



"The City With a Heart"

Rico E. Medina, Mayor  
Sandy Alvarez, Vice Mayor  
Tom Hamilton, Councilmember, District 2  
Michael Salazar, Councilmember, District 3  
Marty Medina, Councilmember, District 4

**AGENDA**  
**SAN BRUNO CITY COUNCIL SPECIAL MEETING**  
**February 10, 2026**  
**6:00 PM**

<p><b>IN PERSON* MEETING LOCATION</b></p> <p>San Bruno Recreation and Aquatic Center, Community Room 251 City Park Way San Bruno, CA 94066</p> <p>*Please turn off all electronic devices before the start of the meeting to prevent disruptions*</p>	<p><b>**Zoom Link</b></p> <p><a href="https://sanbruno-ca-gov.zoom.us/j/89588078537?pwd=1Mn9hdaMbghafdd8LaXUVJJqb1gE6D.1">https://sanbruno-ca-gov.zoom.us/j/89588078537?pwd=1Mn9hdaMbghafdd8LaXUVJJqb1gE6D.1</a></p> <p><b>Phone Line:</b> 1-646-558-8656 <b>Webinar ID:</b> 895 8807 8537 <b>Webinar Password:</b> 622274</p> <p>*Broadcast of the meeting is offered via Zoom as a courtesy to the public. **No public comment accepted via Zoom.</p>
---	---

**PUBLIC COMMENT:** In person attendees who want to provide public comment, will be asked to fill out a speaker card and turn it into the City Clerk. Public comment may also be emailed to [CityClerk@sanbruno.ca.gov](mailto:CityClerk@sanbruno.ca.gov). Comments received via email will not be read aloud during the meeting.

**ACCESSIBILITY:** In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or modifications to participate in this meeting should contact the City Clerk's Office 48 hours prior to the meeting at (650) 616-7061 or [CityClerk@sanbruno.ca.gov](mailto:CityClerk@sanbruno.ca.gov).

\*Any disclosable public writings related to an open session item on a regular meeting agenda and distributed by the City to at least a majority of the City Council less than 72 hours prior to that meeting are available for public inspection at the City Clerk's Office at City Hall located at 567 El Camino Real, San Bruno, California during normal business hours. In addition, the City may also post such documents on the City's Website at [sanbruno.ca.gov/AgendaCenter](http://sanbruno.ca.gov/AgendaCenter).

1. **CALL TO ORDER**
2. **ROLL CALL**
3. **STUDY SESSION**  
*Public comment will be requested after each topic in this section*
  - a. Review information regarding the process for the selection of a sculpture for installation at Posy Park and provide feedback and direction on how to proceed
4. **ADJOURNMENT** – The next Regular City Council Meeting will be held on February 10, 2026 at 7:00 pm.

POSTING: I declare a copy of this agenda was posted at City Hall, 567 El Camino Real, San Bruno, among other locations in the city limits of San Bruno, on February 5, 2026, by 8:00 pm.

  
Alissa Leonardini, Deputy City Clerk



## City Council Agenda Item Staff Report

CITY OF SAN BRUNO

---

**DATE:** February 10, 2026

**TO:** Honorable Mayor and Members of the City Council

**FROM:** Alex D. McIntyre, City Manager

**PREPARED BY:** Travis M. Karlen, Community Services Director  
Tim Wallace, Community Services Superintendent

**SUBJECT:** Review Information Regarding the Process for the Selection of a Sculpture for Installation at Posy Park and Provide Feedback and Direction on How To Proceed

### **BACKGROUND:**

The Posy Park Sculpture project originated as part of a broader effort to re-envision Posy Park as a welcoming gateway to downtown San Bruno and a more engaging public space for transit riders, residents, and visitors.

At an April 21, 2021, special meeting, the City Council reviewed conceptual designs for improvements to Posy Park intended to enhance the plaza's function and visual appeal. The Council selected an improvement concept that emphasized placemaking, public art, and amenities to better serve the site's role as a prominent transit-adjacent gathering space. The project was identified as a City Council strategic priority but experienced delays due to staffing changes and funding considerations.

In Fall 2023, Community Services staff revitalized the Posy Park Improvements Project and conducted a detailed review of the previously approved scope of work. As part of that analysis, staff recommended repair of the fountain in lieu of reuse as a planter and shifting the public art component from additional mosaic murals to a free-standing sculpture that could serve as a focal point for the park.

At its regular meeting on October 8, 2024, the City Council approved a revised scope of work for the Posy Park Improvement Project. As part of that action, the City Council authorized the use of Public Art Fund resources for artwork repair and acquisition of a sculpture for Posy Park. While funding was authorized for the public art component, the maximum commission to be awarded to an individual artist for the Posy Park sculpture is not to exceed \$75,000.

### **DISCUSSION:**

Following City Council direction, the City released a Call to Artists on August 21, 2025, for a permanent outdoor sculpture at Posy Park. The Call to Artists closed on October 22, 2025, with 40 qualified submissions.

An ad-hoc Posy Park Sculpture Review Committee was formed to conduct an initial evaluation of the submissions. The Committee consisted of Culture and Arts Commissioners Stephen

Seymour, Nader Abumuilish, and Jeanne George, along with longtime San Bruno artist Boris Koodrin and longtime public arts administrator Collette Murphy Stefanko.

The Review Committee was charged with evaluating each of the 40 qualified submissions using the first three scoring categories outlined in the Call to Artists:

1. Artistic Merit and Technical Quality
2. Appropriateness for Public Space
3. Artist's Qualifications

The Review Committee initially met on December 2, 2025. At the meeting, staff reviewed the scoring categories and emphasized the importance of evaluating not only the visual qualities of the proposed works, but also the artists' demonstrated experience, thoughtfulness of their written statements and ability to execute the project.

The Committee reconvened on December 16, 2025, to review the individual scores and identify a shortlist of proposals to advance to the next phase of the process. Based on the combined scores of all five members, the committee selected ten proposals to move forward.

The ten shortlisted proposals were presented to the community through a public survey, which opened on December 19, 2025, and closed on January 5, 2026. The survey was promoted through multiple formats, including City social media platforms, City newsletters, physical flyers, and sandwich boards placed at the Recreation and Aquatic Center and Posy Park, with additional promotion at the Senior Center.

All ten proposals were included in the public survey; however, it should be noted that the three proposals with the highest scores from the committee were:

- Jack Howard Potter, "The Ride" with a score of 88.2
- Maxwell Emcays, "Pulse of Connection" with a score of 84.2
- Alex Pentek, "Integrity" with a score of 83

Members of the public were invited to review the ten proposals and rate each on a scale of one to five, with one indicating "not recommended" and five indicating "highly recommended." A total of 542 respondents participated in the survey. Of these respondents, 462 indicated they were San Bruno residents.

Based on the public survey results:

- Artist Solomon Bassoff, "Endangered butterflies in San Bruno...Bay Checkerspot, Calippe Silverspot, Mission Blue" received the highest average score of 3.36
- Artist Maxwell Emcays, "Pulse of Connection" received the second-highest average score of 3.30
- Artist Anastasia Komar, "Jeewanu" received the third-highest average score of 2.79

It was predetermined that with the public survey, the highest average score would receive an additional ten points, the 2<sup>nd</sup> highest average score would receive an additional seven points, and the 3<sup>rd</sup> highest average score would receive an additional four points. Considering both the Review Committee's evaluation scores and the public survey results, the proposals ranked as

follows based on total combined points:

Artist	Review Committee Points	Public Survey Points	Total Points
Maxwell Emcays	84.2	7	91.2
Jack Howard-Potter	88.2	-	88.2
Solomon Bassoff	76.2	10	86.2
Alex Pentek	83	-	83
Anastasia Komar	78.4	4	82.4
Lorri Alcott	76.6	-	76.6
Chad LaFever	72	-	72
Vito Di Bari	70.6	-	70.6
Katharina Moerth	69.6	-	69.6
Rae BK	69.4	-	69.4

At their regular meeting on January 15, 2026, the Culture and Arts Commission discussed the Posy Park Sculpture proposals. The current membership of the commission is five members, and three commissioners were present, meeting the minimum quorum requirement. The discussion focused primarily on individual artistic preferences, with each of the three participating commissioners expressing support for a different proposal based on subjective aesthetic and thematic considerations.

For clarity of the record, while a structured evaluation had been conducted earlier in the selection process to review and score eligible proposals, the Commission's discussion at the January 15 meeting did not prioritize focus on the comparative review of evaluation scores or a structured deliberation based on the full evaluation process.

Commissioners noted specific concerns with each proposal, including limited local connection and distinctiveness, similarities to existing artwork, and questions regarding final execution. Ultimately, despite these concerns and the established evaluation results, the Commission reached consensus to recommend the proposal that ranked third overall through the selection process. Chair Hanhan did highlight that the Bassoff sculpture did receive the most support through the survey. Staff advised that any selected artwork would require further coordination with the artist and installers to ensure structural and safety requirements are met.

Commissioners were asked to take into consideration how the proposals performed during earlier phases of the selection process. It should be noted that the Emcays proposal finished second with both the Review Committee and the public survey, however, based on the scoring procedures, it received the highest score in the process. In contrast, the Bassoff proposal ranked sixth with the Review Committee but received the highest score in the public survey and received the third highest score in the process.

After weighing artistic merit, the selection process, scoring results, and public input, the Commission recommended that the City Council select artist Solomon Bassoff and the proposed sculpture titled *"Endangered butterflies in San Bruno"* for installation at Posy Park.

### **Staff Analysis**

The Posy Park Sculpture selection process included multiple phases designed to incorporate professional review, public input, and advisory commission consideration. These phases produced differing outcomes. The combined Review Committee scoring and weighted public survey results identified one proposal as the highest-ranked overall, while the Culture and Arts Commission ultimately recommended a different proposal following its January 15 deliberations.

The Commission's discussion focused largely on subjective artistic and thematic considerations. While commissioners acknowledged the established scoring results and public survey data, the consensus recommendation differed from the proposal that ranked highest through the formal evaluation process. As a result, there is a divergence between the quantitative outcomes of the selection process and the Commission's advisory recommendation.

Given these discrepancies, staff is presenting the full record to the City Council for review. Staff requests that the City Council consider the results of the established evaluation process, together with public input and the Culture and Arts Commission's recommendation and provide direction to staff regarding the path forward for selection of the sculpture for installation at Posy Park. This approach allows the City Council to provide direction to staff based on the information provided regarding next steps.

Staff will proceed in accordance with the direction provided by the City Council. Following Council direction, staff intends to return at the next City Council meeting with a recommended sculpture for Council consideration.

### **FISCAL IMPACT:**

There is no fiscal impact associated with this report. However, funding for the Posy Park Sculpture project has previously been authorized by the City Council. The artist compensation shall not exceed \$75,000. Additional costs associated with installation of the sculpture are anticipated and will not exceed the total amount authorized for the Posy Park project by City Council in 2024.

### **ENVIRONMENTAL IMPACT:**

The action is not a project subject to CEQA. City Council's action is not considered a "Project" per CEQA Guidelines and therefore no further environmental analysis is required.

### **RECOMMENDATION:**

Review information regarding the process for the selection of a sculpture for installation at Posy Park and provide feedback and direction on how to proceed

### **ATTACHMENTS:**

1. Call to Artists
2. Images of the ten shortlisted sculpture proposals considered by the Culture and Arts Commission



The City of San Bruno in conjunction with the San Bruno Culture and Arts Commission invites qualified professional artists to submit a proposal for a Sculpture at Posy Park located at the intersection of Huntington Ave and San Mateo Ave, San Bruno, CA 94066.

**DETAILS:**

**Open Call to Artists – Sculpture at Posy Park**

**Compensation:** Up to \$75,000 Artist Commission

**Call to Artists Release:** August 21, 2025

**Call to Artists Deadline:** October 22, 2025, at 5:00 p.m. PDT

**Installation Date:** On or before February 27, 2026

**PROJECT DETAILS**

The City of San Bruno Culture and Arts Commission invites artists to submit proposals for a permanent outdoor sculpture to be installed at Posy Park. Located at the intersection of Huntington Avenue and San Mateo Avenue, Posy Park is a prominent public plaza situated just outside the San Bruno Caltrain station and is a gateway to downtown San Bruno. Additionally, the park features a tile mural commemorating the city’s history, making it a key cultural landmark and potential community gathering place.

The sculpture will serve as the focal point of a broader revitalization effort at Posy Park, which will include a repaired fountain, refreshed landscaping, new bicycle lockers, and restoration of the existing tile mural. This public art installation will enhance the visual appeal and community value of the park, helping to connect residents and visitors to San Bruno’s dynamic identity.

The submission is open to all professional artists aged 18 and over. Proposals will be reviewed by an ad-hoc selection committee composed of members of the San Bruno Culture and Arts Commission. Public input will be gathered through a survey that invites community feedback based on the finalists’ proposals. The full Commission will consider the committee’s recommendation and survey results before forwarding a final recommendation to the San Bruno City Council for approval.

**CITY OF SAN BRUNO**

San Bruno is a vibrant, diverse city on the San Francisco Peninsula, nestled between the cities of South San Francisco and Millbrae. With a population of approximately 42,200, San Bruno offers the welcoming feel of a small town alongside the benefits of a

major metropolitan hub. The city is a key transportation nexus, offering direct access to Interstates 280 and 380, U.S. Highway 101, and close proximity to San Francisco International Airport. San Bruno is also served by BART and Caltrain, offering regional connectivity.

Posy Park, the sculpture site, is located at the northern entrance to downtown San Bruno and is immediately adjacent to the San Bruno Caltrain station. This high-visibility space serves as a front door to downtown transit riders and pedestrians, making it an ideal setting for a public artwork that will be seen by thousands of commuters, residents and visitors each week. As a crossroads of transit, commerce, and community, the site offers artists a unique opportunity to create an engaging and enduring piece that reflects the spirit of San Bruno.

## **SCULPTURE THEME**

To encourage maximum creative freedom, the Culture and Arts Commission has not defined a specific theme for the sculpture. However, the final work should be contextually appropriate - complimenting Posy Park, the surrounding streetscape, and the broader character of San Bruno.

## **SCULPTURE ATTRIBUTES**

The Commission seeks a sculpture that is dynamic, memorable, and visually compelling. Ideal submissions will be approachable, spark curiosity and leave a lasting impression. The work should be durable, safe for public interaction, and reflective of San Bruno's identity as a diverse, evolving community rooted in connectivity and culture. Physical dimensions include a minimum height of 6 feet and maximum height of 10 feet. The sculpture may not exceed 5 feet in width at any point.

## **SELECTION & SUBMISSION CRITERIA**

### **Sculpture Requirements**

- Sculpture must be a permanent, free-standing work designed for long-term outdoor display in a public setting.
- Artist is responsible for specifying the method by which the sculpture will be mounted, including details on how the artwork should be secured. Based on this information, the City will design and construct a compatible mounting system/base for the sculpture to be installed on site.
- All materials must be durable and weather-resistant, capable of withstanding sun, wind, rain, and public interaction. Materials must be non-flammable or fire-resistant.
- The sculpture must not include any elements that pose safety risks, such as sharp edges, climbing hazards, or loose components.
- Selected artist may be required to submit technical drawings and/or engineering documentation to certify the sculpture's structural integrity.
- Selected artist will be responsible for fabrication and delivery to the installation

site by a specified deadline.

- Installation of the sculpture will be performed by a contractor retained by the City. The artist will be expected to consult with City staff, Marina Landscape Inc. and the procured installer to ensure proper orientation and placement of the work. This will be coordinated by City staff.
- Artists may submit proposals for either a new, yet-to-be-fabricated sculpture or an existing, previously fabricated sculpture for consideration.

### **Installation Location**

- Sculpture will be installed in Posy Park, a prominent public plaza in downtown San Bruno at the corner of Huntington Avenue and San Mateo Avenue, immediately adjacent to the Caltrain station.
- Installation site will be in a level planting bed near the southwest corner of Posy Park. Please see photos below on pages 5-7.
- Installation will be carried out by a professional contractor procured and managed under the direction of the City. Artist is not responsible for physical installation, but must coordinate with City staff to ensure the sculpture is installed as intended.
- Artist will be required to deliver the completed sculpture to the site by the agreed-upon date and to provide any guidance needed for safe and accurate installation.
- Selected artist will be required to enter into an Artist Agreement with the City and carry insurance as outlined in the Agreement (example agreement is attached below beginning on page 9).

### **Submission Requirements**

Artists must submit the following materials:

- Completed application. Application link found below.
- Written description of the proposed sculpture, including title, concept/inspiration, materials, and dimensions.
- Minimum of three (3) high-resolution images or renderings showing multiple views of the proposed sculpture.
- Minimum of two (2) other examples of similar work completed for another municipality, public agency or private organization.
- Optional: additional images of past work relevant to the proposed design.
- Artist resume and artist statement.
- Contact information, including artist's name, mailing address, email, phone number, and website.
- Up to three (3) separate sculpture proposals may be submitted per artist.
- Budget information, including cost of materials.

## **EVALUATION AND SELECTION**

### **Selection Panel**

Proposals will be reviewed by a review committee primarily made up of members of the San

Bruno Culture and Arts Commission. Public input will also be solicited through a community survey, the results of which will be considered by the full Commission for a recommendation to the City Council. The City Council will have the final decision on sculpture selection.

### Judging Criteria

Submissions will be evaluated based on the following weighted criteria:

**Artistic Merit and Technical Quality (35 Points Max):** Demonstrated creativity, originality, and technical proficiency of the proposed work.

**Appropriateness for Public Space (30 Points Max):** Suitability of the work for a permanent outdoor public setting, including safety, durability, resistance to vandalism, and how well it complements the character of the surrounding area.

**Artist’s Qualifications (35 Points Max):** The aesthetic quality of the artist’s past work, including content, craftsmanship, uniqueness and relevance to its environment as well as the artist’s demonstrated ability to translate art concepts into durable and safe materials.

**Community Survey Results:** The Commission will conduct a community survey of the submissions and award additional points to the top designs: 1<sup>st</sup> place – 10 points, 2<sup>nd</sup> place – 7 points, 3<sup>rd</sup> place – 5 points.

**San Mateo County Artists:** Proposals from artists residing in San Mateo County will receive 5 additional points.

**San Bruno Artists:** Proposals from San Bruno residents will receive a total of 10 additional points (5 for county residency and 5 for city residency).

### Scoring Matrix:

Category	Maximum Score
Artistic Merit and Technical Quality	35 Points
Appropriateness for Public Space	30 Points
Artist’s Qualifications	35 Points
Community Survey Results	10 Points
San Mateo County Artists	5 Points
San Bruno Artists	5 Points
<b>Maximum Possible Score</b>	<b>120 Points</b>

### How to Enter

Submit application at [sanbruno.ca.gov/sculpture](http://sanbruno.ca.gov/sculpture)

### Questions?

Contact Tim Wallace at [twallace@sanbruno.ca.gov](mailto:twallace@sanbruno.ca.gov) or (650) 616-7084

### Attachment

Sample Art Agreement – City of San Bruno







**THE INFORMATION CONTAINED IN THE FOLLOWING  
PAGES IS A SAMPLE AGREEMENT AND FOR  
INFORMATION ONLY AND SHOULD NOT BE FILLED OUT  
AS PART OF THE PROPOSAL**

**DO NOT COMPLETE THE FOLLOWING PAGES**

**CITY OF SAN BRUNO ART AGREEMENT**

This Agreement is made and entered into as of \_\_\_\_\_  
by and between the City of San Bruno (“City”), a municipal corporation (the “City”), and  
\_\_\_\_\_, (the “Artist”) (sometimes  
collectively referred to herein as the “Parties”, and individually as “Party”).

**RECITALS**

- A. On \_\_\_\_\_, the City issued a Call to Artists for artists to create  
\_\_\_\_\_ within the City.
- B. The City has selected the Artist to create \_\_\_\_\_  
at \_\_\_\_\_ (“Site”) in the  
City.
- C. The City will maintain, repair, landscape, and/or decommission the \_\_\_\_\_  
\_\_\_\_\_ as appropriate and provided herein.
- D. The Artist represents that he/she has the appropriate background, training, and  
experience to create the \_\_\_\_\_ for the  
City.

**II. SCOPE OF WORK**

- A. Subject to the terms and conditions set forth in this Agreement and with the more  
detailed Scope of Work set forth in Exhibit A and hereby incorporated, the Artist  
shall execute the Artwork in accordance with Image 1 in Exhibit A, attached hereto  
and incorporated herein as though set forth in full (“Artwork”). City shall have the  
right to request, in writing, changes in the Scope of Work as provided in Exhibit A.  
Any changes mutually agreed upon by the Parties, and any increase or decrease in  
compensation, shall be incorporated by written amendments to this Agreement.

- B. The Artist hereby certifies the Artwork as unique and has not been, or shall not be, duplicated for any other site.
- C. The Artist shall guarantee the structural integrity of the Artwork for 5 years following the completion of the Artwork, and the Artist shall repair any damage to the Artwork in that time period and during the installation period at the expense of Artist.
- D. The Artist shall perform all services required under this Agreement to the highest professional standards and in a manner reasonably satisfactory to the City. The Artist shall comply with all applicable federal, state, and local laws, ordinances, codes, and regulations, including but not limited to maintaining any necessary licenses.
- E. The Artist agrees to complete the Artwork no later than \_\_\_\_\_ unless extended in writing by the City Manager or designee.

**III. AMOUNT AND MANNER OF PAYMENT**

- A. In consideration of the Artist’s execution of the Artwork, the City shall pay the Artist a fixed sum of \_\_\_\_\_ (the “Artist Fee”). The City shall pay \_\_\_\_\_ (50% of the Artist Fee) to the Artist upon execution of this Agreement, and shall pay the remaining \_\_\_\_\_ (50% of the Artist Fee) to the Artist upon satisfactory completion of the Artwork.
- B. After completing the Artwork and receiving final approval from the City’s Community Services Director, the Artist shall submit an invoice to the City for the final payment. The City shall pay all undisputed amounts within forty-five days (45) of receipt of invoice.
- C. The Artist shall be responsible for:
  - i. all subcontractor and consultant costs, including engineers, electricians, materials, fabricators, studio, and overhead costs;
  - ii. all costs related to fabrication, transportation, delivery, storage, and security of all components of the Artwork;

- iii. all costs related to preparation and clean-up of the site, which is presented “as is” to the Artist; iv. all costs related to General and Automobile Liability, Professional Liability insurance, and automotive insurance as required;
- v. all travel costs, including room and board; and
- vi. any other costs associated with the completion of the Artwork, including all costs required for permits and licenses.

D. All invoices shall be directed to the attention of City of San Bruno.

**IV. MAINTENANCE AND WARRANTY OF ARTWORK**

- A. Except for as provided elsewhere in this Agreement, including Paragraph C of Section I, the City shall maintain and repair the Artwork as reasonably necessary until such time the City decommissions the Artwork.
- B. Artist hereby warrants that the Artwork will be free of defects in workmanship (due to faulty design or fabrication), materials and finish, including inherent vice, and that the Artist will, at the Artist’s own expense, remedy, repair or replace any such defects in workmanship, materials and finish, including inherent vice, and if necessary, replace the Artwork, which appear within a period of sixty (60) days following the date the Artwork is completed.

**V. RISK OF LOSS**

Artist bears the sole risk of damage to or loss of all Artwork to be produced by Artist pursuant to this Agreement until such Artwork is delivered to City and City accepts such Artwork as satisfactorily completed pursuant to Exhibit A.

**VI. CITY’S RIGHT AND TITLE TO, AND INTEREST IN, THE ARTWORK**

- A. The Artist shall not retain ownership of or any right, title or interest in the Artwork. The Parties agree that the Artwork and all such rights, title and interest in or to the Artwork are being sold to the City for whatever use the City desires, and that the

City does and shall at all times own, solely and exclusively, complete and unencumbered, all rights, title and interest in and to all of the Artwork worldwide, any modifications thereto and any derivative works based thereon. Nothing contained herein shall be deemed to constitute a mere license or franchise for City. The Parties further agree that the City, and its successors and assigns, will be free to use, modify, distribute, donate, sell, license or otherwise exploit the Artwork and any modifications to or derivative works based thereon without any restrictions or limitations or any obligations or payments to the Artist.

- B. The City hereby authorizes the Artist to make, and to authorize the making of, limited photograph and video reproductions of the Artwork for educational and self-promotional purposes. For purposes of this Agreement, the following are deemed to be photograph and video reproductions for educational and self-promotional purposes: slides, film strips, and video episodes not intended for a mass audience and used solely for educational programs that are hosted by the Artist in print media, on Artist’s website and social media sites, and on Artist’s computers and on any other electronic media, as long as such reproduction is provided to others at no cost. Under no circumstances shall the Artist use or make any photograph or video reproductions of the Artwork for commercial purposes and any photograph or video reproductions used or made by the Artist shall not compete with any City endeavor to sell or promote reproductions of the Artwork. The City has sole discretion to determine whether a photograph or video reproduction is utilized for educational and self-promotional purposes or whether the reproduction competes with the City’s endeavors to sell or promote its reproductions in the City. If the City determines that the photograph or video reproduction does not meet the terms of this section, the City shall provide written notice to the Artist, as appropriate, and, upon receipt of such notice, the noticed Party shall immediately cease and desist the use of the reproduction.
- C. Artist hereby transfers to the City all rights of reproduction, as that term is defined in California Civil Code Section 982, in the Artwork, including, but not limited to, the right to reproduce the Artwork in any manner whatsoever for commercial and non-commercial purposes. Hereinafter, the Artist shall not acquire nor claim any rights in

or to the Artwork, any uses, reproductions or derivatives thereof or any proceeds therefrom.

- D. The Artist hereby waives, releases, and disclaims any rights, demands, or claims as may arise at any time and under any circumstances against the City, its elected officials, officers, agents, employees, attorneys, servants, volunteers, successors, and assigns arising under the federal Visual Artists Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 *et seq.*), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A, California Civil Code § 987 *et seq.*, or any other type of moral right protecting the integrity of works of art. The Artist acknowledges and agrees that the City, in its sole and exclusive discretion, may, among other acts, temporarily or permanently modify, alter, change or destroy the Artwork. Artists expressly waives any and all rights under California Civil Code Section 1542, which states, “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.”
- E. The Artist shall defend any action or proceeding brought against the City based on any claim that the Artwork, or any portion thereof, or the use of the Artwork, or any part thereof, constitutes infringement on any United States patent, copyright or trademark, now or hereafter issued. The City shall give prompt written notice to the Artist of any such claim or proceeding and will reasonably provide authority, information and assistance in the defense of the same. The Artist shall indemnify and hold harmless the City from and against all liabilities in any such action or proceeding. The Artist shall keep the City informed of all new developments in the defense of such actions or proceedings.

**VII. ORIGINALITY OF ARTWORK**

- A. Artist represents and warrants that (i) the Artwork is and will be original; (ii) at the time of transfer hereunder, Artist is the sole owner of the Artwork and of all rights

therein; (iii) Artist is and will be the sole creator of the Artwork; (iv) Artist has and will have full and sufficient right to assign all rights granted herein and to waive all rights relinquished herein; (v) Artist is not under any obligation to transfer or sell the Artwork to any third party; (vi) the Artwork has not been and will not be published under circumstances which have or will cause a loss of any copyright, trademark or other proprietary rights therein; and (vii) the Artwork does not and will not infringe any patent, copyright, trademark or other proprietary rights, privacy rights or other rights of any third party, nor has any claim (whether or not embodied in a legal action, past or present) of such infringement been threatened or asserted, nor is such a claim pending, against Artist (or, insofar as Artist is aware, against any entity from which Artist has obtained any rights).

**VIII. INDEMNIFICATION**

- A. To the full extent permitted by law, Artist shall indemnify, hold harmless and defend City, its elected officials, officers, agents, employees, attorneys, servants, volunteers, successors and assigns from and against any and all claims, demands, causes of action, liability, losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged acts or omissions of Artist or their volunteers or any other person or entity involved by, for, with or on behalf of Artist in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice. The Parties understand and agree that the duty of Artist to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.
  
- B. Artist, on behalf of their heirs, executors, administrators and assigns, hereby releases, discharges and agrees not to sue the City of San Bruno, its agents, officers, servants and employees, for any injury, death or damage to or loss of personal property arising out of, or in connection with Artist's performance of services pursuant to this Agreement, from whatever cause, with the exception of the active negligence or willful misconduct of the City.

- C. Artist's obligations under this or any other provision of this Agreement will not be limited by the provisions of any workers compensation act or similar act. Artist expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- D. City does not, and shall not waive any rights that it may possess against Artist because of the acceptance by City, or the deposit with City, of any insurance policy or certificate. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. Artist agrees that Artist's covenant under this Section shall survive the termination of this Agreement.
- E. Artist agrees to pay all required taxes on amounts paid to Artist under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Artist shall fully comply with the workers' compensation laws applicable to Artist and/or Artist's volunteers. Artist further agrees to indemnify and hold City harmless from any failure of Artist to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any fees due to Artist under this Agreement any amount due to City from Artist as a result of Artist's failure to promptly pay to City any reimbursement or indemnification arising under this Section.

**IX. INSURANCE**

- A. The Artist shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:
  - i. A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$1,000,000 for each occurrence, combined single limit, against any personal injury, death, loss, or damage resulting from wrongful or negligent acts by the insured Party.

- ii. A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 per occurrence combined single limit, covering any vehicle utilized by the Artist in performing the work required by this Agreement.
  - iii. Workers' compensation insurance as required by the State of California.
- B. The Artist shall require each of their sub-contractors (if any) to maintain insurance coverage that meets all of the requirements of this Agreement.
- C. The City's Risk Manager may, in writing, amend and/or waive the insurance provisions set forth in paragraph A. of this section. In such case, the Artist shall comply with the insurance provisions required by the City's Risk Manager.
- D. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A-;VII in the latest edition of Best's Insurance Guide.
- E. The Artist agrees that if the Artist does not keep the aforesaid insurance in full force and effect, the City may immediately terminate this Agreement.
- F. At all times during the term of this Agreement, the Artist shall maintain on file with the City Clerk a certificate or certificates of insurance on the form approved by the City's Risk Manager, showing that the aforesaid policies are in effect in the required amounts. The Artist shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance and vehicle insurance shall contain an endorsement naming the City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to the City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

G. The insurance provided by the Artist shall be primary to any coverage available to the City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

H. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of the City, the Artist shall either reduce or eliminate the deductibles or self-insured retentions with respect to the City, or the Artist shall procure bonds guaranteeing payment of losses and expenses.

**X. INDEPENDENT CONTRACTOR**

The Parties agree, understand, and acknowledge that the Artist is not an employee of the City, but is solely an independent contractor. The Artist expressly acknowledges and agrees that the City has no obligation to pay or withhold state or federal taxes or to provide workers' compensation or unemployment insurance or other employee benefits and that any person employed by the Artist shall not be in any way an employee of the City. As such, the Artist shall have the sole legal responsibility to remit all federal and state income and social security taxes and to provide for their own workers compensation and unemployment insurance and that of their employees or subcontractors. Neither the City nor any of its agents shall have control over the conduct of the Artist or any of the Artist's employees. The Artist shall not, at any time, or in any manner, represent that they or any of their agents or employees are in any manner agents or employees of the City. The Artist shall indemnify and hold harmless the City and its elected officials, officers and employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from the Artist's personnel practices.

**XI. TERMINATION OF CONTRACT**

A. The City retains the right and privilege of canceling, suspending, or abandoning the execution of any work in connection with this Agreement.

- B. The City shall have the right to terminate this Agreement for any reason, or for no reason, upon seven calendar days' written notice to the Artist. The Artist agrees to cease all work under this Agreement on or before the effective date of such notice.
- C. In the event of termination or cancellation of this Agreement by the City, the Artist shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall the Artist be entitled to receive more than the amount that would be paid to the Artist for the full performance of the services required by this Agreement. The Artist shall have no claim against the City by reason of such termination, including any claim for compensation.

**XII. FAILURE TO OBJECT NOT A WAIVER**

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

**XIII. LIMITATION ON ASSIGNMENT**

- A. The personal skill, judgment, and creativity of the Artist are an essential element of this Agreement. Therefore, although the Parties recognize that the Artist may employ qualified personnel or volunteers to work under the Artist's supervision, the Artist shall not assign, transfer or subcontract the creative and artistic portions of the Artwork to another party without the prior written consent of the City.
- B. Any such purported assignment without the City's prior written consent shall be null and void, and the Artist shall hold harmless, defend, and indemnify the City and its officers, officials, employees, agents and representatives with respect to any claim, demand or action arising from any unauthorized assignment.

**XIV. APPROVAL**

Whenever approval, consent, information, or data is herein required of any or all Parties, the same shall not be unreasonably or arbitrarily delayed or withheld.

**XV. NOTICES**

Any notices, bills, invoices, etc. required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during the receiving party’s regular business hours or by facsimile before or during the receiving party’s regular business hours; or (b) on the second business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to this section.

If to the City:

If to the Artist:

City of San Bruno  
567 El Camino Real  
San Bruno, CA 94066  
ATTN: Community Services Director

**XVI. AMENDMENTS**

No modification or amendment of the terms hereof shall be effective unless written and signed by authorized representatives of the Parties. The Parties expressly reserve the right to modify this Agreement from time to time by mutual written agreement.

**XVII. LAW AND VENUE**

The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the State of California, excluding California’s choice of law rules. Venue for any such action relating to this Agreement shall be in the San Mateo County Superior Court.

**XVIII. ATTORNEYS' FEES**

If any legal action or other proceeding, including action for declaratory relief, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs, in addition to any other relief to which the Party may be entitled.

**XIX. ENTIRE AGREEMENT**

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes any and all prior understandings or agreements in regard thereto.

**XX. SEVERABILITY**

If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

*[Remainder of this page intentionally left blank]*

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed as of the first date above written.

CITY OF SAN BRUNO  
A Municipal Corporation

ARTIST

\_\_\_\_\_  
ALEX MCINTYRE  
City Manager

FISCAL IMPACT:

\_\_\_\_\_  
NICK PEGUEROS  
Director, Administrative Services

ATTEST:

\_\_\_\_\_  
LUPITA HUERTA  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
TRISHA ORTIZ  
City Attorney

Art Agreement between City of San Bruno and \_\_\_\_\_ for  
\_\_\_\_\_  
(Project Title)

**Exhibit A**  
**Outdoor Sculpture Installation Location (the Site)**  
**Posy Park – Corner of Huntington Avenue**  
**and San Mateo Avenue**

DRAFT

**SAMPLE AGREEMENT – DO NOT COMPLETE**

**Exhibit B**

**Insert Image of Sculpture**

DRAFT

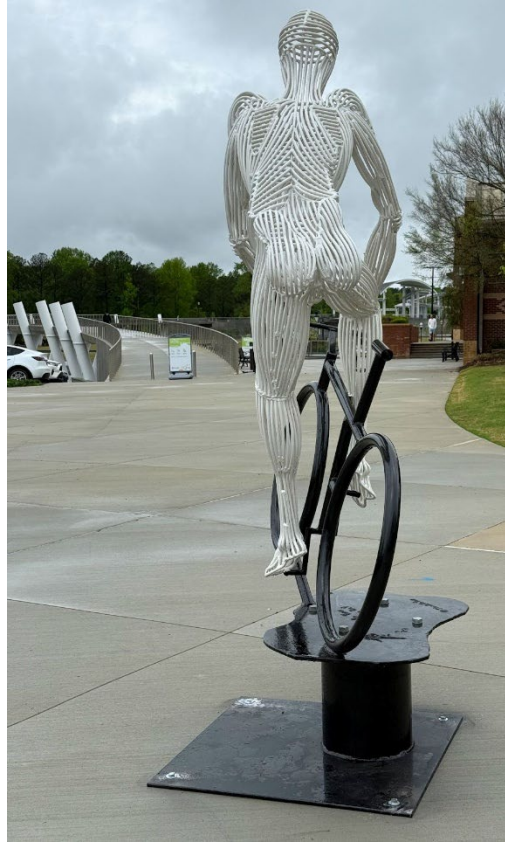
# Maxwell Emcays

Title: Pulse of Connection



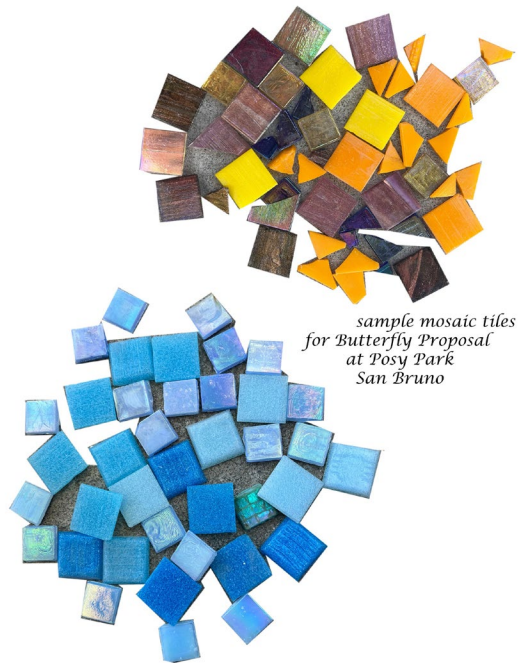
# Jack Howard-Potter

Title: The Ride



# Solomon Bassoff

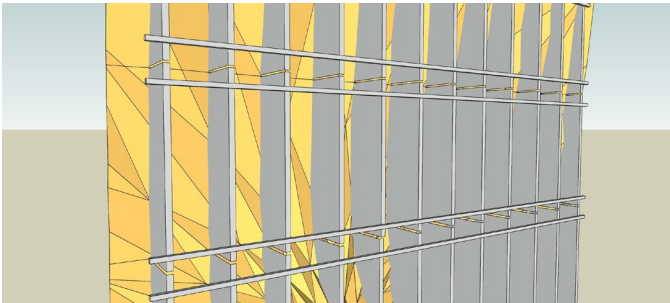
Title: Endangered butterflies in San Bruno...Bay Checkerspot, Calippe Silverspot, Mission Blue



*sample mosaic tiles  
for Butterfly Proposal  
at Posy Park  
San Bruno*

# Alex Pentek

Title: Integrity



# Anastasia Komar

Title: Jeewanu



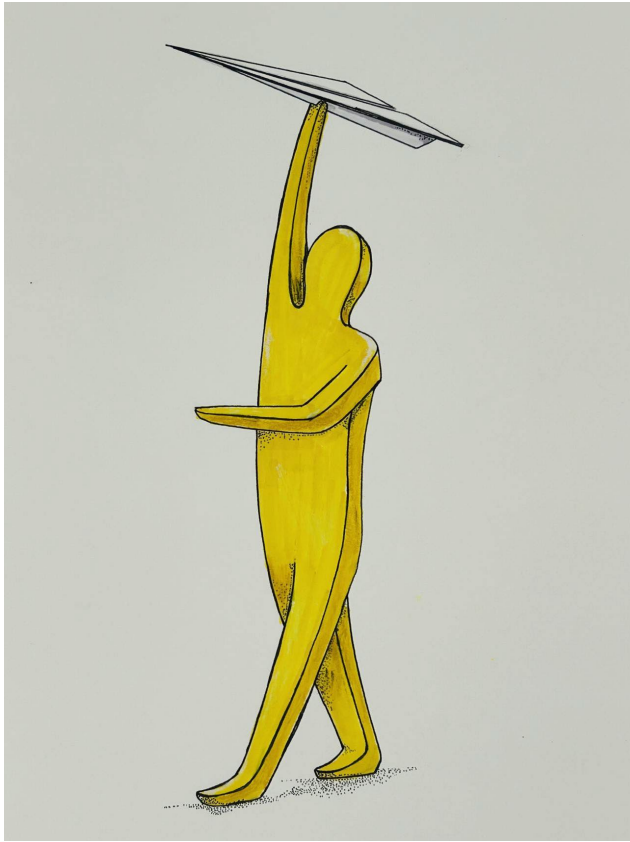
# Lorri Acott

Title: Arc of Peace



# Chad La Fever

Title: Taking Flight



# Vito Di Bari

Title: Woven Horizons



# Katharina Moerth

Title: "Natural Grown" - The Transformative Thistle in Metal



**Rae BK**

Title: "COEXIST"

