

**2018 AGREEMENT  
SAVE DOWNTOWN STOCKTON FOUNDATION  
RELOCATION OF HUNTER SQUARE SPIRE TO  
MARTIN LUTHER KING, JR. PLAZA**

THIS AGREEMENT FOR SERVICES ("Agreement") is made \_\_\_\_\_, 2018 between Save Downtown Stockton Foundation, a California non-profit organization ("SDSF"), and the City of Stockton, a municipal corporation ("City") for the relocation of the City's real property, the Hunter Square Spire ("Spire"), to the City's real property, the Martin Luther King, Jr. Plaza ("Plaza"), and related improvements and construction ("Project") according to the Scope of Services as further contemplated and described herein. SDSF seeks to construct the Project at no cost to the City, and the Project shall constitute a "Donation" from SDSF to City.

In consideration of the mutual promises set forth in this Agreement, the parties agree as follows:

1. Services to be performed. SDSF shall perform the services for Project as set forth in this Agreement. SDSF shall begin performing the services when the funding has been raised for the entirety of the Project, which, if the entirety of the funding is raised, is anticipated to start in 2018 and completion of the Project shall occur within (2) two years of starting the Project. However, the parties may agree to change the beginning or ending date(s). To the extent that performance of the Service by SDSF depends upon approvals or other decisions by City, on City furnishing particular documents, information or approvals, and where SDSF cannot process the information in the City's timeframe, the time estimate for SDSF's completion of Service shall be extended to allow for City and SDSF's delay with respect thereto. These dates may be updated in the SDSF Calendar as defined in Exhibit 2- B.
2. Compensation. For the services under this Agreement, SDSF shall receive no monetary compensation from the City. SDSF shall be responsible for all services under the Agreement.
3. City Permits. SDSF will pay for City of Stockton building permits, traffic plan, and standard inspections per the Agreement and as set forth in meetings with Community Development Department, SDSF and SDSF subcontractors. City will not pay for a traffic control vendor, or unique requirements for transportation, or other requirements by other jurisdictions, if required, or other requirements or permits. Deficiency of Work by SDSF or subcontractor(s) or vendors will require additional permits or inspections, SDSF will pay for those requirements directly.
4. Scope of Project. SDSF shall furnish all services as described in this Agreement. The scope of work for the Project, and draft plans are subject to the terms and conditions of this Agreement. SDSF and City will be responsible and comply with the terms and conditions of the Agreement; completing the Project with a full understanding of the

Project standards and guidelines and project calendar, as well as compliance with laws, regulations and other legal requirements that apply to Project.

5. SDSF Deliverables. SDSF will provide monthly progress reports and deliverables, as provided in the Scope of Project, to Director of Public Works, in a manner agreeable to SDSF and to Public Works.
6. Warranty. SDSF warrants that the Services will be performed in a commercially reasonable manner consistent with the level of care and skill exercised by non-profit service groups when performing services of a similar nature under similar circumstances. SDSF further warrants that for ninety (90) days after the Notice of Acceptance is provided by the City, the improvements installed and constructed shall be free of defects in materials and workmanship. SDSF shall provide an Additional Warranty Period for certain components of the Project if the Project area or components are vandalized. This shall include repair of donor tiles/bricks, walls, benches and shade structure ("Additional Warranty Components"). SDSF will provide Additional Warranty for a period of two (2) years for the Additional Warranty Components only. The City shall notify SDSF if any vandalism has occurred to the Additional Warranty Components. SDSF will respond within two (2) weeks to the City in writing as to SDSF's course of action of the repair. SDSF reserves the right to repair and/or replace the Additional Warranty Components in a different manner than originally installed. The warranty under this section shall provide coverage equal to or greater than those warranties that are customary in the industry and, at a minimum, include all parts and labor.
7. Indemnification. To the fullest extent permitted by law, SDSF shall hold harmless, defend at its own expense, and indemnify the City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers, against any and all liability, claims, losses, damages, or expenses, including reasonable attorney's fees, arising from all acts or omissions to act of SDSF or its officers, agents, or employees in rendering services under this Agreement; excluding, however, such liability, claims, losses, damages, or expenses arising from the City of Stockton's sole negligence or willful acts. The duty to defend and the duty to indemnify are separate and distinct obligations. The indemnification obligations of this section shall survive the termination of this agreement.
8. Insurance. During the term of this Agreement, SDSF shall maintain in full force and effect at its own cost and expense the insurance coverage set forth on the attached Exhibit 4 and shall otherwise comply with the provisions of Exhibit 4.
9. Business License. Prior to its execution of this Agreement, SDSF shall obtain a City business license.
10. Ownership of Spire and related improvements. The Spire and all related improvements in the Plaza and within the boundaries of the Project, are and shall remain the property

of the City. SDSF is only providing Relocation Services to the City for the Project as a Donation and has no ownership interest in the improvements or the Project.

11. Changes to the Agreement. This Agreement may not be modified except in writing by both parties.
- 12.. Applicable Law. This Agreement shall be governed by the laws of the State of California and venue for any action brought in state court shall be in the Superior Court, County of San Joaquin, Stockton Branch or, for actions brought in federal court, the United States District Court for the Eastern District of California, Sacramento Division.
13. Non-Assignability. SDSF shall not assign or transfer this Agreement or any interest or obligation in this Agreement without the prior written consent of the City and then only upon such terms and conditions as City may set forth in writing.
14. Notices. All notices herein required shall be in writing and shall be sent certified or registered mail, postage prepaid, addressed as follows:

To SDSF:        Christina Frankel  
                      Executive Director  
                      924 N Yosemite Street  
                      Stockton, CA 95203

To City:        City Manager  
                      City of Stockton  
                      425 N. El Dorado St.  
                      Stockton, CA 95202

16. Conformance to Applicable Laws. SDSF shall comply with all applicable Federal, State and Municipal laws, rules and ordinances. SDSF shall not discriminate in the employment of persons or in providing services under this Agreement on the basis of any legally protected classification including race, color, national origin, sex or religion of such person.

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17. Miscellaneous Provisions.

- a. In the performance of this Agreement, SDSF, its agents shall have the status of an independent contractor and not as an employee of the City for any purpose.
- b. If either City or SDSF waives a breach of this Agreement, such waiver shall not constitute a waiver of other or succeeding breaches of this Agreement.
- c. This Agreement constitutes the entire understanding of the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the date and year first above written.

ATTEST:

City OF STOCKTON

BY: \_\_\_\_\_  
BRET HUNTER  
CITY CLERK  
CITY OF STOCKTON

BY: \_\_\_\_\_  
KURT O. WILSON  
CITY MANAGER

APPROVED AS TO FORM:

SAVE DOWNTOWN STOCKTON  
FOUNDATION

JOHN M. LUEBBERKE  
CITY ATTORNEY

BY: \_\_\_\_\_  
DEPUTY CITY ATTORNEY

BY: \_\_\_\_\_  
CHRISTINA FRANKEL  
EXECUTIVE DIRECTOR

**EXHIBIT 1  
CITY AND SDSF RESPONSIBILITIES**

**A. SDSF RESPONSIBILITIES**

1. SDSF will reinstall the Spire in the location of the fountain in the Project as identified in Exhibit 3.
2. SDSF has already received public input regarding the design options and has shared the results of that input with City.
3. SDSF shall be responsible to complete and pay for permits and inspections according to Article 3 of the Agreement and Exhibit 2.
4. Until Notice of Acceptance is issued by the City, SDSF will maintain the areas within the Project through construction (fence installation/repairs/replacement, graffiti removal, trash pickup and weed control.) SDSF shall not be responsible for any area outside of the Project area during construction. SDSF shall be responsible for the protection of existing facilities within the Project area to remain. If any repairs are needed, they shall be completed prior to Notice of Acceptance being issued.

**B. CITY RESPONSIBILITIES**

1. City is not obligated to pay or fund any portion of this Project.
2. City will store the Spire in the current condition and manner.
3. The Stockton Arts Commission and Community Services Department will assist with the publicizing and supporting the Project. This may include, but is not limited to distributing Project information, providing a letter of support, and updating the community on the Project design and purpose via City webpage, print, film, and social media.
4. The City will be responsible for maintaining the areas outside of the Project Area during construction unless the Project causes repairs to be required.

5. The City shall undertake site inspections per agreed upon Warranty period and notify SDSF of any needed repairs. After that time City will only contact SDSF regarding Additional Warranty Components items. SDSF and City shall work together to determine what repairs are needed.

## **EXHIBIT 2 SCOPE OF SERVICES**

SDSF shall perform the following services as a Donation to the City: the relocation installation, and reestablishment of the Hunter Square Spire ("Spire") on City property at Martin Luther King Jr Plaza ("Plaza"). The City property location is identified as the existing, drained fountain at the Plaza in Downtown Stockton at the Center of El Dorado, Fremont, Center, and Oak Streets.

### **A. GENERAL SCOPE OF THE PROJECT**

The general scope of the Project includes the following understandings:

1. The Project includes shade structures within the Project area. Permitting and engineering reviews will be the responsibility of SDSF.
2. The Project shall be limited to the inner circle of King Plaza which includes the walkway ring and existing unused fountain basin. SDSF shall not be required to improve or alter or bring up to code any other portion of the Plaza, including addressing the existing fountain sump pit outside of the walkway ring. SDSF may go outside of the project boundary to tie the project to existing utilities.
3. SDSF shall be allowed to make modifications to the existing fountain basin. Both parties agree that this area will no longer be used as a fountain.
4. The City shall not expand the project scope as defined in this Agreement.

### **B. SDSF CALENDAR**

SDSF shall submit a proposed calendar to Public Works to be finalized within thirty (30 days) after all funds are raised for the Project. This calendar will include start date, completion date and shall be updated if Project delays occur.

### **C. SCHEMATIC DESIGN PROPOSAL**

1. Draft Schematic Design Proposal.
  - a. SDSF has presented one or more concept site plans and concept renderings showing SDSF's Design Proposal for the Project to the public and the City, at various stages of design to gain approval by the City, to proceed through the City process and for review by the public

and donors for the purpose of describing the scope and potential design of the Project (the “Schematic Design Proposal”) draft which is included in this Exhibit and labeled as “Draft”.

- b. The Schematic Design Proposal draft was presented to Stockton Arts Commission on February 4, 2015, refined, and approved January 9, 2017.
  - c. The Schematic Design Proposal was presented at the Parks and Recreation Commission on April 27, 2015 and was favorably reviewed.
  - d. The Schematic Design Proposal included, indication of the scale, and proposed materials.
  - e. The Schematic Design Proposal also includes information on structural considerations, surface integrity, permanence, and protection against theft and vandalism.
  - f. The Project includes shade structures within the project area.
2. Final Schematic Design Proposal.
- a. The Project has been presented to the public on two occasions and the final proposal to City is based on public’s preferred option of the Sundial Option.
  - b. The Final Schematic Design Proposal, as approved by Public Works shall include all draft items as well as a finalized outline of the proposed construction, Additional Warranty Components and a schedule for the Project construction which will be used for the permitting process.

#### **D. CONSTRUCTION DOCUMENTS.**

1. Documents.
- a. SDSF, shall be responsible for the preparation of any drawings beyond the Final Schematic Design Proposal depicting both the fabrication and installation of the Project (“Construction Documents”)
  - b. SDSF shall be responsible for obtaining all information necessary for preparation of the Construction Documents for the permitting process, including without limitation, any field measurements of the proposed site.
  - c. Construction Documents must be certified by a qualified Architect or engineer, licensed by the State of California and must conform to all applicable federal, state and local laws and regulations. The Construction Documents for the Project are subject to approval by City's normal permit process.
  - d. Those components of the Construction Documents for the Project that are within the City’s Standard Specification, such as sidewalk



and ramps, must be designed in accordance with City's standard specifications ("City's Standard Specifications"). Other components of the Construction Documents for the Project, such as the railings, donor bricks, donor wall, concrete seat wall, and shade structure will be reviewed and approved by City's Department of Public Works. The Construction Documents, including the approval of other components, and City's Standard Specifications shall collectively be referred to as the "Plans." Once the Construction Documents are approved by the City's Public Works and Community Development Departments, the Director of Public Works will notify SDSF in writing.

## 2. Construction Document Approval

- a. When seeking approval of the Construction Documents, SDSF shall submit the following for City's approval:
  - i. Three copies of the Plans on reproducible sheets measuring 24 inches by 36 inches which include a "wet signature" by Engineer;
  - ii. Two sets of all other requested documents- including all design documents and engineering calculations associated with the submitted construction documents; and
- b. City's approval of the Plans shall not release SDSF of the responsibility for the correction of mistakes, errors or omissions which may be the result of circumstances unforeseen at the time the Plans were developed or approved.
- c. SDSF shall comply with City's Standard Specifications and Standard Details to the extent such details are applicable to the Project. References in the Standard Specifications to "Contractor" shall be deemed to mean SDSF, including without limitation, SDSF's subcontractors.
- d. To the extent that the City's Standard Specifications conflict with the provisions set forth in this Agreement, this Agreement shall control.

## **E. NOTICE TO PROCEED.**

1. If all approvals are secured, the Director of Public Works will separately issue written Notices to Proceed for Construction. See Section F. Construction below for more details on timing.
2. SDSF shall not begin construction of Project until the Director of Public Works has issued such Notice.
3. If Notice to Proceed for the Project is issued such that City and SDSF agree that there is reason to anticipate a delay in the

mutually agreed schedule of performance, then City and SDSF shall identify the revised calendar in writing on the Notice to Proceed or other mutually agreed upon manner.

## **F. CONSTRUCTION.**

### **1. Final Project**

- a. The Final Project is inclusive of the approved final Plans filed with the Director of Public Works.
- b. In the event of conflict between the final plans and this Agreement, this Agreement will control.

### **2. Project construction, transportation, supervision.**

- a. SDSF shall complete the Project consistent with the final Plans, including without limitation, supervising all aspects of construction of the Project to ensure proper construction.
- b. As described below, SDSF shall be responsible for the transportation and delivery of the Spire to the Site.
- c. SDSF shall be responsible for the installation of the Project at the Site consistent with the Construction Documents for the Project which were approved by City.

### **3. Deviations from Project.**

- a. The goal of the parties for the Project is a product that represents the efforts of SDSF and satisfies the requirements set forth in the Agreement for the Project.
- b. The parties recognize that they must consult closely during all stages of development of the Project, including without limitation, during construction of the Project in order to accomplish these goals and that changes from the Agreement may become desirable as the Project is constructed.
- c. Additionally, the parties recognize and agree that certain specific items regarding the Project, such as, but not limited to, the size, color, material (including grade of the material), of some of the elements of the Project are not identified in the Agreement.
- d. To the extent that any specification for the Project is not identified in the Agreement, SDSF shall seek City's prior approval of these specific items before commencing with construction of the Project.

### **4. Change in Design**

- a. The parties also recognize that the shift in Project from Draft Schematic Design Proposal to a full-scale work may require adjustments.

- b. SDSF reserves the right to make minor adjustments to the Project, as SDSF deems aesthetically or fiscally necessary to deliver the Project within the fundraising efforts.
- c. Additionally, SDSF shall make no change in the design that requires a modification of the construction documents without the prior written approval of City.

5. Material Deviations.

- a. Any material deviation from the Final Project in the scope, design, color, size, material, utility and support requirements, texture or location of the Project must be approved in writing and in advance by City before SDSF proceeds with completion of the Project.
- b. Without limiting the generality of the foregoing, material deviation also includes any change from the Final Project which affects the fabrication, schedule of delivery or installation of the Project, and preparation of the Site.

6. Personnel.

- a. SDSF has, or will secure at SDSF's expense, all personnel and subcontractors required to perform SDSF's services. Such services may, at SDSF's discretion, be a volunteer workforce.
- b. All persons retained by SDSF to act as subcontractors, shall be experienced with similar respective work and possess the requisite licenses; permits and insurance necessary.
- c. SDSF shall review with the City proposed personnel and subcontractors. SDSF shall reserve the right to change the workforce as necessary to complete the project.

7. Review of Progress and Reports.

At reasonable times and with advance notice to SDSF, City has the right to review the work in progress and to require and receive progress reports from SDSF.

8. Risk of Loss.

Until the Project is formally accepted by City, any damage to, theft or vandalism to, or acts of God or nature affecting the Project are the responsibility of SDSF, including, but not limited to, any loss occurring during the construction, transportation, delivery or installation of the Project or Spire. SDSF reserves the right to modify the Project if loss is beyond the Project's budget.

9. Off Site Elements.

City and SDSF agree that various elements of the Project may be fabricated or stored at locations away from the Site (collectively,

“Off-Site Elements”). The Off-Site Elements, are to be defined per the Project.

#### 10. Inspection Notice

- a. SDSF shall notify City in writing when each element of the Project is ready for inspection, for those items required to be inspected, prior to transporting the Off-Site Element to the Site.
- b. The parties acknowledge and agree that City has the right to inspect each of the Off-Site Elements for those items required to be inspected.
- c. Prior to transporting the Spire, the City and SDSF shall inspect the condition of the Spire to determine its present condition. All parties shall agree to its existing condition prior to transportation. After the Spire is transported, SDSF will be responsible for any change in condition of the Spire.
- d. After completion of inspection of each Off-Site Element, the City shall provide SDSF with a written Notice of Completion of Inspection.

#### 11. Off-Site Defects Notice

- a. If there are defects or deficiencies in the Off-Site Elements, not including the Spire, which prevent formal acceptance, the defects or deficiencies will be described in writing (“Off-Site Defects Notice”).
- b. In the event that City issues an Off-Site Defects Notice, SDSF shall have the opportunity to promptly remedy any defects to the satisfaction of the Director of Public Works.

#### 12. Delivery of Off-Site Elements to Site

- a. Upon issuance of the Transport Notice to Proceed, SDSF shall deliver the Off-Site Element to the Site.
- b. SDSF shall coordinate with Director of Public Works regarding the time, place and manner of delivery and installation of the Off-Site Elements.
- c. The Director of Public Works shall have the right to inspect the Off-Site Elements, not including the Spire, upon arrival at the Site in order to determine whether it has been damaged in transit.
- d. In the event the City elected to delay its inspection of the Off-Site Elements, not including the Spire, until it arrived at the Site, City will communicate defect or deviation.
- e. SDSF shall make an attempt to remedy any damage to the Spire caused by transportation. The solution for repair, if feasible and affordable will be agreed upon by SDSF and the City. Other defects or directed by City in the Off-Sites Elements Inspection Notice will be to the satisfaction of the Director of Public Works.

13. Work at the Site. Plans and Installation

- a. Plans- SDSF shall provide all labor and material incorporated in the Project to be furnished in accordance with the requirements set forth in the Plans for the Project.
- b. If, during the course of construction, City determines in City's sole discretion that the public safety requires modification of, or the departure from, the Plans, City shall have the authority to require SDSF to address the public safety issues and to present SDSF's proposed modifications to the Public Works Director for review and approval of the proposed modifications.
- c. The parties acknowledge that the Plans, once approved by City, shall be final and that, except as expressly provided in this Agreement, no revisions to the Plans shall be permitted except with the prior written approval of City
- d. Installation. SDSF shall be responsible for construction, travel to site/installation of Spire at the Site, including without limitation, supervising the work of any subcontractors and coordinating the inspection of the installation of the Project with the City.
- e. Travel and installation of the Spire requires the SDSF subcontractor(s) provide appropriate insurance and apply for/receive licenses, including transportation permits and building permits, encroachment permits and pay for street closure subcontractor and traffic control plans. Under this Agreement, subcontractor(s) must provide adequate insurance as indicated in Exhibit 4.

14. Appearance of Site.

- a. SDSF shall maintain a neat appearance to the work at the Site until construction is complete.
- b. SDSF shall be responsible for any clean-up of the Site made necessary by the Project, including without limitation, removal of equipment, materials and the repair of any portion of the Site or surrounding area damaged by the Project caused by the negligence or willful acts or omissions of SDSF or SDSF's subcontractors.

15. City's Access to Site.

- a. City's designated representatives shall have during the progress of the Project at the Site have access to the Project for inspection purposes by requesting access from SDSF during reasonable work hours. .
- b. If the City Representative determines that all or any portion of the work done on the Spire or Project is not in compliance with the Plans, City shall notify SDSF of the same in writing.

**16. Representatives of SDSF.**

- a. SDSF shall designate in writing before starting work, an authorized representative or representatives who shall have the authority to represent and act for SDSF and who shall be responsible for all work as performed per approved Plans
- b. When work is not in progress and during periods when work is suspended, arrangements acceptable to the City's designated representative(s) shall be made for any emergency work which may be required.
- c. City shall also designate one or more authorized representative(s) who shall have the authority to represent City.
- d. SDSF's authorized representative(s) shall be present at the site of the work during all construction activities.
- e. Prior to commencement of the work, the parties shall mutually agree to an inspection schedule, which schedule may be adjusted from time to time by mutual agreement, separate from Community Development Department inspections.

**17. Emergency Numbers during Installation**

- a. SDSF shall provide to the Director of Public Works the names and telephone numbers of at least one person in charge/responsible for the work who can be reached personally in case of emergency 24 hours a day, 7 days a week.
- b. The City shall provide SDSF with contact information for all authorized representatives, as well as, the name(s) and contact information who can be reached in case of emergency.

**G. AFTER INSTALLATION AND COMPLETION.****1. Site Completion Notice/Notice of Completion**

SDSF shall notify Director of Public Works that the Project has been completed (Site Completion Notice).

**2. Acceptance Notice/Defects Notice**

- a. Within thirty (30) days of City's receipt of the Notice from the SDSF City shall notify SDSF in writing that the Project as completed meets the requirements of this Agreement ("Acceptance Notice").
- b. If the Project does not meet this Agreement's requirements, City shall notify SDSF of the defects ("Defects Notice") in writing. If the defects are in violation of codes, statutes or laws, SDSF shall correct immediately. If the defects are related to quality or aesthetics SDSF and the City shall come to an agreement on the defects before issuing a written Defects Notice.
- c. The parties recognize and agree that the Project will not be formally accepted by City, unless the Director of Public Works approves the

construction. The City will formally accept the completion of the Project (15) fifteen days after all defect items have been corrected by SDSF or through a mutually agreed written understanding of the conditions have been met between the City and SDSF.

3. Remedy of Defects.

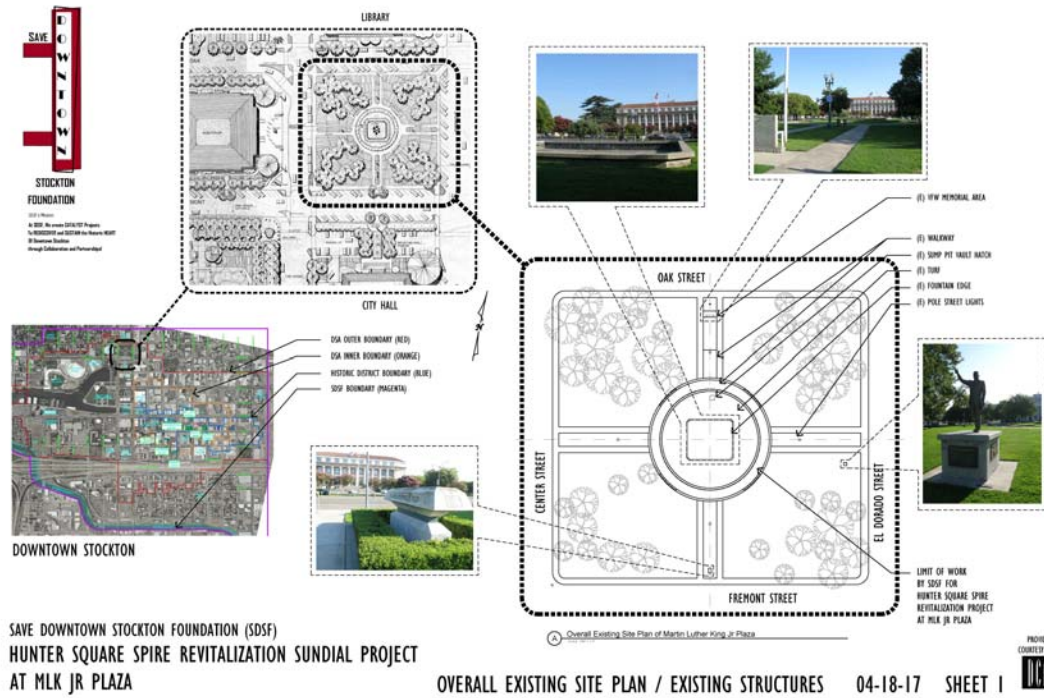
SDSF shall remedy at SDSF's own cost any defects noted in City's Defects Notice to the satisfaction of the Director of Public Works.

4. Maintenance by City. The City shall be responsible to maintain all the Project work, including the concrete work, ramps, stairs and original fountain edge after Notice of Completion. The City is not obligated to maintain the bricks, benches, wall, spire or shade structure to any greater extent than applies to normal parks maintenance. City shall not be responsible for replacement and repair of donor bricks and spire. SDSF shall retain responsibility of replacing and/or repairing bricks and spire. The City may not be able to replace portions or components of the Spire missing or damaged from extensive vandalism. Such repairs or replacements will be subject to available funding.

### EXHIBIT 3

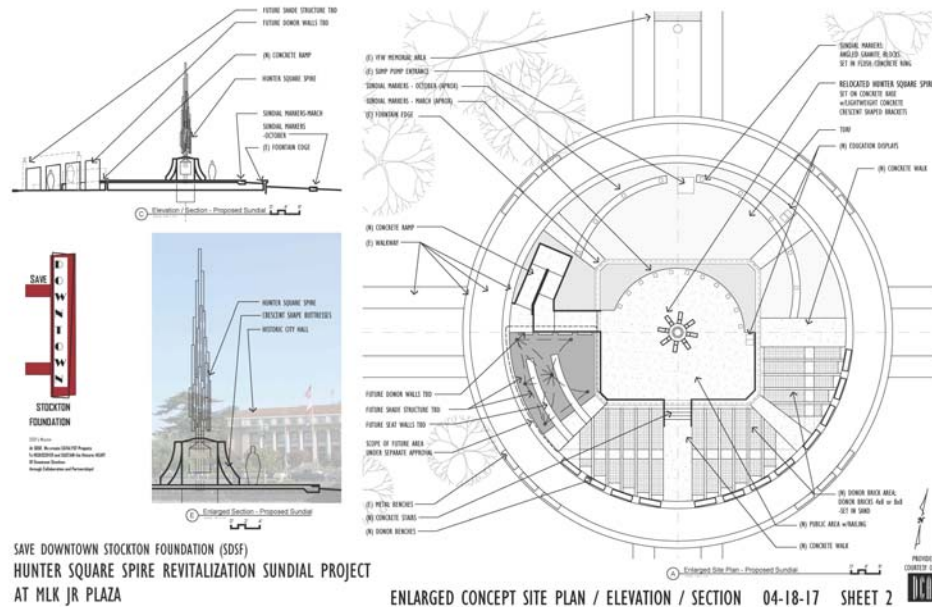
#### Draft Schematic Design Draft Plans- April 2017

#### 1.1 Location- Existing Site Plan Draft 4-2107

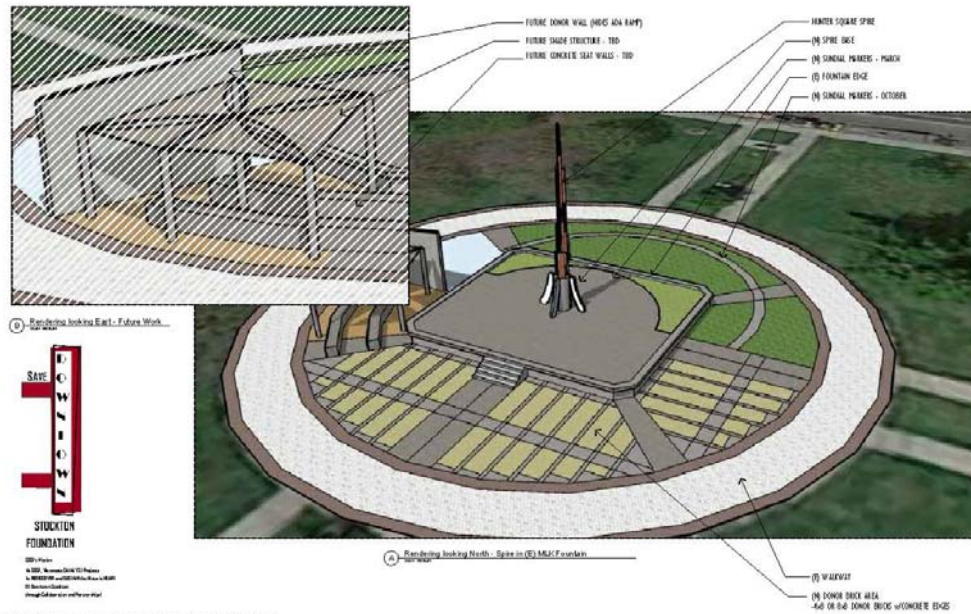




## 1.2 Concept Site Plan Draft 4-2017



### 1.3 Concept Rendering Draft 4-2017



CONCEPT RENDERINGS 04-18-17 SHEET 3



## EXHIBIT 4 INSURANCE

SDSF shall procure and maintain for the duration of the Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Artist, their agents, representatives, employees or subcontractors.

### MINIMUM SCOPE AND LIMIT OF INSURANCE

#### Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. **Automobile Liability (AL):** ISO Form Number CA 00 01 covering any auto (Code 1), or if SDSF has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation:** as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than **\$1,000,000** per accident for bodily injury or disease.

If SDSF maintains higher limits than the minimums shown above, the City of Stockton requires and shall be entitled to coverage for the higher limits maintained by SDSF. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City of Stockton.

#### Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

##### ***Additional Insured Status***

*The City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers* are to be covered as additional insureds on the CGL and AL policy with respect to liability arising out of work or operations performed

by or on behalf of SDSF including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to SDSF's insurance (**at least as broad as** ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).

***Primary Coverage***

For any claims related to this Agreement, SDSF insurance coverage shall be endorsed as **primary** insurance as respects the *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers*. Any insurance or self-insurance maintained by the *City of Stockton, its Mayor, Council, officers, representatives, agents, employees and volunteers* shall be excess of SDSF insurance and shall not contribute with it. The City of Stockton does not accept endorsements limiting SDSF insurance coverage to the sole negligence of the Named Insured.

***Notice of Cancellation***

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City of Stockton.

***Waiver of Subrogation***

SDSF hereby grants to the City of Stockton a waiver of any right to subrogation which any insurer of said SDSF may acquire against the City of Stockton by virtue of the payment of any loss under such insurance. SDSF agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City of Stockton has received a waiver of subrogation endorsement from the insurer.

***Deductibles and Self-Insured Retentions***

Any deductibles or self-insured retentions must be declared to and approved by the City of Stockton Risk Services. The City of Stockton may require SDSF to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

***Acceptability of Insurers***

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII if admitted to do business in the State of California; If not admitted to do business in the State of California, insurance is to be placed with insurers with a current A.M. Best's rating of no less than A+:X.

***Claims Made Policies***

If any of the required policies provide claims-made coverage:

- The Retroactive Date must be shown, and must be before the date of the Agreement or the beginning of work.
- If Claims Made policy form is used, a three (3) year discovery and reporting tail period of coverage is required after completion of work.

***Verification of Coverage***

SDSF shall furnish the City of Stockton with original certificates and amendatory endorsements required by this clause. All certificates and endorsements are to be received and approved by the City of Stockton Risk Services before work commences. Failure to obtain the required documents prior to the work beginning shall not waive SDSF obligation to provide them. The City of Stockton reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time, for any reason or no reason.

SDSF shall, prior to the commencement of work under this Agreement, provide the City of Stockton with a copy of its Declarations Page and Endorsement Page for each of the required policies.

***Special Risks or Circumstances***

The City of Stockton reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other circumstances.

***Certificate holder address***

Proper address for mailing certificates, endorsements and notices shall be:

- City of Stockton
- Attention: Risk Services
- 425 N. El Dorado Street
- Stockton, CA 95202

City of Stockton Risk Services Phone: 209-937-5037

City of Stockton Risk Services Fax: 209-937-8558

***Maintenance of Insurance***

If at any time during the life of the Agreement or any extension, SDSF fails to maintain the required insurance in full force and effect, all work under the Agreement shall be discontinued immediately. Any failure to maintain the required insurance shall be sufficient cause for the CITY to terminate this Agreement.

***Subcontractors***

If SDSF should subcontract all or any portion of the work to be performed in this Agreement, SDSF shall cover the subcontractor, and/or require each subcontractor to adhere to all subparagraphs of these Insurance Requirements section. Similarly, any cancellation, lapse, reduction or change of subcontractor's insurance shall have the same impact as described above.