

**REPORT/RECOMMENDATION TO THE BOARD OF SUPERVISORS
OF THE COUNTY OF SAN BERNARDINO
AND RECORD OF ACTION**

May 4, 2021

FROM

LEONARD X. HERNANDEZ, Chief Executive Officer, County Administrative Office

SUBJECT

Contract for Phase C: Fabrication, Construction, and Installation of the December 2nd Memorial

RECOMMENDATION(S)

1. Approve **Contract No. 21-300** with Hood Design Studio Inc., for the Phase C fabrication and delivery of the December 2nd Memorial, for a total amount not to exceed \$1,022,120.44, effective May 4, 2021 through completion of the December 2nd Memorial project.
2. Authorize the Chief Executive Officer or the County Chief Operating Officer to approve increases in the Artist (Hood Design Studio, Inc.) Budget, Capital Improvement Budget or Project Budget for the December 2nd Memorial project in a total amount not to exceed \$102,212.04, for required changes to the project and unforeseen conditions.
3. Direct Real Estate Services Department – Project Management to manage the contract for Phase C with Hood Design Studio, Inc. for fabrication and delivery of art work and manage the Government Center site work construction of the December 2nd Memorial.
4. Authorize the Director of Real Estate Services Department to accept work when 100% complete, execute, and file the Notice of Completion.
5. Direct Real Estate Services Department – Project Management to transmit all documents and amendments in relation to this contract to the Clerk of the Board within 30 days of execution.

(Presenter: Leonard X. Hernandez, Chief Executive Officer, 387-5417)

COUNTY AND CHIEF EXECUTIVE OFFICER GOALS & OBJECTIVES

Focus on Recovery and Resiliency Following the December 2, 2015 Terrorist Attack (SB Strong).

FINANCIAL IMPACT

Approval of this recommended contract in an amount not to exceed \$1,022,120.44 will not result in the use of additional Discretionary General Funding (Net County Cost). The total cost of the December 2nd Memorial (Memorial), as explained below, is estimated to be \$1,575,035.18, including design, fabrication, and site improvements, and will be funded by the December 2nd Memorial Project budget (WBSE 10.10.0984). Sufficient appropriation is included in the 2020-21 Capital Improvement Program (CIP) budget for the Memorial and will be included in the 2021-22 recommended CIP budget.

Description	Estimated Cost
Design	\$187,500
Fabrication and Delivery	\$1,022,120.44
Site Improvements	\$263,202.70

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Contingency	\$102,212.04
Total Estimated Project Budget	\$1,575,035.18

BACKGROUND INFORMATION

The Memorial Committee was formed by a vote of the Board of Supervisors (Board) after Chairman James Ramos appointed Supervisor Gonzales on February 9, 2016, to work with the Chief Executive Officer and others to create the Memorial that honors the victims, survivors, rescuers, and all who were affected by the December 2nd terrorist attack. On January 9, 2018 (Item No. 17), the Board approved Contract No. 18-08 with Community Arts, Inc. (CAI) to assist the December 2nd Memorial Committee (Memorial Committee) with the ultimate selection of the artist, design, creation and installation of the December 2nd Memorial. CAI worked with the Memorial Committee as the Memorial Committee selected “Curtain of Courage” from Hood Design Studio Inc. (Hood Design) as the Artist for the Memorial. “Curtain of Courage” is comprised of mesh panels made of bronze steel that are cast with different color glass pieces. These panels simulate the curvature of a curtain, and are situated around sitting areas to create a place of healing and reflection by evoking an image of a prism’s eternal sparkle. The Memorial will be located in the exterior courtyard on the west side of the San Bernardino County Government Center.

On September 29, 2020 (Item No. 27), the Board approved Contract No. 20-929 with Hood Design for Phase A Site Work Improvement Design and Phase B Artwork Design, for the period September 30, 2020 through January 31, 2021, in an amount not to exceed \$187,500. Due to continued work to finalize the construction documents, under the authority granted to him by the Board on September 29, 2020 (Item No. 27), the Chief Executive Officer extended the term of Contract No. 20-929 to March 31, 2021, with no change to the contract amount.

The recommended contract with Hood Design, effective May 4, 2021, will commence Phase C of the Memorial Project, which includes fabrication and delivery of the artwork by Hood Design. Site improvements and installation will be completed by separate contractors retained and managed by Real Estate Services Department – Project Management. The Memorial is anticipated to be completed in late Spring of 2022. Under the recommended contract, the Chief Executive Officer or County Chief Operating Officer are authorized to approve increases to the budget in an amount not to exceed \$102,212.04 for required changes to the Memorial and unforeseen conditions. The not to exceed \$1,022,120.44 amount of the contract with Hood Design, includes a \$7,000 contingency for the cost of a narrative plaque for the Memorial.

Per County Policy 11-05, contracts containing non-standard terms must be approved by the Board. The recommended contract with Hood Design presents the following non-standard contract terms that require Board approval:

Payment terms: Artist limits payment terms to Net 30.

- The County standard processing time is 60 days with no interest or late payment penalties.
- Potential Impact: Failing to pay in 30 days could result in the Artist stopping work under the contract and seeking other legal remedies.

Indemnification: Artist limits his indemnification obligation in the contract to indemnifying, not defending, the County from claims arising from Artist’s negligence, reckless, or willful

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misconduct. However, Artist has agreed to indemnify and defend the County for claims of copyright infringement.

- The County standard contract indemnity provision requires the Artist, as a design professional, to indemnify and defend the County from third party claims arising out of the negligence, recklessness, or willful misconduct of the Artist.
- Potential Impact: By excluding the defense obligation, the County will be responsible for costs to defend a potential case and will have to attempt to recover such costs from the Artist.

PROCUREMENT

Hood Design was selected by the Memorial Committee, from over 90 proposals from artists across the country and internationally, to design the Memorial under Phases A and B of the project. Hood Design will use the design documents from these prior phases to complete Phase C of the Memorial Project, which includes fabrication and delivery of the artwork by Hood Design.

REVIEW BY OTHERS

This item has been reviewed by County Counsel (Julie Surber, Principal Assistant County Counsel, 387-5455) on April 30, 2021; Real Estate Services Department (Jennifer Costa, Assistant Director, 387-5380) on April 30, 2021; Finance (Stephenie Shea, Administrative Analyst, 387-4919 and Wen Mai, Principal Administrative Analyst, 387-4020) on April 30, 2021; and County Finance and Administration (Matthew Erickson, County Chief Financial Officer, 387-5423) on April 30, 2021.

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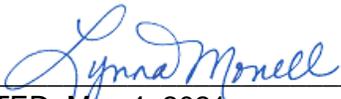
Record of Action of the Board of Supervisors
County of San Bernardino

APPROVED (CONSENT CALENDAR)

Moved: Joe Baca, Jr. Seconded: Col. Paul Cook (Ret.)

Ayes: Col. Paul Cook (Ret.), Janice Rutherford, Dawn Rowe, Curt Hagman, Joe Baca, Jr.

Lynna Monell, CLERK OF THE BOARD

BY 
DATED: May 4, 2021



cc: CAO- Hernandez w/agree
Contractor- C/O CAO w/agree
File- w/agree
LA 5/4/2021