



DIPĀTTAMENTON I KAŌHAO GUINAHAN CHAMORRO  
DEPARTMENT OF CHAMORRO AFFAIRS



Honorable Edward J.B. Calvo  
Governor of Guam

Joseph Artero-Cameron  
President, DCA

Raymond S Tenorio  
Lieutenant Governor of Guam

September 10, 2014

32-14-2040  
Office of the Speaker  
Judith E. Won Pat, Ed.D

Mr. Vincent Arriola  
Executive Director  
*I Mina'trentai Dos Na Liheslaturan Guåhan*  
155 Hesler Street  
Hagåtña, Guam 96910

Date: 9-10-14  
Time: 2:45  
Received By: [Signature]

Dear Mr. Arriola,

*Håfa Adai.* Please be advised that pursuant to Public Law 31-118, which amends §§850, 852 and 853 of Article 2, Chapter 8 of Title 2, Chapter 8 of Title 1, Guam Code Annotated, Relative to Arts in Buildings and Facilities, all public buildings and facilities where the total cost of construction, remodeling or renovation, exceeds the sum of \$100,000, must set aside one percent (1%) of the total cost of overall construction, remodeling or renovation of the building for the acquisition of works of art. The program applies to those buildings supported by either the Government of Guam through tax abatements, rebates, loans, loan guarantees, bond financing or by Federal funds administered by the Government of Guam. Public Law 31-118 expands the program to include the fostering of culture, arts and the development of the arts beginning with young children; whereas, the developer or owner of these buildings would have the following options:

1. To set aside one percent (1%) of the total cost of overall construction, remodeling or renovation of the building for the acquisition of works of art; or
2. The monies would be deposited into a fund to be established and administered by CAHA. The fund will specifically be used to assist individuals and organizations with grants or programs/projects geared towards the development of arts that would benefit the community, especially young children and young adults.

Please note, that two percent (2%) of the one percent (1%) allocated for the Percent for the Arts Program must be made payable to Guam CAHA for administrative costs.

In addition, pursuant to Public Law 31-118, Section 3, §853 relative to the inclusion of Chamorro artistry or Guam History Elements in Government Buildings, all government of Guam buildings and structures must contain elements of either Guam History or of Chamorro artistry costing up to a maximum of three percent (3%) or the aggregate of the architectural and engineering, the construction of the renovation budgets therefore.

2040 Attached are copies of the public law and the program's rules and regulations. Should you require further information regarding this matter, please do not hesitate to contact me at 475-4278/9 or Ms. Jackie Balbas, CAHA Program Coordinator at 300-1204-8.

"Department of Chamorro Affairs is an Equal Opportunity Provider and Employer"

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P.O. Box 2950 Hagåtña, Guam 96932 • Phone: (671) 475-4278/9 • Fax: (671) 475-4227

2014 SEP 16 PM 3:05 PM



You and I must meet ASAP prior to signing off on a Memorandum of Agreement (MOA) that binds compliance to the Percent for the Arts prior to any Request for Proposal (RFP) announcements for Architecture and Engineering and/or construction. Attached is a sample MOA that you could use as a reference in preparing your MOA.

*Senseramente,*



Joseph Artero Cameron  
President

Attachments

Cc: Speaker, *I Mina'trentai Dos Na Liheslaturan Guåhan*  
Vice-Speaker, *I Mina'trentai Dos Na Liheslaturan Guåhan*  
Attorney General of Guam

EDDIE BAZA CALVO  
Governor



RAY TENORIO  
Lieutenant Governor

*Office of the Governor of Guam*

October 4, 2011

Honorable Judith T. Won Pat, Ed.D.  
Speaker  
*I Mina'trentai Umu Na Liheslaturan Guåhan*  
155 Hesler Street  
Hagåtña, Guam 96910

31-11-964  
Office of the Speaker  
Judith T. Won Pat, Ed. D.  
Date 10/4/11  
Time 4:00 PM  
Received by [Signature]

Dear Madame Speaker:

Transmitted herewith is Substitute Bill No. 240-31 (COR) "AN ACT TO AMEND §§850, 852 AND 853 OF ARTICLE 2, CHAPTER 8 OF TITLE 1, GUAM CODE ANNOTATED, RELATIVE TO ARTS IN BUILDINGS AND FACILITIES", which was signed into law on September 30, 2011 as Public Law 31-118.

*Senseramente,*

EDDIE BAZA CALVO

31-11-964  
10/4/11  
4:00 PM  
[Signature]

Attachment: copy of Bill

964

I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN  
2011 (FIRST) Regular Session

CERTIFICATION OF PASSAGE OF AN ACT TO I MAGA'LAHEN GUÅHAN

This is to certify that Substitute Bill No. 240-31 (COR), "AN ACT TO AMEND §§850, 852 AND 853 OF ARTICLE 2, CHAPTER 8 OF TITLE 1, GUAM CODE ANNOTATED, RELATIVE TO ARTS IN BUILDINGS AND FACILITIES," was on the 19<sup>th</sup> day of September, 2011, duly and regularly passed.



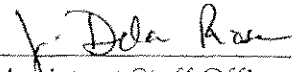
Judith T. Won Pat, Ed.D.  
Speaker

Attested:



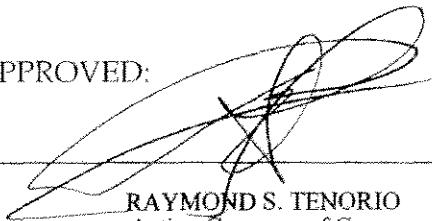
Tina Rose Muña Barnes  
Legislative Secretary

This Act was received by I Maga'lahaen Guåhan this 20<sup>th</sup> day of Sept, 2011, at 4:10 o'clock P.M.



Assistant Staff Officer  
Maga'laha's Office

APPROVED:



RAYMOND S. TENORIO  
Acting Governor of Guam

SEP 30 2011

Date: \_\_\_\_\_

Public Law No. 31-118

*I MINA'TRENTAI UNU NA LIHESLATURAN GUÅHAN*  
**2011 (FIRST) Regular Session**

**Bill No. 240-31 (COR)**

As substituted by the Committee on Youth,  
Cultural Affairs, Procurement, General Government Operations  
and Public Broadcasting, and the Author.

Introduced by:

Aline A. Yamashita, Ph.D.

T. C. Ada

V. Anthony Ada

F. F. Blas, Jr.

B. J.F. Cruz

Chris M. Dueñas

Judith P. Guthertz, DPA

Sam Mabini, Ph.D.

T. R. Muña Barnes

Adolpho B. Palacios, Sr.

v. c. pangelinan

Dennis G. Rodriguez, Jr.

R. J. Respicio

M. Silva Taijeron

Judith T. Won Pat, Ed.D.

**AN ACT TO *AMEND* §§850, 852 AND 853 OF ARTICLE  
2, CHAPTER 8 OF TITLE 1, GUAM CODE  
ANNOTATED, RELATIVE TO ARTS IN BUILDINGS  
AND FACILITIES.**

**BE IT ENACTED BY THE PEOPLE OF GUAM:**

**Section 1.** §850 of Article 2, Chapter 8 of Title 1, Guam Code Annotated,  
is hereby *amended* to read as follows:

**“§ 850. Purpose.**

1           The government of Guam recognizes its responsibility to foster  
2 culture and the arts and the necessity for the development of the arts,  
3 beginning with our young children and throughout the community. *I*  
4 *Liheslatura* (the Legislature) declares it to be policy that a portion of  
5 appropriations for capital expenditures for public buildings be set aside for  
6 the acquisition of works of art to be used in such buildings and in any  
7 buildings intended for use of the general public to the extent that the  
8 construction or improvement of such non-public buildings is supported by  
9 either federal or government of Guam tax incentives or other subsidy  
10 arrangement.”

11       **Section 2.** §852 of Article 2, Chapter 8 of Title 1, Guam Code Annotated,  
12 is hereby *amended* to read as follows:

13           “§ 852.       **Arts in Public Buildings and Buildings Supported by**  
14       **Public Funds.**

15           (a) Plans for public buildings and buildings supported by federal or  
16 government of Guam subsidy which contain public areas, and plans for  
17 remodeling or renovation of public buildings or facilities where the total cost  
18 of construction, remodeling or renovation exceeds the sum of One Hundred  
19 Thousand Dollars (\$100,000) *shall* contain provisions for the inclusion of  
20 works of art, by local artists if available, including, but *not* limited to,  
21 sculptures, paintings, murals or objects relating to or consisting of native art  
22 as defined in §851 of this Chapter. The owner of the building *shall* also  
23 have the option of allotting *at least* one percent (1%) of the overall  
24 construction, remodeling or renovation cost of a building to the Guam  
25 Council on the Arts and Humanities Agency (CAHA) in lieu of the inclusion  
26 of works of art. If artwork plans are selected, however, a representation of  
27 the final selection *shall* be published in a newspaper of general circulation

1 and/or the online version of the newspaper for public screening prior to  
2 implementation.

3 (b) Before issuance of the occupancy permit for such construction,  
4 remodeling or reconstruction the owner of the building must obtain  
5 clearance from the Guam Council on the Arts and Humanities Agency that  
6 the provisions of this Chapter are being complied with.

7 (c) *At least* one percent (1%) of the overall construction,  
8 remodeling or renovation cost of a building described in Subsection (a) of  
9 this Section *shall* be reserved for the purposes of the design, construction,  
10 mounting, maintenance and replacement, and administration of works of art  
11 by CAHA in the public area of such a building, or the owner *shall* give the  
12 amount to CAHA.

13 The Director of CAHA *shall* include in CAHA rules and regulations,  
14 pursuant to the Administrative Adjudication Law, for the disposition of  
15 funds to meet the purpose of fostering culture and the arts for the  
16 development of local artists, our children and the community as a whole.

17 The Director of Public Works *shall* ensure that no construction,  
18 remodeling or renovating of a public building, or building supported by  
19 government of Guam funds, is granted an occupancy permit without this  
20 Chapter being complied with.

21 (d) Such buildings with an overall construction cost of *less than*  
22 One Hundred Thousand Dollars (\$100,000) are exempted from the  
23 requirements of the Chapter *unless* inclusion of works of art in their design  
24 and construction is specifically authorized by the owner.

25 (e) The artist who creates these works of art *shall* be selected as  
26 provided in Subsection (f) of this Section.

1           (f) The Director of CAHA *shall* develop rules and regulations,  
2 pursuant to the Administrative Adjudication Law, for the selection of works  
3 of art under this Chapter, and *shall* open competition for awarding any art  
4 contract under this Chapter by:

5                 (1) soliciting proposals from local artists by a project  
6 announcement published *no less than* three (3) times in a local  
7 publication of general circulation in print and online versions; and

8                 (2) appointing a selection committee consisting of five (5)  
9 members to review all proposals and report to the Director the results  
10 of its deliberations regarding the proposed art contract. Such  
11 committee *shall* include a representative of the building's owner or of  
12 the agency or department involved, the project architect, the  
13 municipal commissioner from the project site, and *at least* two (2)  
14 practicing artists from Guam. The final decision regarding the use of  
15 art work and the selection committee's recommendations *shall* be by  
16 the Director of CAHA, who *shall* be the contracting officer for any art  
17 contract executed pursuant to this Chapter.

18           (g) The Director of CAHA *shall* include in CAHA rules and  
19 regulations, pursuant to the Administrative Adjudication Law, procedures  
20 for the acceptance of funds as stated in this Section.

21                 (1) An account *shall* be established which *shall* be  
22 maintained separate and apart from other funds of the government of  
23 Guam, *shall* be kept in a separate bank account, and *shall not* be  
24 subject to any transfer authority of *I Maga'lahren Guåhan*. Funds  
25 *shall* remain in such account and expended by CAHA for the purposes  
26 mandated in this Section. Said Fund *shall* be examined and reported



1 upon as required by law by the Director of CAHA who will serve as  
2 the certifying officer of said Fund.

3 (2) On the first (1st) day of each fiscal quarter, the CAHA  
4 Director *shall* provide to *I Maga'lahaen Guåhan* and the Speaker of *I*  
5 *Liheslaturan Guåhan*, and post on the CAHA website, a detailed  
6 report of how funds were allocated and utilized.

7 (h) **Enforcement.**

8 (1) CAHA *shall* identify public buildings in non-compliance  
9 with this Section and send written notices within ten (10) working  
10 days. Upon receipt of the notice, recipients have two (2) weeks  
11 (fourteen (14) calendar days) to acknowledge, in writing, receipt.  
12 Recipients will be given *up to* one (1) fiscal year to comply with this  
13 Section.

14 (2) The Guam Economic Development Authority (GEDA)  
15 *shall* ensure that current Qualifying Certificate (QC) program  
16 beneficiaries are in compliance with this Section.

17 (3) For monitoring purposes, GEDA *shall* provide to CAHA  
18 a list of past and current QC recipients. CAHA will determine  
19 whether former QC recipients complied with Subsections (a) and (c),  
20 and notify them in writing if non-compliance was determined. Upon  
21 receipt of the notice, recipients have two (2) weeks (fourteen (14)  
22 calendar days) to acknowledge, in writing, receipt. Recipients will be  
23 given *up to* one (1) fiscal year to comply with this Section.

24 (4) CAHA *shall* provide to the Department of Revenue and  
25 Taxation a list of QC recipients who fail to comply with this Section.  
26 The Department of Revenue and Taxation *shall* refuse to grant  
27 renewal of business licenses for current and past QC recipients in

1 noncompliance, until the CAHA Director issues a written  
2 confirmation of compliance.”

3 **Section 3.** §853 of Article 2, Chapter 8 of Title 1, Guam Code Annotated,  
4 is hereby *amended* to read as follows:

5 “§ 853. **Inclusion of Chamorro Artistry or Guam History**  
6 **Elements in Government Buildings.**

7 (a) **Government of Guam Buildings and Structures.** All  
8 government of Guam buildings and structures *shall* contain elements of  
9 either Guam history or of *Chamorro* artistry costing up to a maximum of  
10 three percent (3%) of the aggregate of the architectural and engineering, the  
11 construction or the renovation budgets therefore. Such elements may be  
12 made part of the internal or external physical structure of the building or  
13 structure and may be within the main part of the building or structure or  
14 separated from the main part. In complying with the provisions of this  
15 Section, a contractor for the government agency constructing the building or  
16 structure may consult with CAHA as to the various types of *Chamorro* or  
17 historic Guam artistic elements. The Department of Public Works  
18 (Department) *shall* monitor noncompliance with this Section during its plans  
19 approval process, *unless* such plans are exempted in accordance with  
20 Subsection (b) of this Section. If the Department determines that a non-  
21 exempted project does *not* comply with this Section, it *shall* refuse to issue  
22 either a building permit or an occupancy permit (as the case requires) for  
23 such project until compliance.

24 (b) **Exceptions to Applicability.** Buildings and structures  
25 constructed for use as shelters for utility facilities, or utility operations, are  
26 *not* subject to Subsection (a) of this Section.

1           (c) **Compliance.** Government of Guam agencies found in non-  
2 compliance of this Section *shall* be given up to one (1) fiscal year to comply.  
3 CAHA *shall* ensure compliance with this Section.

4           (d) **Government Leased Spaces.** Government of Guam agencies  
5 leasing spaces are *not* exempt from this Section, and if found in non-  
6 compliance will be given up to one (1) fiscal year to comply. CAHA *shall*  
7 ensure compliance with this Section.”

8           **Section 4. Severability.** *If* any provision of this Law or its application to  
9 any person or circumstance is found to be invalid or contrary to law, such  
10 invalidity *shall not* affect other provisions or applications of this Law which can be  
11 given effect without the invalid provisions or application, and to this end the  
12 provisions of this Law are severable.

PROCEDURES AND GUIDELINES HANDBOOK FOR ART IN PUBLIC BUILDINGS AND BUILDINGS SUPPORTED BY FEDERAL AND GOVERNMENT OF GUAM FUNDS IN THE TERRITORY OF GUAM AND THE PERCENT FOR THE ARTS ENHANCEMENT GRANT PROGRAM.

CHAPTER I. THE LAW

Public Law 20-27, Chapter 8 of Title 1 of the Guam Code Annotated, relative to “Arts in Public Buildings and Facilities” as amended by Public Law 31-118 amending subsections 850, 852 and 853 of the Guam Code Annotated.

CHAPTER II. PURPOSE

P.L. 31-118 Section 1 Subsection 850

The government of Guam recognizes its responsibility to foster culture and arts and the necessity for the development of the arts beginning with our young children and throughout the community. The Legislature (the legislature) declares it to be policy that a portion of appropriations for capital expenditures for public buildings be set aside either for the acquisition of works of art to be used in such buildings and in any buildings intended for use of the general public to the extent that the construction or improvement of such non-public buildings is supported by either federal or government of Guam tax incentives or other subsidy arrangement or the funds may be given to the Guam Council on the Arts and Humanities Agency for the purpose of fostering culture and the arts for the development of local artists, children and the community as a whole.

CHAPTER III. DEFINITIONS

- A. Definitions as it applies to Art in Public Buildings and buildings supported by the Federal and Government of Guam Funds in the Territory of Guam.
1. “Art and Arts” means the graphic arts and other arts having aesthetic value that is to the public as defined by P.L. 20-27.
  2. “Artist” means one who produces or aids in the production of art.
  3. “Public Building” or “Public Facility”: a building or facility owned by the government of Guam or any of its instrumentalities.
  4. “Non-Public Buildings”: Buildings that are supported by either government of Guam funds through tax abatements, rebates, loans, loan guarantee or bond financing or by Federal funds administered by the Government of Guam.
  5. “Department” means the Department of Public Works or that agency of the government which supervises the design of a public building or facility.
  6. “Public Area” means that part of a public building or facility to which the public is generally admitted during certain hours of the day. Public area does not include any office space to which the public generally has no access.
  7. “Local Artists” mean artists who are residents of Guam for at least 6 months and pay taxes on Guam.

PROCEDURES AND GUIDELINES HANDBOOK FOR ART IN PUBLIC BUILDINGS AND BUILDINGS SUPPORTED BY FEDERAL AND GOVERNMENT OF GUAM FUNDS IN THE TERRITORY OF GUAM AND THE PERCENT FOR THE ARTS ENHANCEMENT GRANT PROGRAM.

8. *"Contracting Agency": The owner of the building identified including either governmental or non-governmental.*

B. Definitions as it applies to the Percent for the Arts Enhancement Grant Program.

1. "Agency" means Guam Council on the Arts and Humanities Agency, government of Guam.
2. "Director" means Director of the Guam Council on the Arts and Humanities Agency.
3. "Board" means the council on the Arts and Humanities Agency Board, government of Guam.
4. "Fund" means the Percent for the Arts Enhancement Grant Fund.
5. "Grantee" means an applicant who is awarded a grant.
6. "Grant" means an approved award of funds from the Percent for the Arts Enhancement Grant Program.
7. "Government of Guam funds" means any funds received from a legislative appropriation, the Guam Visitors Bureau or from an autonomous agency.
8. "Government" means the government of Guam.

CHAPTER IV. HOW IT WORKS

A. Art in Public Buildings and buildings supported by the Federal and Government of Guam Funds. (P.L. 31-118 Section 2 subsection 852)

1. Plans for public buildings and buildings supported by federal or government of Guam subsidy which contain public areas, and plans for remodeling or renovation of public buildings or facilities where the total cost of construction, remodeling or renovation exceeds the sum of One Hundred Thousand Dollars (\$100,000) shall contain provisions for the inclusion of works of art by local artists if available, including, but not limited to, sculptures, paintings, murals or objects relating to or consisting of native arts.
2. The owner of the building shall also have the option of allotting at least one percent (1%) of the overall construction, remodeling or renovation cost of a building to the Guam Council on the Arts and Humanities Agency (CAHA) in lieu of the inclusion of works of art.
3. If artwork plans are selected, however, a representation of the final selection shall be published in a newspaper of general circulation and/or the online version of the newspaper for public screening prior to implementation.

PROCEDURES AND GUIDELINES HANDBOOK FOR ART IN PUBLIC BUILDINGS AND BUILDINGS SUPPORTED BY FEDERAL AND GOVERNMENT OF GUAM FUNDS IN THE TERRITORY OF GUAM AND THE PERCENT FOR THE ARTS ENHANCEMENT GRANT PROGRAM.

4. Before issuance of the occupancy permit for such construction, remodeling or reconstruction the owner of the building must obtain clearance from the Guam Council on the Arts and Humanities Agency that the provisions of this Chapter are being complied with.
5. At least one percent (1%) of the overall construction, remodeling or renovation cost of a building described in Subsection (a) of this Section shall be reserved for the purpose of the design, construction, mounting, maintenance and replacement and administration of works of art by CAHA in the public area of such a building or the owner shall give the amount to CAHA.

The Director of Public Works shall ensure that no construction, remodeling or renovating of a public building, or building supported by government of Guam funds, is granted an occupancy permit without this Chapter being complied with.

6. Such buildings with an overall construction cost of less than One Hundred Thousand Dollars (\$100,000) are exempted from the requirements of this Chapter unless inclusion of works of art in their design and construction is specifically authorized by the owner.
7. The artist who creates these works of art shall be selected as provided in Subsection (f) of this section.
8. The Director of CAHA shall develop rules and regulations, pursuant to the Administrative Adjudication Law, for the selection of works of art under this Chapter and shall open competition for awarding any art contract under this Chapter by:
  - a. Soliciting proposals from local artists by a project announcement published no less than three (3) times in a local publication or general circulation in print and online versions;
  - b. Appointing a selection committee consisting of five (5) members to review all proposals and report to the Director the results of its deliberations regarding the proposed art contract. Such committee shall include a representative of the building' owner or of the agency or department involved, the project architect, the municipal mayor from the project site and at least two (2) practicing artists from Guam. The final decision regarding the use of art work and the selection committee's recommendations shall be by the Director of CAHA, who shall be the contracting officer for any art contract executed pursuant to this Chapter.
9. *The Director of CAHA shall include in the CAHA rules and regulations, pursuant to the Administrative Adjudication Law, procedures for the acceptance of funds as stated in this Section.*

PROCEDURES AND GUIDELINES HANDBOOK FOR ART IN PUBLIC BUILDINGS AND BUILDINGS SUPPORTED BY FEDERAL AND GOVERNMENT OF GUAM FUNDS IN THE TERRITORY OF GUAM AND THE PERCENT FOR THE ARTS ENHANCEMENT GRANT PROGRAM.

- a. *An account shall be established which shall be maintained separate and apart from other funds of the government of Guam, shall be kept in a separate bank account and shall not be subject to transfer authority of I Maga'alahan Guahan. Funds shall remain in such account and expended by CAHA for the purpose mandated in this Section. Said Fund shall be examined and reported upon as required by the law by the Director of CAHA who shall serve as the certifying officer of said Fund.*
- b. *On the first (1<sup>st</sup>) day of each fiscal quarter, the CAHA Director shall provide to I Maga'Lahan Guahan and the Speaker of I Liheslaturan Guahan and post on the CAHA website, a detailed report of how funds were allocated and utilized.*

10. *Enforcement*

- a. *CAHA shall identify public buildings in non-compliance with this Section and send written notices within ten (10) working days. Upon receipt of the notice, recipients have two (2) weeks (fourteen (14) calendar days) to acknowledge in writing, receipt. Recipients will be given up to one (1) fiscal year to comply with Section.*
- b. *The Guam Economic Development Authority (GEDA) shall ensure that current Qualifying Certificate (QC) program beneficiaries are in compliance with this Section.*
- c. *For monitoring purposes, GEDA shall provide to CAHA a list of past and current QC recipients. CAHA will determine whether former QC recipients complied with Subsections (a) and (c), and notify them in writing if non-compliance was determined. Upon receipt of the notice, recipients have two (2) weeks (fourteen (14) calendar days) to acknowledge, in writing, receipt. Recipients will be given up go one (1) fiscal year to comply with this section.*
- d. *CAHA shall provide to the Department of Revenue and Taxation a list of QC recipients who fail to comply with this Section. The Department of Revenue and Taxation shall refuse to grant renewal of business license for current and past QC recipients in noncompliance, until the CAHA Director issues a written confirmation of compliance.*

11. *P.L. 31-118 Section 3 subsection 853 - Inclusion of Chamorro Artistry or Guam History Elements in Government Building: Government of Guam Buildings and Structures*

*All government of Guam building and structures shall contain elements of either Guam History or of Chamorro artistry costing up to a maximum of three percent (3%) of the aggregate of the architectural and engineering , the construction or the renovation budgets therefore. Such elements may be made part of the internal or external physical structure of the building or structure and may be within the main*

PROCEDURES AND GUIDELINES HANDBOOK FOR ART IN PUBLIC BUILDINGS AND BUILDINGS SUPPORTED BY FEDERAL AND GOVERNMENT OF GUAM FUNDS IN THE TERRITORY OF GUAM AND THE PERCENT FOR THE ARTS ENHANCEMENT GRANT PROGRAM.

*part of the building or structure or separated from the main part. In complying with the provision of this Section, a contractor for the government agency constructing the building or structure may consult with CAHA as to the various types of Chamorro or historic Guam artistic elements. The Department of Public Works (Department) shall monitor noncompliance with this Section during its plans approval process, unless such plans are exempted in accordance with Subsection (b) of this Section. If the Department determines that a non-exempted project does not comply with this Section, it shall refuse to issue either a building permit or an occupancy permit (as the case requires) for such project until compliance.*

*12. Exceptions to Applicability*

*Buildings and structures constructed for use as shelters for utility facilities or utility operations are not subject to Subsection (a) of this Section.*

*13. Compliance*

*Government of Guam agencies found in noncompliance of this Section shall be given up to one (1) fiscal year to comply. CAHA shall ensure compliance with this Section.*

*14. Government Lease Spaces*

*Government of Guam agencies leasing space are not exempt from this Section, and if found in noncompliance will be given up to one (1) fiscal year to comply. CAHA shall ensure compliance with this Section.*

15. SELECTION COMMITTEE

The Selection Committee shall determine the scope, direction, and particular needs of each project. The Selection Committee shall include.

- a. A representative of the building's owner or of the agency or department involved.
- b. The project architect.
- c. The Municipal Mayor from the project site.
- d. At least two (2) practicing artists from Guam.

Voting: Each member of the selection committee will have one vote. The majority vote shall determine selection.

16. SELECTION PROCEDURE

The Selection Committee shall tour the site of the project and designate the various areas where artwork is to be placed. The Selection Committee shall then consider the



PROCEDURES AND GUIDELINES HANDBOOK FOR ART IN PUBLIC BUILDINGS AND BUILDINGS SUPPORTED BY FEDERAL AND GOVERNMENT OF GUAM FUNDS IN THE TERRITORY OF GUAM AND THE PERCENT FOR THE ARTS ENHANCEMENT GRANT PROGRAM.

particular needs of the project including the budget, appropriate art forms, and the location and medium of the art form.

17. Selection Method

Open Competition: The Selection Committee shall solicit artwork samples from artists by a project announcement published no less than three (3) times in a local publication of general circulation.

The selection process may be in two stages whereby a limited number of finalists, selected from the competition will be asked to submit more detailed proposals. Each of the finalists will be paid a professional design fee.

18. Criteria for Selection

- a. Style and Nature: Works of art that compliment the environment where the art work is to be displayed. The size of the artwork must also be compatible to the size of the location designated.
- b. Quality: The inherent quality of the artwork is the most important criterion for selection.
- c. Media: All visual art forms will be considered along with objects relating to or consisting of indigenous art. The artwork can be either portable or permanently fixed. If the artwork is to be permanently placed the Selection Committee will decide if the location identified is structurally capable of maintaining the artwork in terms of relative maintenance of repair costs.
- d. Permanence: Due consideration will be given to structural and surface soundness and to permanence in terms of relative excessive maintenance or repair costs.
- e. Method of Acquisition: Existing works of art specifically commissioned are eligible.

19. BUDGET

The selection Committee shall identify the funds available for the project and approve expenditures. The funds will be dispersed as specified by P.L. 31-118.

20. USE OF FUNDS

- a. Funds identified may be used for:
  - 1. For the purchase of existing artwork selected or commissioned by the Selection Committee.
  - 2. Design: Artist's professional design fee.
  - 3. Construction: The actual work and materials put into the creation of the artwork.

PROCEDURES AND GUIDELINES HANDBOOK FOR ART IN PUBLIC BUILDINGS AND BUILDINGS SUPPORTED BY FEDERAL AND GOVERNMENT OF GUAM FUNDS IN THE TERRITORY OF GUAM AND THE PERCENT FOR THE ARTS ENHANCEMENT GRANT PROGRAM.

4. Mounting: Expenses for the purposes of affixing the artwork onto the location specified.
5. Maintenance: Expenses incurred towards the mechanical maintenance of the artwork for up to one year after installation.
6. Replacement: Artwork that are to be replaced due to irreparable damage.
7. Administration: Expenses to cover any administrative costs incurred by the Selection Committee of GCAHA in the selection of artwork. Those costs include but are not limited to hiring of contractual staff, advertisements, supplies and professional services. At least one percent (1%) of the identified funds will be awarded to the Guam Council on the Arts and Humanities Agency for the purposes of contracting administrative staff to coordinate and maintain the program.
8. Plaques and Labels identifying the art work.
9. Frames, mats and pedestals necessary for the presentation of the artwork.
10. Waterworks and electrical and mechanical devices, equipment and site work which are integral parts of the work of art.
11. Reproductions of up to 50 high quality limited edition prints, numbered and signed by the artist. Exclusively used for exhibition purposes and will not be for sale. (Subject to approval by the Selection Committee).

a. FUNDS IDENTIFIED MAY NOT BE USED FOR:

1. Reproductions, by mechanical or other means, of original works of art, unless mechanical means of reproductions are an integral part of the creative process. (Subject to approval by the selection Committee as mentioned on section (K) on USE ON FUND: Funds Identified May be used for)
2. Decorative, ornamental, or functional elements which are designed by the building architect or consultants engaged by the architect, as opposed to an artist commissioned for this purpose.
3. Those elements generally considered to be components of a landscape architectural design.
4. Art objects which are mass produced or of a standard commercial design, such as playground sculpture or fountains.

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5. Directional, or other functional elements, such as super graphics, signage, color coding, maps, etc., except where these elements are an integral part of the original work of art.
6. Those items which are required to fulfill the basic purpose of the contracting agency. Examples would be works of art in the collection of a state museum, or works of art fulfilling an interpretive or educational role in a college or university art museum or gallery.
7. Preparation of the site necessary to receive the work of art.
8. Energy and water costs of operation of electrical and mechanical systems.
9. Art exhibitions and educational activities.
10. In connection with the works of art after delivery: registration, dedication, unveiling, insurance and security.
11. Architectural services.
12. Artistic staff salaries, equipment and supplies employed by the building owner.

## 21. WHO IS ELIGIBLE

Selection preference may be given to local artists who have resided in Guam for at least 6 months; who pay taxes in Guam; and are registered with CAHA. Selection preference may be given to local artists.

## 22. RESPONSIBILITIES

- a. Guam Council on the Arts and Humanities Agency in consultation with the various Government agencies and departments needed to comply with the law and the building owner shall:
  1. Be responsible for the selection of the commissioning of artist for, reviewing the design, execution and placement of, and acceptance, of works of art in consultation with the selection committee.
  2. Appoint the selection committee.
  3. Assist the contracting agency in contract negotiation with the artists.
  4. In consultation with the contracting agency, CAHA may transfer works of art between public buildings, whenever, in its judgment, the

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transfer will be to the benefit of the citizens of Guam. This section only pertains to Government agencies and departments.

5. Handle public information aspects of the project. All expenses incurred will be the responsibility of the contracting agency.
  6. Identify and carry necessary maintenance procedures (for up to one year after installation), and maintain accurate records of the collection in partnership with the contracting agency.
- b. The Contracting Agency Shall:
1. Notify the Guam Council on the Arts and Humanities Agency upon Legislative approval of construction/renovation projects which costs over \$100,000. If the contracting agency in this instance must notify GCAHA upon approval of support by either government of Guam funds through tax abatements, rebates, loans, loan guarantees or bonds financing or by Federal Funds administered by the government of Guam.
  2. Notify the Guam Council on the Arts Humanities Agency of the Project details.
  3. Consult with GCAHA and Selection committee on the determination of budget and selection procedures.
  4. Contract with and pay for the architect for administrative and/or design services to be rendered in connection with the commissioning of works of art.
  5. See that payment is made for all costs, professional fees, purchases and commissions in accordance with the Guam Law, these rules and GCAHA standards.
  6. Provide project coordination to assure timelines of completion.
  7. Be responsible for inventory and security of the work; and with advice and consent of the Guam Council on the Arts and Humanities Agency for maintenance and repair.
  8. Assist GCAHA with public information aspects of the project, with assistance and approval from GCAHA.
  9. The Guam Council on the Arts and Humanities Agency and the selection Committee must be informed of any changes in the proposed plans, costs, construction completion date or scope of the project before these changes are implemented.

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c. The Architect Shall:

1. Recommend to the Guam Council on the Arts and Humanities Agency and the contracting agency specific sites for works of art and the scale and type of work thought to be most appropriate.
2. Act as a member of the selection committee.
3. Work closely with the artist where required, provide engineering and technical assistance to the artist if requested from the contracting agency.
4. Assure that all service requirements for the work of art met in the design documents and that the work may be installed with relative ease.

d. The Artist shall:

1. Be commissioned by the contracting agency (Defined as both governmental and private developments) with approval of the Director of the Guam Council on the Arts and Humanities Agency to execute and complete the work in a timely and professional manner. Be in close contact with the contracting agency before and during installation, and transfer title of an existing work of art to the agency for incorporation in its building inventory.
2. Deal personally with the other parties in all phases of the negotiations. However, the artist (s) may, at their option designate their dealers or agents to represent them in certain aspects of the project.
3. Copyright: The artist retains those rights concerning the reproduction and of the original artwork for commercial purposes unless specified in the original contract agreed upon by the artist and the contracting agency.
4. Maintain a close working relationship with the architect and contracting agency on commissioned pieces.
5. Upon completion of the work (s) or purchased, the artist shall submit to the Guam Council on the Arts and Humanities Agency a detailed description of the work (s) with instructions on its care and maintenance, high resolution digital files, scans and two 8 X 10 glossy photos. The description form shall be submitted concurrently with the final invoice.
6. All plans, drawings, and other materials related to a proposed work of art are the property of the Guam Council on the Arts and

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Humanities Agency until the final work is installed, at which time such preparatory materials revert to the artist.

23. SCOPE AND NATURE EXPENDITURES

While no more than 1% can be dedicated from capital construction appropriations, it is possible that a dollar total greater than 1% can be expended for art in a project if funds are generated from other sources (i.e., governmental or private funds). The 1% figure is a minimum.

If 1% of total funds appropriated for a particular project is not required for that project, such un-required amounts can be: a) used to acquire art for existing government buildings; b) transferred to another construction project, or both, as determined by the Guam Council on the Arts and Humanities Agency, in consultation with the contracting agency. If the contracting agency is a non public building the contracting agency may use these funds to purchase art pieces that will be donated to the people of the territory of Guam, these funds can also be used to fund art related projects, although these expenditures must be approved by the Guam Council on the Arts and Humanities Agency.

Administrative costs of any particular project may be funded through the 1% appropriation and will be limited to the following area:

- a. Supplies and services connected with public information, and artists' prospect for specific projects.
- b. Selection committee per diem, and artist professional fees.
- c. Contractual Services.

24. GENERAL PRINCIPLES AND PROCEDURES

Integration of Art and Architecture: So that artists and architects can gain from each others' design insights and, thereby produce a more integrated solution, all parties should strive for engagement of the artist as soon as possible after the approval of the architect's schematic design phase.

Freedom of Expression: Because of the bold attempt to meld together the imaginations and talents of so many individuals and groups, freedom to reach creative solutions must always be maintained. The artists, on their part, must be sensitive to the unique qualities of public art and the guidelines and parameters which, of necessity, may have been agreed upon.

Exhibitions and Educational Aspects: To serve the public more fully the contracting agencies should consider undertaking the following, funded with monies other than those made available under the Act:

- a. Exhibition of sketches and scale models created in open competitions.

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- b. Involvement of students and art instructors in workshops with artists creating works.
- c. Tours of those sites which exhibit many works, conducted by trained docents.
- d. Use of State educational and other facilities by the artist in developing concepts and creating the work, so that the people of the territory of Guam can better understand the creative process. Such facilities might studio space, foundries, machine, welding and woodworking shops, printing and photographic facilities.
- e. Filming or Videotaping the creation and installation of the work.

The Guam Council on the Arts and Humanities Agency is available to provide consultative assistance with these matters.

Accessibility of Information: All parties will strive to publicize widely all aspects of the program. All meetings of the Selection Committee are open to the public.

Community Support and advice: While firmly committed to the principle of selection of artists by the selection Committee, the Selection Committee welcomes advice from the interested public.

Conflict of Interest: All procedures will be conducted and all decisions will be made free of any conflict of interest. The Guam Council on the Arts and Humanities Agency will ensure that members of the Selection Committee and the Contracting Agency are not related in any way to the artists submitting portfolios either through kin and/or Business relations.

Dedication: If a dedication or "Unveiling" of work is desired, arrangements shall be the responsibility of the contracting agency in consultation with the Guam Council on the Arts and Humanities Agency.

## 25. DOCUMENTATION

Documentation:

- A. Identification: The Guam Council on the Arts and Humanities Agency will assist the contracting agency with identification which will include plaques or labels identifying the work, which are securely affixed, unobtrusive, and well designed. Included should be the name of the artist; if any; medium; and year completed.
- B. Registration: The Contracting agency shall maintain accurate inventory records. Copies will be filed with the Guam Council on the Arts and Humanities Agency.
- C. Publications: As Collections grow, contracting agencies are encouraged to publish informative folders and booklets on works of art. The Guam Council

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on the Arts and Humanities Agency is available to assist with editorial and technical assistance.

**CHAPTER V. HOW IT WORKS** – The Percent for the Arts Enhancement Grant Program. (P.L. 31-118 Section 2 subsection 852)

Public Law 31-118 establishes the fund. It mandates the Guam Council on the Arts and Humanities Agency to set up the eligibility requirements governing usage of the fund. The Director of CAHA shall include in CAHA rules and regulations, pursuant to the Administrative Adjudication Law, for the disposition of funds to meet the purpose of fostering culture and arts for the development of local artists, our children and the community as a whole.

**CHAPTER VI. Purpose of Grants**

Grants are available to enhance cultural and artistic learning opportunities for our youth and youth organizations. Funds of no more than \$3,000 per project will be awarded to assist in areas of cultural and artistic development. These projects must demonstrate that they are vital to long term learning and development, and support the continued fostering of the arts and cultural education process for the youth.

**CHAPTER VII. Eligibility**

A. Organizations

1. If the applicant is an organization, it must be registered with the government of Guam as a nonprofit organization, or be a bona fide Guam school program, sanctioned by the school's principal and endorsed by the Director of Education, school master or Superintendent of Parochial schools.
2. Organizations that apply for a grant must be in compliance with all applicable laws and regulations.

B. Individuals

1. If the applicant is an individual, he or she must be a permanent resident of Guam.
2. If the applicant is an individual under the age of eighteen years of age, their parent or legal guardian will be able to apply on the minor's behalf.

**CHAPTER VIII. Grant Criteria**

Grants will be awarded only to individuals or organizations.



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**CHAPTER IX. Application Process**

A. Step One: Submission.

1. To qualify for a grant, an application must be filled out and submitted to the Agency, along with the following information:

A nonprofit organization requesting funds must provide a copy of its articles of incorporation or other proof of registration as a nonprofit organization with the government of Guam. A requesting school must submit a letter from the school's principal and the Director of Education, school master or Superintendent of Parochial Schools, endorsing the organization.

2. Grant applications which do not comply with the requirements of Step One shall not be considered complete and eligible for certification.

B. Step Two: Certification.

The Director will certify the grant application as to its completeness. If the application is not complete, the Agency will send a notification to the applicant either via email or by certified mail informing them of the application's status and that proper adjustment need to be made within 15 days of notification. The Director will certify the grant application as to its completeness. If the grant application is not complete, the Agency will mail a non-certification form to the grant applicant for proper adjustment.

C. Step Three: Consideration.

1. A certified grant application shall be submitted by the Director to the Board for consideration during the next grant review cycle for the program. Applications will be reviewed and considered by the Board on a biannual basis, every January and June of a calendar year.
2. The Board shall approve grant applications in accordance with the purposes stated in Chapter VI of these regulations.
3. The Board will not consider any grant application unless Steps One and Two have been completed.

**CHAPTER X. Disbursement of Funds**

- A. The Director shall manage the Fund and the Agency's certifying officer shall be the Fund's certifying officer.
- B. Upon Board approval of the application, the Agency shall process the necessary paperwork for the grant

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- C. Within thirty days after completion of project/program, the grantee shall provide the Director with a report and an accurate expenses report reflecting the expenditure of all government of Guam funds.

**CHAPTER XI. Misuse of Funds**

- A. Any person who willfully misuses a grant received under these regulations shall be guilty of a petty misdemeanor and subject to a fine not to exceed \$500.
- B. If the grantee is delinquent in submitting the detailed narrative and expenditure report required by Chapter X, Section C, the Agency shall send a written notice, certified mail, return receipt requested, to the grantee giving the grantee fifteen days from the date of receipt of the notice to submit the report. Grantees failure to comply may be deemed a violation of said chapter.

**CHAPTER XI. Grant Limitations**

- A. Only one grant from the Fund can be awarded per organization program or individual per year.**
- B. The maximum grant amount for each organization or individual cannot under any circumstances exceed \$3,000.
- C. All grants awarded through the Agency are contingent upon the availability of funds and final approval by the governor.

**CHAPTER XII. Recording Requirements**

**Reporting Requirements** – Art in Public Buildings and Buildings Supported by Federal and Government of Guam Funds in the Territory of Guam and the Percent for the Arts Enhancement Grants Program.

On the first (1<sup>st</sup>) day of each fiscal quarter the CAHA Director shall provide I Maga'lahaen Guahan and the Speaker of I Liheslaturan Guahan and post on the CAHA website a detailed report of how the funds were allocated and utilized.

- A. The quarterly report for the Art in Public Buildings and Buildings Supported by Federal and Government of Guam Funds in the Territory of Guam shall include the following information concerning the use of the Fund:
  - 1. The number and names of projects.
  - 2. The amount allocated towards the program per project.
  - 3. Other pertinent data concerning management of the fund.

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B. The quarterly report for the Percent for the Arts Grants Enhancement Program shall include the following information concerning the use of the Fund:

1. The number and names of applicants.
2. The number, names of grantees and amounts of grants awarded.
3. Other pertinent data concerning management of the fund.

Furthermore, the Guam Council on the Arts and Humanities Agency shall annually make a public report on all Art in Public Buildings and Buildings Projects Supported by Federal and Government of Guam Funds in the Territory of Guam and the Percent for the Arts Enhancement Grants Programs of the previous year.

*CHAPTER XIII. SEVERABILITY P.L. 31-118 Section 4*

*If any provisions of this Law or its application to any person or circumstance is found to be invalid or contrary to law, such invalidity shall not affect other provision or applications of this Law which can be given effect without the invalid provision or applications and to this end the provisions of this Law are severable.*

IN CONCLUSION

Guam's 1% Program is dedicated to placing visual art of the highest quality by contemporary and traditional artists where the people of the Territory of Guam can appreciate. In so doing, the Territory of Guam is building a significant art collection of historic value for its people. Furthermore, it will enrich the lives of our children, local artists and the community as a whole.

## MEMORANDUM OF AGREEMENT

Between the

DEPARTMENT OF CHAMORRO AFFAIRS, and its division GUAM COUNCIL ON THE ARTS AND HUMANITIES (CAHA)

And the

GUAM POWER AUTHORITY

*Ref: RFQ 14-3621- 002 for art to be provisioned for the GCEF exhibits*

This **MEMORANDUM OF AGREEMENT** (hereafter referred to as "MOA") is entered into on the effective date indicated below by and between the **DEPARTMENT OF CHAMORRO AFFAIRS** and more specifically its division **GUAM COUNCIL ON THE ARTS AND HUMANITIES AGENCY (CAHA)** hereafter referred to as "DCA" or "CAHA" ("DCA/CAHA") and the **GUAM POWER AUTHORITY** (hereafter referred to as GPA).

**WHEREAS**, The Gloria B. Nelson Public Service Building (GBNPSB) is scheduled to open in late 2014 and will be a consolidated utility building for the community of Guam.

**WHEREAS**, the Guam Council on Arts and Humanities Agency (CAHA) is a division of the Department of Chamorro Affairs and CAHA administers Guam's one percent for the arts program by Public Law 31-118;

**WHEREAS**, GPA and its representatives from the GBNPSB design team will be actively engaged in managing the artist(s) selected by CAHA under this RFQ;

**WHEREAS**, desires for the art procured as a result of RFQ 14-362-002 to qualify for Guam Council on Arts and Humanities Agency's one percent for the arts program;

**WHEREAS**, has contracted with CoreTech International to construct the GBNPSB, with said construction currently in progress;

**WHEREAS** GPA and CAHA and issued RFQ 14-3621-002 calling for artists to remit their applications and portfolios expressing interest in producing art ("the Work") for display at the GBNPSB including fine art, crafts/historic reproductions, photography, illustrations;

**WHEREAS** CAHA will negotiate and enter into contracts with artists to produce art outlined in RFQ 14-3621-002 which is necessary for inclusion in the GBNPSB and,

**NOW THEREFORE**, CAHA, GPA and in consideration of the mutual covenants hereinafter set forth, do hereby **AGREE** as follows:

## SECTION 1. WORK COST AND PAYMENT.

In accordance with CAHA's one percent for the arts program, artists shall be selected by the CAHA selection committee.

Selected artists will be contracted to CAHA utilizing its standard one percent for the arts program contract.

The amount for each piece of art will be negotiated with the artists by CAHA. The total art program will not exceed one percent of the construction costs of the GBNPSB or \$300,000 whichever is lower.

Artists will remit payment applications to CAHA for approval. CAHA will review and approve then forward a copy to GPA for final approval and processing.

Payments to artists will be made by GPA after approval by CAHA and GPA.

The amount of 2% from the 1% allocated overall for the Percent for the Arts Program shall be made payable to Guam CAHA for administrative costs.

**SECTION 2. WORK PERFORMANCE AND RESPONSIBILITIES:** CAHA and GPA agree that the production of art for the GBNPSB shall be performed in accordance with the following:

**A. Procurement and Contracting.** CAHA and GPA will complete the procurement process to obtain the Work for the GBNPSB as described in RFQ 14-3621-002 (Exhibit A/attached). In general, CAHA will: (1) administer the RFQ and selection process; (2) assist in the enforcement of the contract terms. CAHA will contract with selected artisans. In general CAHA in the preparation of the RFQ, (2) provide representation to coordinate the work and schedule of the artisans pursuant to the GBNPSB design and construction schedule.

**B. Access to Work and Construction Site.** GPA shall reasonably allow the artisans and employees who shall be contracted to CAHA, to access the project site at all reasonable times prior to and during exhibit installation in order to perform the Work and inspection services. Completion of site specific safety orientation and training is pre-requisite for entry.

**C. Waiver of Rights.** Each party's payment of fees for the services required under this MOA shall not be construed to operate as a waiver of any of its rights hereunder or of any cause of action arising out of the other party's failure to perform this MOA. Each party shall be, and remain, liable to the other party for costs which may be reasonably incurred by the other party as a result of its negligent performance or any responsibilities under this MOA, as specifically limited by the sovereign immunity of the government of Guam, and by the Government Claims Act, 5 GCA §§6101, et seq.

**D. No Liability.** No party assumes any liability for any accident or injury that may occur to any other party, its officers, agents, dependents, staff, contractors or personal property. No party shall be liable to the other parties for any work performed or costs incurred by such other party prior to their execution of this MOA; and each party hereby expressly waives any and all claims for service performed in expectation of this MOA.

**E. Compliance with Laws.** Each party shall comply with all applicable laws of the United States and of Guam in exercising its rights and performing its obligations under this MOA. In addition, each party shall comply, and cause its agents, employees, and contractors to comply, with all applicable laws of the United States and of Guam in performing work under the contracts and/or accessing the project site.

**SECTION 3. MAINTENANCE AND ACCESS TO RECORDS.** For three (3) years from the dates of the final payments under the artist/CAHA contracts, DCA/CAHA and GPA shall maintain, and cause their contractors to maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred and shall make such materials available for inspection at their respective offices at all reasonable times.

**SECTION 4. OWNERSHIP OF WORK and DOCUMENTS.** GPA shall retain ownership of Work produced by contracted artisans. Each party shall retain ownership of project-related documents, drawings, and specifications ("material") it alone produced prior to the date this MOA is fully executed. Any and all material jointly produced by the parties until that date shall remain jointly owned by the parties. Each party grants the other party full rights of use to its material as well as to the jointly produced material. Artisan contractors shall retain intellectual property rights to use the Work in their portfolio and on their respective websites. By purchasing the Work, GPA and CAHA will have exclusive rights to use the art in exhibits GPA displays, on their respective websites, and in print and video format for promotional purposes. Any reproductions of the artisan's Work made by CAHA, or GPA must be approved in writing by the artisan contractor(s). In the event that GPA and/or CAHA duplicate the artisan contractor's Work for a commercial endeavor, artisans will be credited and compensated via royalties or licensing fees by GPA or CAHA as appropriate and as specified in the individual agreements between GPA/CAHA and each artisan contractor.

From the date this MOA is fully executed, all project-related material as well as audiovisual recordings and any and all tangible work product produced in regard to the construction contracts, no matter if produced by the CAHA, its artisan contractor(s), GPA or its contractor(s), shall be the property of GPA, and GPA hereby grants the CAHA full rights of use indefinitely thereto. The CAHA shall be entitled, at its cost, to one copy of all such project-related material, audiovisual recordings, and tangible work product produced under the artisan contracts.

**SECTION 5. TERMINATION.** At any time the parties hereto may, by written notice to the others, terminate this MOA in whole or in part either for convenience or for default. The parties fully recognize that the artist/CAHA contract, if already in effect on the date this MOA is terminated, are separate legal undertakings and must also be terminated in accordance with their own terms to give full effect to a termination of this MOA.

Upon termination of this MOA if no artist/CAHA contract has been entered into or, if they have, upon termination of such contract by either party thereto, all plans, drawings, briefs, reports, summaries, completed artwork and artwork in progress, and such other information and materials as may have been produced under either contract and utilized by either party hereto in connection with the project shall be placed in the possession of GPA. Ownership thereof and rights of use thereto shall be determined in accordance with Section 4 hereof.

GPA may, upon termination, retain as a set-off for such expenses or fees due to the CAHA in connection with the artist/CAHA contract any funds owed to the GPA. Artists contracted to the GPA shall be entitled, however, to be paid or reimbursed fully and promptly by GPA for all work satisfactorily

performed by them.

**SECTION 6. NOTICES.** Each party shall notify the other once it has entered into, made significant modification to, or terminated its own separate contract(s) related hereto. For the avoidance of doubt, the term "separate contract(s)" as used herein shall mean, with respect to its contract for other services. With respect to the DCA, the term "separate contract(s)" as used herein shall mean the artist/CAHA contract.

Unless during the term of this MOA a party notifies the other party in writing of a change or other address to be used, any notices or notification required or permitted to be given shall be given promptly in writing and delivered in person or by certified mail to the parties at the following addresses:

**Council of Arts and Humanities Agency  
c/o Department of Chamorro Affairs**

**GPA**

**Delivery Address:**

**Attn:** Joseph Artero Cameron  
President  
Terlaje Professional Building  
1st Floor 194 Hernan Cortez Ave.  
Hagåtña, Guam 96910

**Delivery Address:**

**Attn:** Joven Acosta  
Chief Engineer  
1911 Route 16 Army Drive  
Harmon, Guam 96913-1255

**Mailing Address:**

**Attn:** Joseph Artero Cameron  
President  
P.O. Box 2950  
Hagåtña, Guam 96932

**SECTION 7. MISCELLANEOUS PROVISIONS.**

- A. This MOA is made under and shall be governed and construed in accordance with the laws of Guam, and the courts of Guam shall have jurisdiction over any and all disputes.
- B. If any provision of this MOA shall be deemed by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be deemed stricken and the MOA shall be enforced according to its valid and subsisting terms and provisions.
- C. The failure of either party to insist upon strict compliance with any term, provision, or condition of this MOA shall not be construed as a waiver of either party's rights and remedies under this MOA.
- D. Any approval required herein by the GPA shall mean that the approval of the General Manager of GPA is required, unless another person is designated to issue particular or limited approvals on certain matters.
- E. Removal of the Work commissioned through Guam's One Percent for the Arts Program must be approved by CAHA and the Selection Committee. Removal of the Work shall be at the expense of Owner.
- F. GPA must notify CAHA and artist prior to removal of the Work.
- G. There must be a compelling reason to remove and/or relocate the piece of the Work to another location in the facility which meets the criteria of Guam's one percent for the arts program.
- H. In the event that GPA is unable to identify an alternate location for the Work that is agreeable to both

CAHA and the artisan contractor by the time of removal/relocation, GPA shall contribute the Work which is removed to the CAHA art bank.


I. This MOA may only be modified in writing signed by the parties.

**SECTION 8. EFFECTIVE DATE.** The terms of this MOA shall become effective on the date it is signed by the President of the DCA and shall be binding upon the parties hereto and their representatives, successors and assigns.

**IN WITNESS HEREOF,** the parties have executed this Memorandum of Agreement effective the day and year the Governor of Guam affixes his signature.

**DEPARTMENT OF CHAMORRO AFFAIRS**

**GUAM POWER AUTHORITY**



Joseph Artero Cameron  
President, Department of Chamorro Affairs

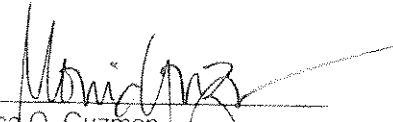


Joaquin Flores  
General Manager

Date: 8/11/14

Date: 8/12/14

**GUAM COUNCIL ON THE ARTS AND HUMANITIES AGENCY**

  
Monica O. Guzman  
Chairman of the Board, Guam CAHA

Date: 8/18/14

**APPROVED AS TO FORM & LEGALITY:**

\_\_\_\_\_  
Leonardo M. Rapadas  
Attorney General of Guam

Date: \_\_\_\_\_

**APPROVED:**

\_\_\_\_\_  
Edward Baza Calvo  
Governor of Guam

Date: \_\_\_\_\_



Exhibit A – RFQ 14-3621-002  
See attachment.  
[Rest of page left intentionally blank.]

Exhibit B – CAHA's Standard One Percent for the Arts Contract  
See attachment.  
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**GUAM POWER AUTHORITY REQUEST FOR QUALIFICATIONS NO. 14-3621-002  
FOR ARTISTS TO PRODUCE VARIOUS TYPES OF ART FOR DISPLAY IN THE  
GLORIA B. NELSON PUBLIC SERVICE BUILDING.**

RFQ – Issue Date: April 15, 2014

Responses Due Date and Time: May 30, 2014 5:00 p.m., Chamorro Standard Time (ChST)

**ISSUING AGENCY INFORMATION**

Guam Power Authority  
Joaquin Flores, General Manager  
P.O. Box 2977  
Hagatna, Guam 96932  
Phone: (671) 648-3000  
Website: [www.guampowerauthority.com](http://www.guampowerauthority.com)

Points of Contact: Jackie Balbas  
Guam Council on the Arts and Humanities Agency (CAHA)  
a Division of the Department of Chamorro Affairs  
Terlaje Professional Building 1<sup>st</sup> Floor  
194 Hernan Cortez Avenue, Hagatna, Guam 96910  
Phone: (671) 300-1204/5/6/7/8 Fax: (671) 300-1209  
Email: [jacqueline.balbas@caha.guam.gov](mailto:jacqueline.balbas@caha.guam.gov)  
Website: [www.guamcaha.org](http://www.guamcaha.org)

**INSTRUCTIONS TO RESPONDENTS**

**Submit to:** Sherrie Barcinas  
Guam Council on the Arts and Humanities Agency  
Terlaje Professional Building 1<sup>st</sup> Floor  
194 Hernan Cortez Avenue  
Hagatna, Guam 96910  
Phone: (671) 300-1204/5/6/7/8  
Fax: (671) 300-1209

**Mark Face of Envelope/Package:**  
**RFQ Number:** 14-3621-002  
**RFQ Title:** Request for Qualifications for Artists  
Capable of Producing Various Types and Works of Art to be  
displayed or exhibited in the Gloria B. Nelson Public  
Service Building (GBNPSB).  
**Responses Due:** May 30, 2014, 5:00p.m. (ChST)

**RESPONDENTS MUST COMPLETE THE FOLLOWING**

Respondent's Name/Point of Contact/Address:

Authorized Respondent's Signatory Printed Name:

Authorized Respondent's Signature: (Please print name  
and sign in ink)

Respondent's Phone Number:

Respondent's Fax Number:

Respondent's Federal I.D. Number:

Respondent's E-mail Address:

**RESPONDENTS MUST RETURN THIS COVER SHEET WITH THEIR RESPONSE**

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**GLORIA B. NELSON PUBLIC SERVICE BUILDING  
(GBNPSB)  
Request for Qualifications 14-3621-002**

**INTRODUCTION**

Guam Power Authority (GPA) as the end user of the facility, together with the Guam Council on the Arts and Humanities Agency (CAHA) as the administrator of Guam's One Percent for the Public Arts Program, seek qualifications from qualified local artists to provide a variety of art and craft items to be displayed or exhibited in the Gloria B. Nelson Public Service Building (GBNPSB). All selected art must speak to the theme: "Energy, water, wind, sun, ocean - for 4,000 years our islands resources." The artwork should reflect a respect for the environment and depict attitudes of sustainability, renewable energy, conservation and awareness.

GPA, in partnership with CAHA, is soliciting qualifications from local artists capable of producing various types and works of art including:

Fine Art  
Murals  
Banners  
Photography  
Illustrations  
Crafts

**ELIGIBILITY** To be considered as eligible, artists must meet **all** of the following criteria:

- (1) Those who have resided in Guam for at least 6 months
- (2) Those who pay taxes in Guam
- (3) Those who are registered with CAHA<sup>1</sup>.

**SUBMITTALS**

Qualifications submitted in response to this RFQ must include:

- 1 Professional resume(s);
- 2 At least three (3) but not more than ten (10) samples of relevant work (as photos or prints);
- 3 At least four (4) professional references from individuals who are familiar with your artwork produced in the past five (5) years.

All samples submitted as part of this RFQ will become property of Guam CAHA and will not be returned to the artist.

<sup>1</sup>Interested applicants may register with CAHA by visiting: [http://www.guamcaha.org/#artists\\_directory](http://www.guamcaha.org/#artists_directory)

## LOCATION

All artwork will be displayed or exhibited in the Gloria B. Nelson Public Service Building (GBNPSB). Bidders should note, upon their familiarization with the locations of the artwork, that artwork will be installed in areas where the public will pass and congregate. No provisions will be made to prevent unauthorized handling of the pieces.

## SELECTION PROCESS

Respondents will be selected in general accordance with CAHA's Procedures and Guidelines Handbook for Art in Public Buildings and Buildings Supported by Federal and Government of Guam Funds in the Territory of Guam and the Percent for the Arts Enhancement Grant Program. A copy of the procedures and guidelines may be downloaded from CAHA's website at: <http://www.guamcaha.org/>. The process of selecting the artisans will consist of two steps:

### 1. Request for Qualifications - Artist Application

All interested artists are required to submit a completed application which is divided into four areas:

- i. Artist background and history – Focus should be on the applicant's experience in creating works in their craft
- ii. Ability to produce art of the size and scope required for the commission-Applicants shall provide a detailed narrative of his/her ability and/or approach to produce the artwork. This should include studio space (existing or proposed), specific experience in creating commissioned works of art, and overall capability.
- iii. Portfolio of relevant past works – Applicants shall provide a separate portfolio of relevant works that expresses their abilities and capabilities to produce the commissioned work. The portfolio should include representations or photographs of past works (commissioned or not), information on the locations(s) of such works, and patrons. Letters of recommendation from patrons are required.
- iv. After reviewing initial submissions, the selection panel will invite selected artists who demonstrate the greatest ability to accomplish the commission to submit concepts and/or craftwork samples of their work.

## 2. Conceptual Presentation

From this initial application, the Selection Committee will issue invitations to selected artisans who demonstrate the greatest ability to accomplish the commission. All artisans invited to the second stage of selection shall submit the following:

- i. Sample representation/sketch of proposed concept, style, graphics, and method of assembly as applicable per media, area of interest of craft selected.
- ii. Written narrative on the concept and how it relates to the thematic guidelines.
- iii. Type(s) of medium to be used.
- iv. Proposed timeline for completion.
- v. Location of where the commissioned work will be produced. Note: If the commission is to be produced in a location other than Guam, the applicant should include a proposal on how the work-in-progress can be effectively monitored and inspected.

## 3. Final Conceptual Selection

- i. The selection committee will evaluate the portfolios and representative samples of the artists' work (scaled as appropriate) and will make final selections.

CAHA and GPA reserve the right to request additional information. All final concepts and craftwork samples will become the property of CAHA/GPA along with limited copyrights and certifications of authenticity.

The criteria used to select the artists for the commissions will be based on:

1. The quality and creativity of the artist relative to the RFQ disciplines for which they request evaluation;
2. Ability to express and conceptualize according to a thematic framework, including those specific to the GPA facility and exhibit designs;
3. Technical competence specific to the disciplines identified in this RFQ. Technical competence, must be evidenced by past works and experience, and documented in the artist's portfolio; and
4. Aptitude for planning, budgeting, and meeting schedule milestones

## COMPLETING THE WORK

The artisans assembled as a result of this selection process will be contracted by CAHA or GPA. From the outset, the work of all artisans will be closely coordinated by CAHA, the selection committee and GPA representative.

Following contracting and the issuance of a Notice to Proceed, an initial "kick off" meeting will be held between each contracted artisan and CAHA, the selection committee and GPA to discuss project schedules and deliverables. After this meeting, formal schedules projecting critical interim and

completion dates for each of the participating disciplines will be generated. There may be a different schedule for progress submittals and approvals, related progress payments, and final completion dates.

Before the work of each artisan is complete, meetings to discuss concept review, rough draft reviews, and a final draft review will be held. All artists are required to submit weekly progress reports with photos (transmitted via email) that document their progress. CAHA, the selection committee and GPA will approve sketches to ensure that the design intent is being met and that the final deliverable is in keeping with the vision of the GPA.

It will be the responsibility of the artisan to provide the art work in the approved format timeline specified. Final design and installation of all pieces must comply with all building and safety codes and other criteria determined by CAHA, the selection committee and GPA necessary for the safety of GPA staff and patrons. This is particularly important for three-dimensional designs that utilize heavy materials, moving parts, or glass. Therefore any design deemed to be of too great a safety risk will not be considered.

All submissions and art delivered under the contract must be certified by the artist as original artwork.

## **PROJECT SCHEDULE**

<b>Solicitation Issue Date</b>	<b>April 15, 2014</b>
<b>Orientation at CAHA Gallery</b>	<b>May 3, 2014, 10am (ChST)</b>
Review of project requirements	
Review of artwork spaces within the building	
Discussion of theme/concept	
<b>RFQ Responses Due</b>	<b>May 30, 2014, 5pm (ChST)</b>
<b>Evaluation of Applications</b>	<b>June 2014</b>
<b>Select and Commission Artists</b>	<b>July 2014</b>
<b>Production of Artwork</b>	<b>August – October 2014</b>
<b>Final Artwork Due</b>	<b>November 1, 2014</b>
<b>Installation of Artwork</b>	<b>November 2014</b>





GUAM COUNCIL ON THE ARTS & HUMANITIES AGENCY  
*Kahan I Kutturán Guahan*  
 P.O. Box 2950 Agaña, Guam 96932  
 Tel. (671) 300-1204 to 300-1208 Fax. (671) 300-1209

**Request for Qualifications 14-3621-002: Artist Application**  
**To produce various types of art for display in the**  
**Gloria B. Nelson Public Service Building**

Carefully review the program guidelines and instructions before filling out the application form. Incomplete and illegible forms may invalidate your application. All applications must be typed or computer generated. Supplemental information is limited to one (1) page only. Please double-check all information to ensure that it is correct.

A. Applicant/ Organization Name: \_\_\_\_\_  
 SSN or TIN: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 City: \_\_\_\_\_ Guam \_\_\_\_\_ Zip Code: \_\_\_\_\_

B. Are you a permanent resident of Guam? \_\_\_\_\_  
 How long have you resided in the Territory of Guam? \_\_\_\_\_  
 Are you a member of CAHA? \_\_\_\_\_

C. Contact Person: \_\_\_\_\_ Phone: \_\_\_\_\_  
 Email Address: \_\_\_\_\_ Title: \_\_\_\_\_

D. Authorizing Official: \_\_\_\_\_

E. Project Title: \_\_\_\_\_

Art Type / Discipline Applying for:  Fine Art  Photography  Illustrations  Craft/Historic Reproductions  
 Other \_\_\_\_\_ (please describe)

G. Artist(s) Involved (name and #): \_\_\_\_\_

Project Description: 1 Describe the proposed artistic project and its purpose. Specifically, what medium will be used and what type of art do you plan to produce? Where will the work occur? How is project to be accomplished? By whom? How long will it take you to produce your work?

GCAHA USE ONLY:	
Application Number:	Date Received
Applicant Status	Project Type
Applicant Institution:	Type of Activity
	Applicant Discipline

Panel	Award Date:
Project Discipline:	Progress Report Due:
International Activity:	GR: PR:

Project Description *continued*

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**Art Background and History**

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Art Background and History      2      Provide a synopsis of your history as an artist to include familiarity with the types of mediums you work with. Information and samples/photos of your work and history; work should be included in your portfolio. Feel free to attach a separate sheet if more space is needed.

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**Ability to produce art of the size and scope required for the commission**

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Ability to  
produce art

3 Please provide a detailed narrative on your ability and capability to fulfill the requirements of the artist specifications, including your ability to meet the project schedule. This should include but not be limited to your experience in fulfilling commissioned works of art in the past, current commissions, and studio space. Provide any other pertinent information that would demonstrate your ability to fulfill a commission of this magnitude. Feel free to attach a separate sheet if more space is needed.

**Organizations** As verification of legal status, organizations must submit a copy of their business license or a copy of the organization's articles of incorporation. Person signing the application must be duly authorized.

**Legal Assurances**

In the event that a contract is awarded as a result of this application, *the following terms and conditions shall be complied with* as signified by the applicant's signature. This application shall become a part of the legally binding contract between the applicant and the Department of Chamorro Affairs/Guam Council on the Arts and Humanities Agency

1. The **contract** cannot be assigned to a different project or transferred *without prior written approval* of GCAHA.
2. The **Contractor/Artist** shall submit to DCA/GCAHA the dates, times and locations of the project to take place for on-site review by GCAHA representatives.
3. The financial accounts shall be subject to audit by appropriate agencies of the Territory of Guam and for the Federal Government. The **Contractor/Artist** shall be responsible for the safe keeping and identification of records maintained to account for funds awarded herein. Said records must be kept in the **Contractor/Artist's** files for a period of three (3) years after completion of the project

**Authorizing Signature**

I, the undersigned, do certify that the information contained within this application including all attachments and supporting materials is correct and true to the best of my knowledge.

Applicant Signature:

Name (Please Print):

Date of Application:

**CHECKLIST**

**INDIVIDUALS (Did you include the following with your completed application?)**

1. Professional Resume / Biography
2. Four (4) letters of personal recommendation and/or letters of support from individuals who are familiar with your artwork produced in the past five (5) years.
3. At least three (3) and no more than ten (10) samples of relevant artwork (i.e., photographs, prints, CD-ROM containing digital images, etc.).

All samples submitted as part of this RFQ will become property of CAHA and/or GPA and will not be returned to the artist.

AGREEMENT FOR COMMISSION OF ARTWORK

AGREEMENT BETWEEN  
THE GOVERNMENT OF GUAM AND <<artist>>

**THIS AGREEMENT**, entered into through the Guam Council on the Arts and Humanities Agency, (hereinafter called "CAHA") this \_\_\_\_ day of \_\_\_\_\_, 2014 between the **Guam Power Authority**, an agency of the GOVERNMENT OF GUAM (hereinafter called the "GPA", whose office is Terlaje Professional Building, 1st Floor 194 Hernan Cortez Ave., Hagåtña, Guam 96910, and \_\_\_\_\_ (hereinafter called the "Artist"), whose mailing address is \_\_\_\_\_.

**WHEREAS, CAHA** is implementing a public art program pursuant to GC 320-22, whereby one percent (1%) of the costs of construction, renovation or remodeling in public buildings, and in non-public buildings receiving financial assistance from the **Government of Guam**, are allocated for the establishment of artworks; and

**WHEREAS**, these funds are authorized to be used for the costs of the design, construction, mounting, maintenance and replacement of works of art and for administrative costs such as those incurred in the Artist-selection process; and

**WHEREAS** the selection of the Artist was duly made by the **Art Selection Committee**, (hereinafter called the "**Committee**"), and approved by the **CAHA Compliance Officer**, in compliance with applicable statutes and regulations, to design and fabricate [insert details of approved proposals], (hereinafter called the "**Work**") for **GPA** in a public place located at [insert GPA physical address], (hereinafter called the "**Site**") and that negotiations of compensation have been determined to be fair and reasonable; and

**WHEREAS**, both parties wish to promote and maintain the integrity and clarity of the **Artist's** ideas and statements as represented by the **Work**;

**NOW, THEREFORE**, the **GPA** and the Artist, for the consideration and under the conditions hereinafter set forth, agree as follows:

## ARTICLE 1. SCOPE OF SERVICES.

### 1.1 General

- a. The **Artist** shall provide his or her best efforts in the performance of the duties and responsibilities as outlined below in accordance with the laws, rules, regulations and policies of the **Government of Guam**.
- b. The **Artist** shall perform all services and furnish all supplies, materials and equipment as necessary for the design, execution, fabrication and transportation of the **Work** to the **Site**.
- c. The **Artist** shall determine the Artistic expression, scope, design, color, material, and texture of the **Work**, subject to review and acceptance by the **Committee** and approval by the Compliance Officer, as set forth in this Agreement. For purposes of this Agreement, the Compliance Officer shall be the CAHA.

### 1.2 Proposal.

- a. As promptly as possible after the execution of this Agreement, the Artist shall carry out such procedures as may be necessary to prepare a design proposal for the Work (hereinafter called the "**Proposal**"). The **GPA** shall make available to the **Artist** the necessary background materials and information on matters affecting the Site and installation of the **Work** including, where applicable, the plans for the underlying capital project. It is the intent of the parties that the **GPA** and the Artist shall establish a close and cooperative working relationship throughout the duration of this Agreement.
- b. The **Artist** shall prepare and submit the Proposal to the **Committee** no later than N/A. The Proposal shall specify such materials, dimensions, weight, finish and preliminary maintenance recommendations and proposed installation method and include such drawings and other documents and models as are required to present a meaningful representation of the concept and design of the proposed **Work**. The Proposal shall include a budget, not to exceed \$\_\_\_\_\_, that includes estimated costs for design, fabrication and installation and the **Artist's** fee.
- c. The **Committee** shall, within N/A days after the **Artist** has submitted the Proposal, notify the Artist whether the Proposal has been approved or disapproved. If it has been disapproved, it shall provide the Artist with a statement in writing of its reasons for such disapproval. In such event, the Artist shall be afforded an opportunity either to submit a second Proposal for the **Work** within a reasonable period of time specified by the **Committee**, or to terminate this Agreement. Within 30 days following such submission by the Artist, the **Committee** shall notify the



Artist in writing whether the Proposal has been approved or disapproved. If the Proposal is disapproved, the Committee shall provide the **Artist** with a statement in writing of the reasons for disapproval, whereupon this Agreement shall terminate.

d. In the event of termination of this Agreement pursuant to paragraph (c), the **Artist** shall retain the Proposals and, after the **GPA** has paid the **Artist** on behalf of CAHA and the one percent for the arts program all compensation due under Section 2.1 herein, neither party shall be under any further obligation to the other in respect of the subject matter thereof. Any such compensation may, at the discretion of the **GPA**, be credited toward the one percent requirement.

### 1.3 Execution of the Work

a. After the **Artist** receives written approval of the final Proposal, the **Artist** shall furnish to the Committee a tentative schedule for completion of fabrication and installation of the **Work**. After written approval of the schedule by the **Committee**, the **Artist** shall fabricate, transport and install the **Work** in accordance with the schedule.

b. The **GPA**, **CAHA** and the **Committee** and/or its representatives shall have the right to review the Work at reasonable times during its fabrication.

c. The **Artist** shall complete and the fabrication and installation of the **Work** in substantial conformity with the Proposal.

### 1.4. Delivery and Installation

a. The **Artist** shall notify **GPA** when fabrication of the Work is completed and he or she is ready for its delivery at the Site.

b. The **Artist** shall deliver and install the completed **Work** at the **Site** in compliance with the schedule approved pursuant to Section 1.3(a).

c. **GPA** shall be responsible for all expenses, labor and equipment to prepare the Site for the timely installation of the **Work**. The cost of any such preparation may, at the discretion of the **GPA**, be credited toward the one percent

requirement.

### 1.5. Post-Installation.

a. Within 90 days after the installation of the **Work**, the Artist shall furnish **CAHA** with the following photographs of the **Work** as installed:

i. digital images of the completed **Work**, taken from three different viewpoints;

b. The **Artist** shall be available at such time or times as may be agreed between the **GPA** and the **Artist** to attend any inauguration or presentation ceremonies relating to the transfer of the **Work** to the **Government of Guam**. In the event a decision is made by the **GPA** to have such a ceremony, the **GPA** shall use its best efforts to schedule the ceremony as soon as practical following installation.

c. Upon delivery of the **Work**, the Artist shall provide to the **GPA** written instructions for appropriate maintenance and preservation of the **Work**.

### 1.6. Final Acceptance.

a. The **Artist** shall advise the **GPA** in writing when all services required prior to those described in Section 1.5(b) have been completed in substantial conformity with the Proposal.

b. The **GPA** shall notify the Artist in writing of its final acceptance of the **Work**.

c. Final acceptance shall be effective as of the earlier to occur of (1) the date of the **GPA's** notification of final acceptance or (2) the 30th day after the Artist has sent the written notice to the **GPA** required under Section 1.6(a) unless the **GPA**, upon receipt of such notice and prior to the expiration of the 30-day period, gives the **Artist** written notice specifying and describing the services which have not been completed.

1.7. **Risk of Loss.** The risk of loss or damage to the **Work** shall be borne by the **Artist** until final acceptance, and the **Artist** shall take such measures as are necessary to protect the **Work** from loss or damage until final

acceptance; except that the risk of loss or damage shall be borne by the **Government of Guam** prior to the acceptance during such periods of time as the partially or wholly completed **Work** is in the custody, control or supervision of the **GPA** or its agents for the purposes of transporting, storing, installing or performing any other ancillary services to the Work unless loss or damage was caused by the **Artist** or his or her agents or employees.

**1.8. Indemnity.** Upon final acceptance of the **Work**, **GPA** shall, to the extent permitted by law, indemnify and hold harmless the **Artist** against any and all claims or liabilities then existing or arising thereafter in connection with the Work, the Site, the Project or this Agreement, except claims by **GPA** against the **Artist** and claims which may occur as a result of the **Artist's** breach of the warranties provided in Article 4.

**1.9. Title.** Title of the Work shall pass the Government of Guam upon final acceptance.

**1.10. Ownership of Documents, Models.** Upon final acceptance, all studies, drawings, designs, maquettes and models prepared and submitted under this Agreement shall be returned to the **Artist** and shall belong to the **Artist**. The **GPA** may select and the **Artist** shall convey to the Government of Guam one of the original drawings if submitted as part of the Proposal, the Government of Guam representing that such drawing will be used by it solely for exhibition and held by it in safekeeping.

## **ARTICLE 2. COMPENSATION AND PAYMENT SCHEDULE.**

**2.1.** As the certifying agency, **GPA** shall pay the **Artist** on behalf of **CAHA** a fixed fee of \$\_\_\_\_\_, which shall constitute full compensation for all services and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in the following installments, expressed either as a fixed amount, or as percentages of the remainder of the fixed fee, each installment to represent full and final, non-refundable payment for all services and materials provided prior to the due date thereof, unless otherwise provided by Article 10:

a. After the execution of this Agreement by **GPA** and the **Artist**, and [within ten (10) days] after submission of the completed Proposal by the **Artist** to the **Committee** as provided in Article 1.2(b), **GPA** shall pay the artist on behalf of CAHA's one percent for the arts program a fee of \$0.00, for the preparation of the Proposal as set forth in Section 1.2. This fee may be retained by the **Artist**, and no part of it shall be refunded regardless of whether the Proposal is ultimately approved or disapproved by the **Committee**, provided that the **Artist** has submitted the Proposal to the **Committee** in compliance of the terms in Article 1.2(b). Payment of the fee may, at the discretion of the **GPA**, be credited toward the one percent requirement. If the Proposal is not so submitted, **GPA** may by notice to the **Artist** terminate this Agreement, whereupon there shall be no further obligations between the parties.

b. Fifty percent (50%) of the balance of the fee [within ten (10) days] after the **Committee** notifies the **Artist** of its approval of the submission of the tentative schedule for completion of fabrication and installation of the **Work** required under Section 1.3.

c. Fifty percent (50%) [within ten (10) days] after final acceptance.

**2.2. Artist's Expenses.** The **Artist** shall be responsible for the payment of all costs of transporting the **Work** to the **Site** and the cost of all travel by the **Artist** and the **Artist's** agents and employees necessary for the proper performance of the services required under this Agreement.

**2.3. Final Payment and Release of Claims.** Prior to final payment and as a condition precedent thereto, the **Artist** shall execute and deliver to the **GPA** a release, in a form approved by the **Government of Guam**, of claims against the **GPA** and the **Government of Guam** arising under and by virtue of this Agreement.

### **ARTICLE 3. TIME OF PERFORMANCE.**

**3.1. Duration.** The services to be required of the **Artist** as set forth in Article 1 shall be completed in accordance with the schedule for completion of the **Work** as proposed by the **Artist** and approved by the **Committee** pursuant to Section 1.3(a), provided that such time limits may be extended or otherwise modified by written agreement between the **Artist** and the **GPA**.

**3.2. Time Extensions.** The **GPA** shall grant a reasonable extension of time to the **Artist** in the event that there is a delay on the part of the **GPA** in performing its obligation under this Agreement or in completing the underlying capital project, or if conditions beyond the **Artist's** control or Acts of God render timely performance of the **Artist's** services impossible or unexpectedly 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.

### **ARTICLE 4. WARRANTIES**

**4.1. Warranties of Title.** The **Artist** represents and warrants that (a) the **Work** is solely the result of the Artistic effort of the **Artist**; (b) except as otherwise disclosed in writing to **GPA**, the **Work** is unique and original and does not infringe upon any copyright; (c) the **Work**, or a duplicate thereof, has not been accepted for sale elsewhere; and (d) the **Work** is free and clear of any liens from any source whatever.

**4.2. Warranties of Quality and Condition.** The **Artist** represents and warrants that (a) the execution and fabrication of the **Work** will be performed in a workmanlike manner; (b) the **Work**, as fabricated and delivered, will be free of defects in material and workmanship; and (c) reasonable maintenance of the **Work** will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the **Artist** to **GPA** hereunder.

The warranties described in this Section 4.2 shall survive for a period of one (1) year after the final acceptance of the **Work**. The **GPA** shall give notice to the **Artist** of any observed breach with reasonable promptness. The **Artist** shall, at the request of **GPA**, and at no cost to the **GPA**, cure reasonably and promptly the breach of any such warranty which is curable by the **Artist** and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or refabrication of the **Work**).

## **ARTICLE 5. INDEMNITY.**

The **Artist** agrees to save and hold harmless **GPA**, the **Government of Guam**, and all other **Government of Guam** agencies, their officers, agents, representatives, successors and assigns from any and all suits or actions of every nature and kind, which may be brought for or on account of any injury, death, or damage arising or growing out of the acts or omissions of the **Artist**, the **Artist's** officers, agents, servants or employees under this Agreement.

## **ARTICLE 6. REPRODUCTION RIGHTS.**

**6.1. General.** The **Artist** retains all rights under the Copyright Act of 1976, 17 U.S.C. 101 et seq., and all other rights in and to the **Work** except ownership and possession, except as such rights are limited by this Section 6.1. In view of the intention that the **Work** in its final dimensions shall be unique, the **Artist** shall not make any additional exact duplicate, two or three-dimensional reproductions of the final **Work**, nor shall the **Artist** grant permission to others to do so except with the written permission of **GPA**. The **Artist** grants to **GPA** and its assigns an irrevocable license to make two-dimensional and three-dimensional reproductions of the **Work** for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, and catalogues or other similar publications, provided that these rights are exercised in a tasteful and professional manner.

6.2. **Notice.** All reproductions by **GPA** shall contain a credit to the **Artist** and a copyright notice substantially in the following form: Copyright [name of Artist], [date of publication].

6.3. **Credit to GPA.** The **Artist** shall use his or her best efforts to give a credit reading substantially, "an original Work owned and commissioned by **GPA**," in any public showing under the **Artist's** control or reproduction of the **Work**.

## ARTICLE 7. ARTIST'S RIGHTS.

7.1. **Identification.** The **GPA** shall, at its expense, prepare and install at the **Site**, pursuant to the written instructions and subsequent approval of the **Artist**, a plaque or other identifying document the **Artist**, the title of the **Work** and the year of completion, and shall reasonably maintain such notice in good repair against the ravages of time, vandalism and the elements. The cost of such preparation and installation may be credited toward the one percent requirement.

7.2. **Maintenance.** The **GPA** recognizes that maintenance of the **Work** on a regular basis is essential to the integrity of the **Work**. The **GPA** shall reasonably assure that the **Work** is properly maintained and protected, taking into account the instructions of the **Artist** provided in accordance with Section 1.5 (c), and shall reasonably protect and maintain the **Work** against the ravages of time, vandalism and the elements. If maintenance involves substantial expense, at the request of the **GPA**, the **Committee** may recommend, subject to the approval of the Compliance Officer, that such expense be credited toward the one percent requirement.

### 7.3. Alteration of the Work or of the Site.

a. The **GPA** agrees that it will not intentionally damage, alter, modify or change the **Work** without the prior written approval of the **Artist**.

b. The **GPA** shall notify that **Artist** of any proposed alteration of the **Site** what would affect the intended character and appearance of the **Work** and shall consult with the **Artist** in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the **Work**.

c. Nothing in this Section 7.3 shall preclude any right of the **GPA** (1) to remove the **Work** from public display or (2) to destroy the **Work**. If **GPA** shall at any time decide to destroy the **Work**, it shall by notice to the **Artist** offer the **Artist** a reasonable opportunity to recover the **Work** at no cost to the **Artist** except for an obligation of the **Artist** to indemnify and reimburse the **GPA** for the amount by which the cost to the **GPA** of such recovery exceeds the costs to the **GPA** of the proposed destruction.

**7.4. Artist's Address.** The **Artist** shall notify the **GPA** of changes in his or her address. The failure to do so, if such failure prevents the **GPA** from locating the **Artist**, shall be deemed a waiver by the **Artist** of the right subsequently to enforce those provisions of this Article 7 that require the express approval of the **Artist**. Notwithstanding this provision, the **GPA** shall make every reasonable effort to locate the **Artist** when matters arise relating to the **Artist's** rights.

**7.5. Permanent Record.** **CAHA** and the **GPA** shall maintain on permanent file a record of this Agreement and all related documents, and of the location and disposition of the **Work**.

**7.6. Surviving Covenants.** The covenants and obligations set forth in this Article 7 shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest, and the **GPA's** covenants do attach and run with the **Work** and shall be binding to and until twenty years after the death of the **Artist**. The **GPA** shall give any subsequent owner of the **Work** notice in writing of the covenants herein, and shall cause each such owner to be bound thereby.

**7.7. Additional Rights and Remedies.** Nothing contained in this Article 7 shall be construed as a limitation on such other rights and remedies available to the **Artist** under the law which may now or in the future be applicable.

## **ARTICLE 8. ARTIST AS INDEPENDENT CONTRACTOR.**

**8.1. Independent Contractor.** The **Artist** shall perform all **Work** under this Agreement as an independent contractor and not as an agent or an employee of the government of Guam. The **Artist** shall not be supervised by any employee or official of the government of Guam, nor shall the **Artist** exercise supervision over any employee or official of the government of Guam.

**8.2. No Employee Benefits.** The **Artist** shall not receive any employee benefits on the basis of this Agreement,

such as insurance coverage, participation in a retirement system, or accumulation of vacation or sick leave.

**8.3. No Withholding of Taxes.** There shall be no withholding of taxes from the Artist's compensation hereunder by the government of Guam.

## **ARTICLE 9. ASSIGNMENT, TRANSFER, SUBCONTRACTING.**

**9.1. Assignment of Transfer of Interest.** Neither the **GPA** nor the **Artist** shall assign or transfer an interest in this Agreement without the prior written approval of the **Committee**, the Compliance Officer, and the prior written consent of other party, provided, however, that claims for money due or to become due from the **GPA** under this Agreement may be assigned to a financial institution without approval.

**9.2. Subcontracting by Artist.** The Artist may subcontract portions of the services to be provided hereunder at the **Artist's** expense provided that the subcontracting shall not affect the design, appearance or visual quality of the **Work** and shall be carried out under the personal supervision of the **Artist**.

## **ARTICLE 10. TERMINATION**

10.1. The services to be performed under this Agreement may be terminated by either party, subject to written notice submitted 30 days before termination, provided that attempts to reconcile the reason for termination have been undertaken but failed. The notice shall specify whether the termination is for convenience or cause.

10.2. If the termination is for the convenience of the **GPA**, the **Artist** shall have the right to an equitable adjustment in the fee (without allowance for anticipated profit on unperformed services), in which event the **GPA** shall have the right at its discretion to possession and transfer of title to the sketches, designs and models already prepared and submitted or prepared for submission to the **GPA** by the Artist under this Agreement prior to date of termination, provided that no right to fabricate or execute the Work shall pass to the **GPA** or the Government of Guam.

10.3. If termination is for the convenience of the Artist, the Artist shall remit to the **GPA** a sum equal to all



payments (if any) made to the Artist pursuant to this Agreement prior to termination.

10.4. If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate, specifying the grounds for termination. The defaulting party shall have 30 days after receipt of the notice to cure the default. If it is not cured, then this Agreement shall terminate. In the event of default by the **GPA**, the **GPA** shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other Work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the **GPA's** option become its property, provided that no right to fabricate or execute the Work shall pass to the **GPA**, and the **GPA** shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the **GPA** for damages sustained by the **GPA** by virtue of any breach of this Agreement by the Artist, and the **GPA** may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the **GPA** from the Artist is determined. Any payments to the Artist under this Article 10 may, at the **GPA's** discretion, be credited to the one percent requirement.

#### **ARTICLE 11. CONTRACTING OFFICER.**

The Contracting Officer for this Agreement shall be the CAHA. All recommendations made by the Committee regarding this Agreement, and each amendment and addendum thereto, shall be subject to the written approval of the Contracting Officer. Wherever this Agreement requires any notice or other document to be given to or by the **GPA**, the **GPA** shall delivery a copy of such notice or document to the Contracting Officer, who shall retain the notice or document and place it in CAHA's file relating to this Agreement.

#### **ARTICLE 12. NONDISCRIMINATION.**

In carrying out the performance of the services designated, the Artist shall not discriminate as to race, creed, religion, sex, age, national origin or the presence of any physical, mental or sensory disability.

#### **ARTICLE 13. GENERAL COMPLIANCE WITH LAWS.**

The Artist shall be required to comply with all federal and territorial laws and regulations applicable to the performance of the Artist's services under this Agreement. The Artist shall submit to the Contracting Officer for attachment to this Agreement a copy of the Artist's business license or a statement of exemption pursuant to GC 16024.

#### **ARTICLE 14. GOVERNING LAW.**

The validity of this Agreement and of any of its terms or provisions, as well as the rights and duties of the parties to this Agreement, shall be governed by the laws of Guam.

#### **ARTICLE 15. SCOPE OF AGREEMENT.**

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof that are not merged herein, and contains all of the covenants and agreements between the parties with respect to this Agreement in any manner whatsoever. Each party to this Agreement acknowledges that no representation, inducements, promises or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement or promise not contained in this Agreement shall be valid or binding. [For the purposes of this paragraph and of the entire Agreement, the signature of the Governor is the only signature that will bind the **GPA** or the **Government of Guam**.]

#### **ARTICLE 16. WAIVER.**

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

#### **ARTICLE 17. MODIFICATION.**

Any alteration, change or modification of the terms of this Agreement will be effective only if it is in writing signed by both parties and approved in writing by the Committee and the Compliance Officer. If such alterations, changes or modifications cause an increase or decrease in the costs of performance of the services by the Artist, or in the time required for this performance, an equitable adjustment shall be made and the Agreement shall be modified in writing accordingly.

**ARTICLE 18. ACCESS TO RECORDS.**

The Artist, including his or her subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the period of this Agreement and for three years from the date of the final payment under this Agreement, for inspection by the government of Guam. Each subcontract by the Artist pursuant to this Agreement shall include a provision containing the conditions of this Article 18.

**ARTICLE 19. HEIRS AND ASSIGNS.**

This Agreement shall be binding upon and shall inure to the benefit of the government of Guam and the Artist and their respective heirs, personal representatives, successors and permitted assigns.

**ARTICLE 19. DISPUTES.**

Neither party shall institute litigation in any court concerning this Agreement unless that party has used good faith efforts to resolve the dispute on a timely basis through negotiation with the other party. A dispute may be submitted to non-binding mediation upon the mutual agreement of the parties. In the event that the parties cannot or will not negotiate a settlement or otherwise resolve the dispute, then either party may institute appropriate court action. Nothing in this Agreement shall be construed to waive the requirements of the Guam Government of Guam Claims Act, and at all times, the courts of Guam will have jurisdiction.

**ARTICLE 21. SEVERABILITY.**

If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be invalid, then such provision shall be deemed stricken from the Agreement and the Agreement shall be enforced according to its valid and subsisting terms and provisions.

**ARTICLE 22. EFFECTIVE DATE OF AGREEMENT.**

[This Agreement and any amendment or addendum thereto, shall take effect upon the date each is signed, respectively, by the Governor of Guam, and the date of this Agreement and any amendment or addendum thereto shall be the date upon which the Governor affixes his or her signature.]

**ARTICLE 23. GPA NOT LIABLE.**

**23.1 Injuries During Travel.** Neither the **GPA** nor the Government of Guam assume any liability for any accident or injury that may occur to the Artist, his or her agents, dependents, or personal property while enroute to or from this territory or during any travel mandated by the terms of this Agreement.

**23.2. Work Done Prior to Approval.** Neither the **GPA** nor the government of Guam shall be liable to the Artist for any Work performed by the Artist prior to the approval of this Agreement by the Governor of Guam, and the Artist hereby expressly waives any and all claims for service performed in expectation of this Agreement prior to its approval by the Governor.

**ARTICLE 24. NOTICE**

All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

If to the Guam Power Authority, to:

**Via Courier:**

[insert physical location]

**Via US Mail:**

[insert mailing address] P

If to the Artist, to:

Mailing Address: \_\_\_\_\_

City, State Zip Code: \_\_\_\_\_

A copy of all such documents should also be delivered to the Compliance Officer at:

GUAM COUNCIL ON THE ARTS AND HUMANITIES AGENCY

Terlaje Professional Building, 1<sup>st</sup> Floor

194 Hernan Cortez Avenue

Hagåtña, Guam 96910

**[Rest of this page left intentionally blank.]**

IN WITNESS WHEREOF the parties hereto have executed this Contract on the dates written by their respective signatures.

**GUAM POWER AUTHORITY**

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

Date: \_\_\_\_\_

**CERTIFIED AS TO FUNDS AVAILABLE:  
GUAM POWER AUTHORITY CERTIFYING OFFICER:**

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

Account No.: \_\_\_\_\_

Document No.: \_\_\_\_\_

Amount: \$XXXXXXXXXXXXXXXXX

Date: \_\_\_\_\_

**REVIEWED AND APPROVED BY  
GUAM COUNCIL ON THE ARTS AND HUMANITIES AGENCY**

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

JOSEPH ARTERO CAMERON  
President

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

MONICA O. GUZMAN  
CAHA Board Chairman

**CONTRACT ACCEPTANCE:**

**GUAM ECONOMIC DEVELOPMENT AUTHORITY**

\_\_\_\_\_  
Artist

Date: \_\_\_\_\_

**APPROVED AS TO LEGALITY AND FORM:**

\_\_\_\_\_  
Leonardo Rapadas, Attorney General of Guam

Date: \_\_\_\_\_

**APPROVED  
GOVERNOR OF GUAM**

\_\_\_\_\_  
EDWARD J.B. CALVO

Date: \_\_\_\_\_