond Fund [Measure DD Capital Improvement Fund (5320), Capital Project Management Organization (92242), Lake Merritt (C241621)] and \$22,000 is available within Measure DD Series A Bond Funds [Measure DD Capital Improvement Fund (5320), Capital Project Management Organization (92280), Creeks/Waterway (C244821)], the remaining \$45,000 will be allocated from Measure DD Series B Bond funds from Creeks and Waterways issued in late 2009; now, therefore, be it

**RESOLVED:** That the City Council hereby authorizes the City Administrator to negotiate and execute a professional services agreement with Wowhaus in an amount not to exceed eighty-seven thousand dollars (\$87,000) from Measure DD bond funding; and be it

**FURTHER RESOLVED:** That \$20,000 will be allocated from the Measure DD Series A Bond Fund [Measure DD Capital Improvement Fund (5320), Capital Project Management Organization (92242), Lake Merritt (C241621)] and \$22,000 is available within Measure DD Series A Bond Funds [Measure DD Capital Improvement Fund (5320), Capital Project Management Organization (92280), Creeks/Waterway (C244821)], the remaining \$45,000 will be allocated from measure DD Series B Bond funds from Creeks and Waterways issued in late 2009; and be it

**FURTHER RESOLVED:** In the event the issuance of the Measure DD Series B Bond Fund is delayed and not in time for the payment of the remainder of the contract, funding will be advanced from existing Measure DD Series A project funds that have not been spent or from the projects that are on hold, and will be recovered from Series B Bond when the funds do become available; and be it

**FURTHER RESOLVED:** That the City Administrator is hereby authorized to execute any amendments or modifications of said contract within the limitations of the project specifications; and be it

**FURTHER RESOLVED:** The agreement will be reviewed and approved by the City Attorney and placed on file in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 2009

**PASSED BY THE FOLLOWING VOTE:**

AYES - BROOKS, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, QUAN, REID AND  
PRESIDENT BRUNNER

NOES -

ABSENT -

ABSTENTION -

ATTEST:

\_\_\_\_\_  
LATONDA SIMMONS  
City Clerk and Clerk of the Council of  
the City of Oakland, California