CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: July 15, 2019

ITEM: Motion – Approval of Artist Agreement – "Aqua Strata"

FINANCIAL IMPACT: Cost not to exceed $34,000 to be paid from budgeted funds in the Public Art account (437.400.470.5400.750). The total budget for this project is $35,000 with $1,000 previously paid to the artist for a project proposal. A portion of the cost of this project is being covered by a $10,000 Bravo Art Programming Grant.

BACKGROUND: Funds are budgeted for community event artwork with the theme of water quality awareness. Staff and the Public Arts Advisory Commission recommend that an agreement be entered into with Bounnak Thammavong Artworks (BTA) for crowd-sourced artwork not to exceed $34,000. The Water Quality Public Art Workgroup met on June 19, 2019 to review the submitted proposal. The Workgroup unanimously approved the proposal and recommended to the Public Arts Advisory Commission that an agreement be entered into with BTA. The Public Arts Advisory Commission approved the Workgroup's recommendation at its June 27, 2019 meeting.

BTA was selected to submit a proposal based upon their qualifications including past participation in Art on the Campus by all three artists on the BTA team (Bounnak Thammavong, Stephanie Sailer, and Michael Sneller), experience in crowd-sourced artwork ("Birds of a Feather", Des Moines International Airport), and their ability to work within an abbreviated timeframe.

The Council is asked to approve an agreement with BTA. The agreement is for the crowd-sourced artwork component of the Water Quality Community Service Public Art Project only. The crowd-sourced portion of the artwork project is planned to take place on September 21, 2019 during Illumifest on the City Campus. Following Illumifest, the artist will complete the artwork utilizing watercolor paintings created by event attendees. The final artwork will consist of three permanent interior sculptures that will become part of the City's public art collection. The agreement and proposal are attached for your reference.

The attached agreement was reviewed by the Legal Department.

OUTSTANDING ISSUES: None

RECOMMENDATION: Staff and the Public Arts Advisory Commission recommend that the City Council approve the agreement with Bounnak Thammavong Artworks for the Water Quality Event Artwork titled "Aqua Strata".

Lead Staff Member: Sally Ortgies, Director of Parks & Recreation

STAFF REVIEWS

Department Director	Sally Ortgies, Director of Parks & Recreation
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	Public Arts		
Date Reviewed	June 27, 2019		
Recommendation	**Yes**	No	Split

CITY OF WEST DES MOINES, PUBLIC ARTS ADVISORY COMMISSION
PUBLIC ART PROGRAM

DESIGN DEVELOPMENT / FINAL PROPOSAL / PROJECT IMPLEMENTATION
AGREEMENT BY AND BETWEEN CITY OF WEST DES MOINES AND BOUNNAK THAMMAVONG

THIS AGREEMENT is made on July 15, 2019 between the City of West Des Moines on behalf of the City of West Des Moines, Public Arts Advisory Commission (collectively "the OWNER"), and Bounnak Thammavong ("the ARTIST"). The OWNER'S REPRESENTATIVE shall be the Director of Parks and Recreation or her/his designee.

WHEREAS, the OWNER desires to commission and acquire a crowd-sourced PUBLIC WORK OF ART for the community of West Des Moines, Iowa; and

WHEREAS, the OWNER desires that the ARTIST to create a public work of art ("PUBLIC WORK OF ART") in the ARTIST'S unique style, and expressed with community engagement and participation; and

WHEREAS, the ARTIST has submitted a Preliminary Proposal for the PUBLIC WORK OF ART "Aqua Strata" (Attachment A).

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

Article 1. Scope of Services

1.1 General

a. The ARTIST shall perform all services and furnish all supplies, materials and equipment as necessary for the design, execution, fabrication, transportation and installation of the PUBLIC WORK OF ART at the site.

b. The ARTIST shall determine the artistic expression, scope, design, color, size, material, and texture of the PUBLIC WORK OF ART, subject to review and acceptance by the OWNER'S REPRESENTATIVE as set forth in this Agreement.

c. The ARTIST shall consistently, frequently, and cooperatively consult with OWNER'S REPRESENTATIVE throughout the duration of this Agreement.

1.2 Design Development and Final Proposal

a. Within thirty (30) days after the execution of this Agreement, the ARTIST shall prepare and submit a Final Proposal including further development of the PUBLIC WORK OF ART to the OWNER'S REPRESENTATIVE's reasonable satisfaction. The Final Proposal shall specify such materials, textures, colors, dimensions, weights, finish, preliminary maintenance recommendations and proposed installation method; and shall include such drawings and other documentation and models as are required to present a meaningful representation of the final design of the proposed PUBLIC WORK OF ART. The Final Proposal shall include the location(s) of the proposed PUBLIC WORK OF ART. The ARTIST shall prepare a narrative statement describing the relevance and meaning of the Final Proposal in relation to this PUBLIC WORK OF

ART, and provide written instructions for proposed and appropriate maintenance and preservation of the PUBLIC WORK OF ART. The Final Proposal shall include a budget, not to exceed $34,000, that includes estimated costs for design, engineering, insurance, execution, fabrication, transportation, installation, and the ARTIST'S fee.

b. The OWNER'S REPRESENTATIVE shall within fifteen (15) days following the ARTIST'S submission of the Final Proposal, notify the ARTIST whether OWNER approves or disapproves the Final Proposal. During this period, the ARTIST shall be available as reasonably required to communicate with the OWNER'S REPRESENTATIVE regarding the Final Proposal.

c. If the OWNER'S REPRESENTATIVE determines that the Final Proposal is disapproved, it shall provide the ARTIST with a statement in writing of its reasons for such disapproval. In such event, the OWNER'S REPRESENTATIVE shall determine whether the ARTIST may submit a second Proposal for the PUBLIC WORK OF ARTwithin a reasonable period of time as specified by the OWNER'S REPRESENTATIVE or whether to terminate this Agreement. Within fifteen (15) days following a second authorized Proposal submission by the ARTIST, the OWNER'S REPRESENTATIVE shall notify the ARTIST in writing whether it approves or disapproves the Proposal. If the OWNER'S REPRESENTATIVE determines that the second proposal is disapproved, it shall provide the ARTIST with a statement in writing of its reasons for disapproval, whereupon this Agreement shall terminate.

d. In the event of termination of the Agreement pursuant to subsection (c), the ARTIST shall retain the Proposal and all compensation amounts paid prior to the notice of termination and neither party shall be under any future obligation to the other in respect of the subject matter thereof.

e. Although the ARTIST shall have the responsibility and authority for all aspects of the PUBLIC WORK OF ART, the ARTIST shall give appropriate consideration to input received from the OWNER'S REPRESENTATIVE, City staff, the community, the Artist Selection Committee, and the Public Arts Advisory Commission.

f. The ARTIST may provide input to the OWNER'S REPRESENTATIVE with respect to all of the other physical elements of the site locations, but the OWNER shall have the final authority for all such other physical elements beyond the PUBLIC WORK OF ART.

g. The ARTIST agrees to design and install the PUBLIC WORK OF ART in such a way as to allow it to be removed and relocated without damage, destruction or other change of the PUBLIC WORK OF ART.

h. The OWNER may require the ARTIST to make such revisions to the Final Proposal as are necessary for the PUBLIC WORK OF ART to comply with applicable statutes, ordinances, regulations, requirements of any governmental regulatory agency having jurisdiction over the project, or for the safety of the public.

i. The OWNER may also request revisions for other practical (non-aesthetic) reasons.

j. The ARTIST shall receive no revision or redesign fees.

k. Upon approval of the Final Proposal and detailed description, the OWNER shall become owner of all the studies, sketches, drawings, paintings, diagrams, working drawings, graphic material, and models or related products as presented in the Final Proposal to the Public Arts Advisory Commission.

1.3 Execution of the Work

a. The ARTIST shall be responsible for all aspects of the crowd-sourced portion of the PUBLIC WORK OF ART to take place at Illumifest from 4:00 pm to 9:00 pm on Saturday, September 21, 2019 as outlined in the Preliminary Proposal.

b. The ARTIST shall complete fabrication and installation of the permanent PUBLIC WORK OF ART by February 1, 2020. Such schedule may be amended by written agreement between the OWNER'S REPRESENTATIVE and the ARTIST.

c. The OWNER shall have the right to review the PUBLIC WORK OF ART at reasonable times during the fabrication thereof. The ARTIST shall submit to the OWNER progress reports upon request of the OWNER.

d. The ARTIST shall be responsible for obtaining any and all permits from any governmental regulatory agency required to perform any aspect of the fabrication and installation of the PUBLIC WORK OF ART if necessary. The OWNER'S REPRESENTATIVE will handle any approvals required by the City's Development Services Department.

e. The ARTIST shall complete the fabrication and installation of the PUBLIC WORK OF ART in substantial conformity with the Final Proposal, detailed working drawings, and approved schedule.

f. The ARTIST shall present to the OWNER'S REPRESENTATIVE in writing for further review and approval any significant changes in scope, design, color, size, material or texture of the PUBLIC WORK OF ART not permitted by or not in substantial conformity with the Final Proposal or detailed working drawings. A significant change is any change in scope, design, color, size, material, texture or location of the site of the PUBLIC WORK OF ART which affects installation, scheduling, site preparation or maintenance for the PUBLIC WORK OF ART or the concept of the PUBLIC WORK OF ART as represented in the Final Proposal.

1.4 Delivery and Installation

a. The ARTIST shall notify the OWNER'S REPRESENTATIVE in writing when the fabrication of the PUBLIC WORK OF ART is complete and the ARTIST is ready for its delivery and installation at the site.

b. The ARTIST agrees to notify the OWNER'S REPRESENTATIVE, no fewer than thirty (30) days prior to the ARTIST'S intended time of delivery to determine the particulars of delivery including time, location and agent designated by the OWNER.

c. The ARTIST shall deliver and install the completed PUBLIC WORK OF ART at the site in compliance with the schedule.

d. The ARTIST shall be responsible for all expenses, labor, and equipment to prepare the site for the timely installation of the PUBLIC WORK OF ART, including mounting devices.

1.5 Post-Installation

a. Within thirty (30) days after the installation of the PUBLIC WORK OF ART, the ARTIST shall furnish the OWNER'S REPRESENTATIVE with the following photographs/images of the PUBLIC WORK OF ART:

(i) a minimum of twenty-four (24) photographs/images which document the process and development of the PUBLIC WORK OF ART from community engagement and participation to beginning fabrication through completion. Images must be 600 dpi, and suitable for electronic and print publication

(ii) an additional minimum of twelve (12) photographs/images of the completed and installed PUBLIC WORK OF ART, taken from at least three different viewpoints

b. The abovementioned photographs/images shall become the property of the City to be used at the City's discretion.

c. The ARTIST shall be notified of any dates and times for public art dedication or presentation ceremonies relating to the Public Art Program. The OWNER shall not be required to pay the ARTIST'S expenses to attend any such ceremonies.

d. The OWNER'S REPRESENTATIVE shall use its best efforts to arrange for publicity for the completed PUBLIC WORK OF ART in such publications as may be determined between the OWNER'S REPRESENTATIVE and the ARTIST as soon as practicable following installation.

e. Upon installation of the PUBLIC WORK OF ART, the ARTIST shall provide to the OWNER'S REPRESENTATIVE written, final instructions for appropriate maintenance and preservation of the PUBLIC WORK OF ART.

1.6 Final Acceptance

a. The ARTIST shall advise the OWNER'S REPRESENTATIVE in writing when all services required by Article 1, including those described in Section 1.5., have been completed in substantial conformity with the Final Proposal.

b. The OWNER'S REPRESENTATIVE shall notify the ARTIST in writing of its final acceptance of the PUBLIC WORK OF ART.

c. Final acceptance shall be effective as the earlier of: (1) the date of the OWNER'S REPRESENTATIVE'S notification of final acceptance; or, (2) the 60th day after the ARTIST has sent the written notice to the OWNER'S REPRESENTATIVE under section 1.6.(a), unless the OWNER'S REPRESENTATIVE upon receipt of such notice and prior to the expiration of the 60-day period, gives the ARTIST written notice specifying and describing the services which have not been completed.

1.7 Risk of Loss

The risk of loss or damage to the PUBLIC WORK OF ART shall be borne by the ARTIST until final acceptance by the OWNER, and the ARTIST shall take such measures as are necessary to protect the PUBLIC WORK OF ART from loss or damage until final acceptance.

1.8 Indemnity

a. The ARTIST agrees to indemnify and hold harmless the OWNER from any liabilities, willful or non-willful acts of negligence by the ARTIST or the ARTIST'S employees, subcontractors or agents, for any loss, theft, mutilation, vandalism or other damage (including that caused by acts of God) that may befall the

PUBLIC WORK OF ART during any activities related to the planning, creation, delivery or installation of the PUBLIC WORK OF ART, or for any failure of warranty as described in Article 4.

b. Upon final acceptance of the PUBLIC WORK OF ART, and to the extent permitted by Iowa law, the ARTIST hereby agrees to indemnify and hold harmless the OWNER, their officials, employees, agents, contractors, and assigns from any and all claims, demands, causes of action, liability, loss, damage, or injury, both to person and property, arising out of, related to, or connected with the PUBLIC WORK OF ART. This indemnification applies to and includes, but is not limited to, the payment of all penalties, fines, judgments, awards, decrees, attorney's fees, expert witness fees, investigation fees, settlements, related costs or expenses, interest, and any reimbursements incurred by or assessed to the OWNER, their officials, employees, agents, contractors and assigns. The ARTIST shall provide the OWNER with prompt notice of any such claim, demand, or action so that the OWNER may, at its option, defend or settle such claim, demand, or action. The ARTIST understands and agrees that the ARTIST shall have no right of coverage under any and all existing or future OWNER insurance policies. This indemnification provision is effective upon execution and shall be of indefinite duration unless otherwise terminated by the OWNER, at the OWNER'S sole discretion. The terms of this provision shall be binding upon the ARTIST'S heirs, successors, and assigns.

1.9 Title. Title to the PUBLIC WORK OF ART shall pass to the OWNER upon final acceptance.

Article 2. Compensation and Payment Schedule

2.1 Fixed Fee. The OWNER shall pay the ARTIST a fixed fee of $34,000, which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the ARTIST under this Agreement. The fee shall be paid in the following installments, each installment to represent full and final, non-refundable payment for all services, expenses, and materials provided prior to the due date thereof. The ARTIST shall invoice the OWNER for each payment request.

a. Installment One - $19,040 within ten (10) days after execution of this Agreement, recognizing the ARTIST has already invested time and expense in preliminary design coordination with the OWNER and purchase of raw materials and event equipment and supplies.

b. Installment Two - $7,480 within ten (10) days after the ARTIST notifies the OWNER that the PUBLIC WORK OF ART is fabricated and ready for installation at the site.

c. Installment Three - $7,480 within fifteen (15) days after final acceptance.

2.2 ARTIST'S Expenses. The ARTIST shall be responsible for the payment of all mailing or shipping charges on submissions to the OWNER'S REPRESENTATIVE, the cost of transporting the PUBLIC WORK OF ART to the site, the cost of installation, and the costs of all travel by the ARTIST and the ARTIST'S agents and employees necessary for the proper performance of the services.

Article 3. Time of Performance

3.1 Duration. The services to be required of the ARTIST as set forth in Article 1 shall be completed in accordance with the schedule for completion of the PUBLIC WORK OF ART as proposed by the ARTIST and approved by the OWNER'S REPRESENTATIVE pursuant Section 1.3, provided that such time limits may be

extended or otherwise modified by written agreement between the ARTIST and the OWNER'S REPRESENTATIVE.

3.2 Construction Delays. If, when the ARTIST completes fabrication or procurement of the PUBLIC WORK OF ART in accordance with the approved schedule and notifies the OWNER that the PUBLIC WORK OF ART is ready for installation, the ARTIST is delayed from installing the PUBLIC WORK OF ART within the time specified in the schedule as a result of an unreasonable delay on the part of the OWNER, the OWNER shall provide storage, or reimburse the ARTIST for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the PUBLIC WORK OF ART can be installed.

3.3 Early Completion of ARTIST Services. The ARTIST shall bear any transportation and storage costs resulting from the completion of the ARTIST'S services prior to the time provided in the schedule for installation.

3.4 Time Extensions. The OWNER'S REPRESENTATIVE may grant a reasonable extension of time to the ARTIST in the event that there is a reasonable delay on the part of the OWNER in performing its obligations under this Agreement, or if conditions beyond the ARTIST'S control or Acts of God render timely performance of the ARTIST'S services impossible or unexpectedly unreasonably burdensome. Likewise, the ARTIST shall always grant a reasonable extension of time to the OWNER in the event that there is a delay on the part of the ARTIST in performing its obligations under this Agreement, or if conditions beyond the OWNER'S control or Acts of God render timely performance of the OWNER'S services impossible or unexpectedly unreasonably burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such condition.

Article 4. Warranties

4.1 Warranties of Title. The ARTIST represents and warrants that: (a) the PUBLIC WORK OF ART is solely the result of the artistic effort of the ARTIST; (b) except as otherwise disclosed in writing to the OWNER'S REPRESENTATIVE, the PUBLIC WORK OF ART is unique and original and does not infringe upon any copyright; (c) that the PUBLIC WORK OF ART, or a duplicate thereof, has not been accepted for sale elsewhere; and (d) the PUBLIC WORK OF ART is free and clear of any liens from any source whatever. The ARTIST shall indemnify and defend the OWNER if a third party asserts a copyright infringement or claim involving the PUBLIC WORK OF ART.

4.2 Warranties of Quality and Condition. The ARTIST represents and warrants, except as otherwise disclosed to the OWNER in writing in connection with the submission of the Proposal and pursuant to Article 1 that: (a) the execution and fabrication of the PUBLIC WORK OF ART will be performed in a high-quality workmanlike manner; (b) the PUBLIC WORK OF ART, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of inherent vice or qualities which cause or accelerate deterioration of the PUBLIC WORK OF ART; (c) reasonable maintenance and preservation instructions to be submitted by the ARTIST to the OWNER'S REPRESENTATIVE hereunder, shall adequately maintain and preserve the PUBLIC WORK OF ART; and (d) reasonable maintenance and preservation efforts shall adequately ensure preservation of the PUBLIC WORK OF ART for a reasonable period of time.

The warranties described in this Article 4 shall survive for a period of five years after the final acceptance of the PUBLIC WORK OF ART. The OWNER shall give notice to the ARTIST of any observed breach with reasonable promptness. The ARTIST shall, at the request of the OWNER, and at no cost to the OWNER, cure reasonably and promptly the breach of any such warranty which is curable by the ARTIST and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or refabrication of the PUBLIC WORK OF ART).

Article 5. Insurance

5.1 The ARTIST and all employees of the ARTIST shall obtain and maintain through the term of this Agreement, insurance with terms and limits of coverage equal to or in excess of those set forth in the specifications governing the services provided, but in no event, are such terms and limits to be less than those set forth below. The limits of liability under insurance policies required by this Contract shall in no-way limit the ARTIST'S actual liability.

5.2 All certificates of insurance required in this Article 5 shall state that thirty (30) days written notice will be given to the OWNER before the policy is canceled or changed. All certificates of insurance shall be delivered to the OWNER'S REPRESENTATIVE prior to the time that any work under this Agreement begins.

5.3 All certificates of insurance required in this Article 5 shall be written by an insurance company authorized to do business in the State of Iowa.

5.4

a. Commercial General Liability

Including coverage for premises and operations, independent contractors, products & completed operations, contractual liability, explosion, collapse and underground hazards (XCU), personal injury/advertising injury. The limits can be satisfied by providing a primary policy or in combination with an excess liability policy. The OWNER shall be listed as an additional insured.

Bodily Injury & Property Damage - Each Occurrence	$1,000,000 or $500,0000
Personal Injury & Advertising Injury - Per Person	$1,000,000 or $500,000
General Aggregate on the Above	$2,000,000 or $1,000,000
Products & Completed Operations General Aggregate	$2,000,000 or $1,000,000
Fire Damage Limit	$100,000
Medical Expense Limit	$5,000

b. Business Automobile Liability Insurance

Including coverage for all owned, non-owned and hired automobiles with limits of liability not less than the following. The limit can be satisfied by providing a primary policy or in combination with an excess liability policy. The OWNER shall be listed as an additional insured.

Bodily Injury & Property Damage – Each Accident	$1,000,000

c. Workers Compensation and Employers Liability

As required by any applicable law or regulation.

Part 1- Workers Compensation Benefits	Statutory

d. Employers Liability

Bodily Injury Each Accident	$100,000
Bodily Injury by Disease Policy Limit	$300,000
Bodily Injury by Disease Each Employee	$100,000

e. Umbrella Liability

The artist will maintain umbrella liability insurance on an occurrence basis in excess of the general liability, automobile liability and employer's liability insurance described above which is at least broad as all underlying policies.

Each Occurrence Limit	$1,000,000
Aggregate Limit	$1,000,000

f. Property Insurance

The artist will insure the artwork against loss or damage until final acceptance by the City of West Des Moines.

5.5 Any subcontractors utilized shall be subject to the same insurance requirements above.

Article 6. Reproduction Rights.

6.1 General. The ARTIST retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the PUBLIC WORK OF ART except ownership and possession, except as such rights are limited by this Section 6.1. In view of the intention that the PUBLIC WORK OF ART in its final dimension shall be unique, the ARTIST shall not make any additional duplicate reproductions of the final PUBLIC WORK OF ART, nor shall the ARTIST grant permission to others to do so except with the written permission of the OWNER. The ARTIST grants to the OWNER and its assigns a royalty-free, irrevocable license to make two dimensional reproductions of the PUBLIC WORK OF ART for educational and/or non-profit purposes, including but not limited to reproductions used in advertising, calendars, posters, brochures, clothing, media, publicity, catalogues, city, educational and development projects, or other similar publications, provided that these rights are exercised in a professional manner, which license shall be assigned by the OWNER without the consent of the ARTIST.

6.2 Notice. All reproductions by the OWNER shall contain a credit to the ARTIST and a copyright notice substantially in the following form: © Bounnak Thammavong Artworks, date of publication.

6.3 Credit to Owner. The ARTIST shall use best efforts to give a credit reading substantially, "An original PUBLIC WORK OF ART commissioned for City of West Des Moines, Public Arts Advisory Commission. In the permanent Collection, Public Arts Advisory Commission, West Des Moines, Iowa." in any public showing under the ARTIST'S control of reproductions of the PUBLIC WORK OF ART.

6.4 Registration. The ARTIST shall cause to be registered, with the United States Register of Copyrights, a copyright of the PUBLIC WORK OF ART in the ARTIST'S name.

Article 7. IDENTIFICATION and ARTIST'S Rights

7.1 Identification. The OWNER shall incorporate into the PUBLIC WORK OF ART text or plaque at the site identifying the ARTIST, the title of the PUBLIC WORK OF ART, the year of completion, and the City of West Des Moines Public Art Program, Public Arts Advisory Commission. The final wording shall be mutually agreed upon by ARTIST and OWNER'S REPRESENTATIVE.

7.2 Maintenance. The OWNER recognizes that maintenance of the PUBLIC WORK OF ART on a regular basis is essential to the integrity of the PUBLIC WORK OF ART. The OWNER shall reasonably assure that the PUBLIC WORK OF ART is properly maintained and protected, taking into account the instructions of the ARTIST provided in accordance with Section 1.5 (e).

7.3 Alteration of the PUBLIC WORK OF ART or of the Site.

a. Except as provided under subsection 7.3(b), below, the OWNER agrees that it will not intentionally damage, alter, modify or change the PUBLIC WORK OF ART without the prior written approval of the ARTIST, except if determined to be for the safety of the public.

b. The OWNER reserves the right to alter the location of the PUBLIC WORK OF ART; relocate the PUBLIC WORK OF ART to another site; and remove the PUBLIC WORK OF ART from public display as necessitated by city development and planning, or as the OWNER determines as appropriate. The following provisions shall apply to relocation or removal:

(i) While the OWNER shall attempt to remove PUBLIC WORK OF ART in such a way as to not affect the PUBLIC WORK OF ART, it is the parties understanding that such removal may result in damage, alternation, modification, destruction, distortion or other change of the PUBLIC WORK OF ART. The ARTIST acknowledges that this provision shall qualify under 17 U.S. C. Section 113(d) so as to waive rights under 17 U.S.C. Section 106A

(ii) If, at the time of removal, it is determined that the PUBLIC WORK OF ART may be removed without damage, alteration, modification, destruction, distortion or other change, OWNER shall give notice as required by 17 U.S.C. Section 113 (d) (2) and (3). On completion of the PUBLIC WORK OF ART, the ARTIST agrees to file the records, including ARTIST'S identity and address, with the Register of Copyrights as provided under 17 U.S.C. Section 113 (d) (3). The ARTIST further agrees to update information with the Register of Copyrights so as to permit notification of intent to remove the PUBLIC WORK OF ART.

7.4 Permanent Record. The OWNER'S REPRESENTATIVE shall maintain on permanent file a record of this Agreement and the location and disposition of the PUBLIC WORK OF ART.

Article 8. ARTIST as Independent Contractor

The ARTIST shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the OWNER. The ARTIST shall not be supervised by any employee or official of the OWNER, nor shall the ARTIST exercise supervision over any employee or official of the OWNER.

Article 9. Assignments, Transfer, Subcontracting

9.1 Neither this Agreement nor any interest herein shall be transferred or assigned by the ARTIST. Any such transfer shall be null and void and shall be cause to annul this Agreement.

9.2 Subcontracting by ARTIST. The ARTIST may subcontract portions of the services to be provided hereunder at the ARTIST'S expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Final Proposal or PUBLIC WORK OF ART, and shall be carried out under the personal supervision of the ARTIST. The ARTIST must obtain approval from the OWNER'S REPRESENTATIVE prior to hiring any subcontractor. If the OWNER'S REPRESENTATIVE does not approve the hiring of any subcontractor, another subcontractor must be submitted for approval by the OWNER'S REPRESENTATIVE.

Article 10. Termination

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements or stipulations material to this agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If it is not cured, then this agreement shall terminate. In the event of default by the OWNER, the OWNER shall promptly compensate the ARTIST for all services performed by the ARTIST prior to termination. In the event of default by the ARTIST, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the ARTIST under this agreement shall at the OWNER'S option become its property, provided that no right to fabricate or execute the PUBLIC WORK OF ART shall pass to the OWNER and the OWNER shall compensate the ARTIST pursuant to Article 2 for all services performed by the ARTIST prior to termination; or at the ARTIST'S election, the ARTIST shall refund all amounts paid by the OWNER in exchange for all finished and unfinished related PUBLIC WORK OF ART. Notwithstanding the previous sentence, the ARTIST shall not be relieved of liability to the OWNER for damages sustained by the OWNER by virtue of any breach of this Agreement by the ARTIST, and the OWNER may reasonably withhold payments to the ARTIST until such time as the exact amount of such damages due the OWNER from the ARTIST is determined.

Article 11. Compliance

The ARTIST shall be required to comply with Federal, State, and City statutes, ordinances and regulations applicable to the performance of the ARTIST'S services under this Agreement.

Article 12. Records Access

The ARTIST shall provide the OWNER access to any books, documents, papers, and records which are directly pertinent to the specific contract, for the purpose of making an audit, examination, excerpts, and transcriptions, for three years after final payment and all other pending matters related to this Agreement are closed.

Article 13. Non-Discrimination

During the performance of this Agreement, the ARTIST shall not discriminate against any employee or applicants for employment because of race, color, creed, religion, national origin, sex, sexual orientation,

gender identity, marital status, status with regard to public assistance, disability, veteran status, or age. The ARTIST shall post in places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause and stating that all qualified applicants will receive consideration for employment. The ARTIST shall incorporate the foregoing requirements of this paragraph in its subcontracts for program work, and will require its subcontractors for such work to incorporate such requirements in all subcontracts for program work.

Article 12. Entire Agreement

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

Article 13. Modification

No alteration, change, or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the OWNER.

Article 14. Notices

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

a. if the OWNER, to:

Sally Ortgies, Director of Parks and Recreation
City of West Des Moines, Public Arts Advisory Commission
P.O. Box 65320
4200 Mills Civic Pkwy., Suite 1-B
West Des Moines, Iowa 50265

Phone: 515-222-3447
E-mail: sally.ortgies@wdm.iowa.gov

b. if the ARTIST, to:

Bounnak Thammavong
Bounnak Thammavong Artworks
33060 Dawn Drive
Kingston, IL 60145

Phone: 785-691-6824
E-mail: bounnakt@gmail.com

Article 15. Additional Agreements

The ARTIST shall recognize the OWNER'S REPRESENTATIVE or designee as its duly authorized representative of the OWNER.

Article 16. Jurisdiction

Any disputes regarding this Agreement and any written modifications to this Agreement, which result in litigation, shall be subject to the jurisdiction of the State of Iowa, and specifically the Polk County, Iowa, District Court for claims involving state law, and the Southern District of Iowa, United States District Court, for claims involving federal law.

This agreement is executed on day and year first written above.

PUBLIC ARTIST:

7.10.19

Bounnak Thammavong Artworks

OWNER

Steven K. Gaer
Mayor
City of West Des Moines

33060 Dawn Drive, Kingston IL 60145
Cell: 785-691-6824
bounnakt@gmail.com www.bknock.com

Response to City of West Des Moines Water Quality Public Art Project (Water Quality Event Artwork 2019

WDM WQPAP-WQEA 2019 PROPOSAL

City of West Des Moines
Attn: Sally Ortgies
4200 Mills Civic Pkwy.
P.O. Box 65320
West Des Moines, IA 50265

Dear Sally Ortgies:

Please extend our gratitude to the committee; we are very excited to be part of the project and look forward to working with you and the group. In that effort, we present a proposal for the Water Quality Event Artwork:

"Aqua Strata" (the participation event)

Concept: Event Participants will be able to choose from an array of pre-printed and pre-cut watercolor canvases to express their artistic nature in watercolor. Tables and supplies will be provided at the event and their works will be collected. Following the event, their smaller works will be incorporated into a larger sculptural work for a permanent indoor artwork.

"Aqua Strata" (resulting permanent artwork)

An indoor arrangement on wood of 3 Free Standing Sculptures:

Chrysemys picta: 7'x2.5'x2.5' (aprox.), wood, plexiglass, stainless
Ambystoma tigrinum: 7'x2.5'x2.5' (aprox.), wood, plexiglass, stainless
Stenacron interpunctatum: 7'x2.5'x2.5' (aprox.), wood, plexiglass, stainless

Wooden base (representation of watershed map; West Des moines Area):
0.083'x5'x12' (aprox.), wood, paint

"Aqua Strata", $34,000

Concept: "Aqua Strata", is inspired by native Iowa animals that are immediately impacted by the amount of and condition of the water that flows through the West Des Moines Water Shed. Each source of sculptural inspiration was chosen for the form of the animal and/or identifying markings.

Chrysemys Picta (Painted Turtle) utilizes the shell markings of the "belly" of the turtle and the shell segment shapes of the turtle as formal inspiration. Like a Rorschach pattern the shape derived from the belly shell will lend itself well to a monolithic and unique presence when scaled up in size. This unique shape (cut from plexi-glass will house and crop the smaller watercolor paintings produced by event participants. These watercolors will provide color and texture from a distance; and a moment of discovery upon realization that the monolithic sculpture is produced with smaller elements. The Painted turtle spends nearly all its life in water. This turtle lays its eggs in amongst prairie grasses in well drained soils of meadows and woodland near ponds, lakes, and rivers. Being unable to swallow without the aid of water, this animal is greatly affected by the diversion of water to and away from its habitat.

Ambystoma Tigrinum (Tiger Salamander) utilizes the alien like aquatic shapes of the animal's body as formal inspiration. It curls around a circular area framing the event participants watercolors in plexi-glass. Stylized but recognizable, it will provide dark contrast to the watercolors. Throughout the varying developmental stages of this amphibian's life, the Tiger Salamander spends most its life in water. This creature lays its eggs in ponds, lakes, and rivers; shedding its highly absorbent skin at each stage of development toward adulthood. Its food is comprised of invertebrates and insects found in and near water. This animal is greatly dependent on water that is often diverted away from its habitat or suffers contamination.

Stenacron Interpunctatum (Mayfly) utilizes the natural arch found in the insect's body as formal inspiration. It curls around a circular area framing the event participants watercolors in plexi-glass. Its wings also lend another element and place to frame images produced by event participants. Throughout the varying developmental stages of this insect's life, the mayfly spends its youth in water. It sheds its husk at each stage of development from nymph toward adulthood. Only during the last days of its life does it leave the water to find a mate, only to return to lay its eggs in ponds, lakes, and rivers. This insect is relying on water that is often diverted away from its habitat or may become polluted.

This collection of sculptural forms will be produced in stained wood, plexiglass, and steels; creating floating abstract totems that are tributes to their animal inspiration and communicate the connection of the patterns found in natural forms with the patterns and flow of the West Des Moines Watershed Map the sculptures stand upon.

Compositionally, there will be 3 vertically oriented sculptural forms. Each form will stand alone as a work of art and work together as a group upon a shallow relief map of the watershed. This map will be comprised of segments and can be dismantled for storage and transit.

Logistics:

1. The event will require a minimal of a 20' x 20' area with a tent. 3 tables (3'x8' long) to form a u-shaped work area for event participants. 2 tables (3'x8' long) that will allow for storage spaces for completed works. Each worktable will be equipped with precut and preprinted watercolor canvases in the shapes and prints of various water animals. Each worktable will have watercolor stations equipped with watercolor paint sets and brushes, cups for fresh water, and aprons. Fresh water buckets, wastewater buckets will be provided. Wastewater will be stored and disposed of after the event.

2. The painting event session would last from 4pm to 8pm, allowing time to accumulate enough works for the sculptures. This event will be actively supervised and coordinated by one of the artists.

3. At the close of the event, all the watercolors will be collected for later use in the permanent work. Fragile or vulnerable supplies and equipment will be removed immediately following the event. The painting station will be fully taken down the following day.

4. The permanent artwork will be produced over the course of 8 weeks following the event. anticipated delivery in weeks 10-12 following the event.

Thank you again on behalf of my team and myself for the opportunity to propose this project. We hope our proposal excites and delights you as much as it has for use to put together for you. We look forward to bringing this artwork to your event.

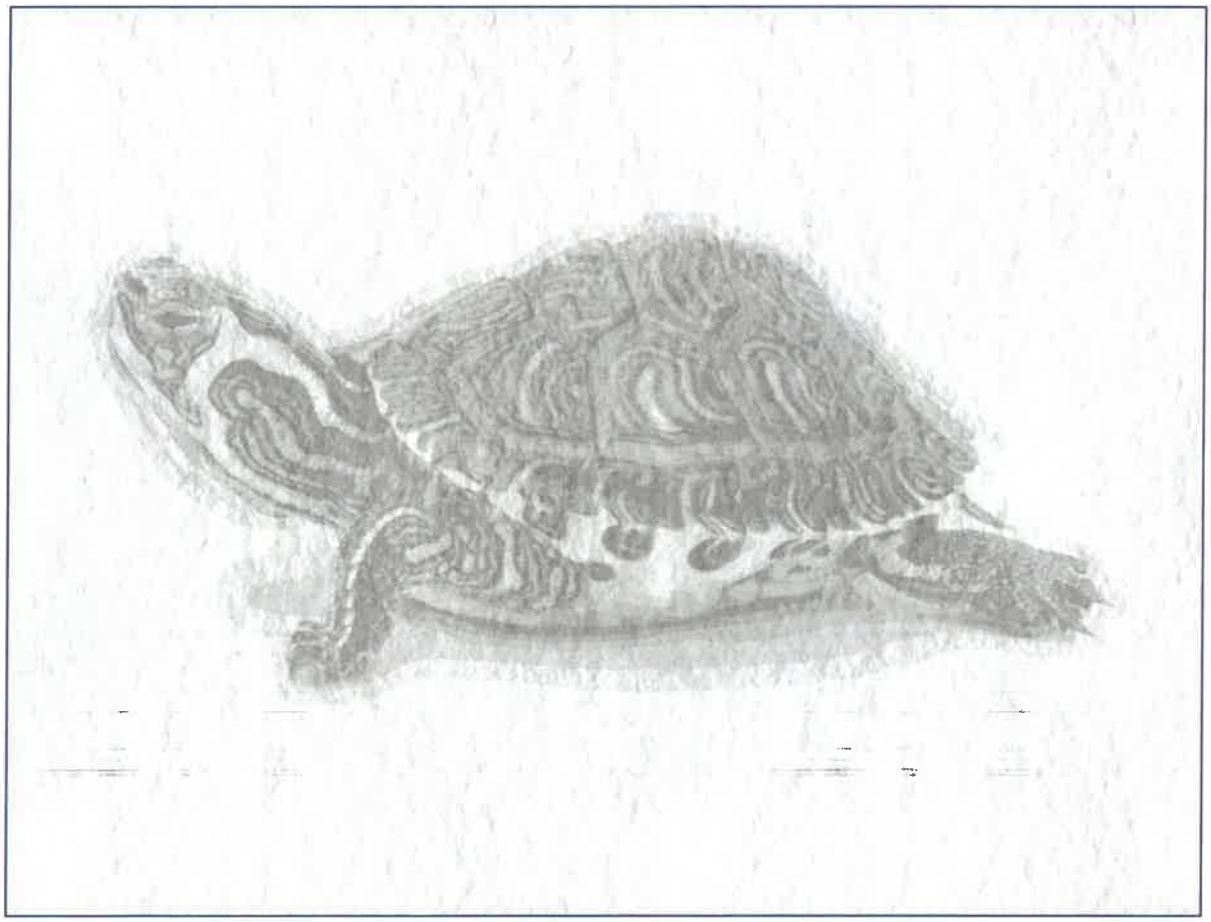
Thank you for your time and consideration,

Bounnak Thammavong, Lead Artist
33060 Dawn Drive
Kingston IL, 60145
785-691-6824 bounnakt@gmail.com www.bknock.com

Reference pictures of animal inspiration for sculptures:

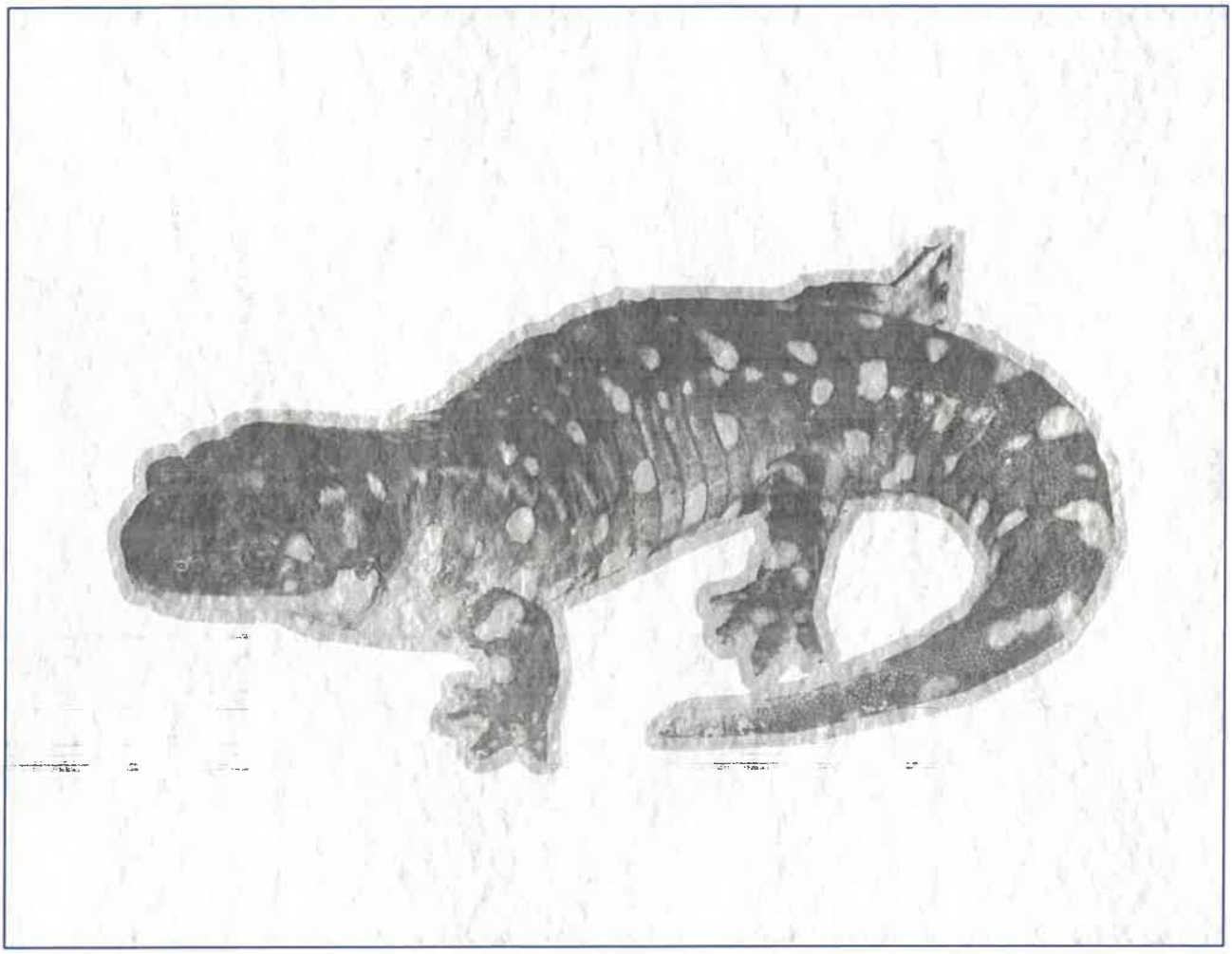
Painted Turtle Chrysemys picta

Rendering of the precut & preprinted watercolor canvas for the Painted turtle:
(note the print will be faint and light to allow the participants to paint over with watercolor as desired)



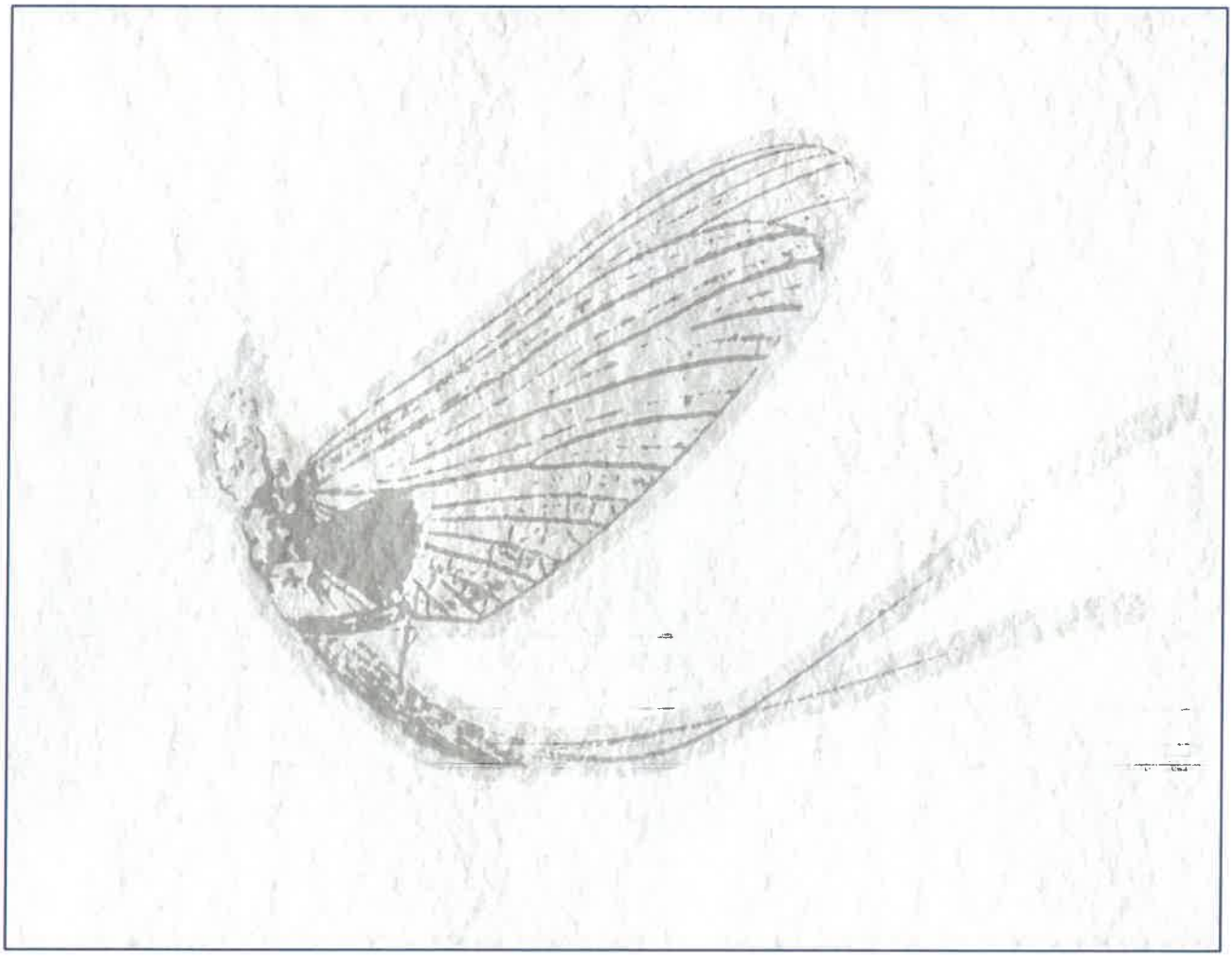
Ambystoma Tigrinum (Tiger Salamander)

Rendering of the precut & preprinted watercolor canvas for the tiger salamander:
(note the print will be faint and light to allow the participants to paint over with watercolor as desired)



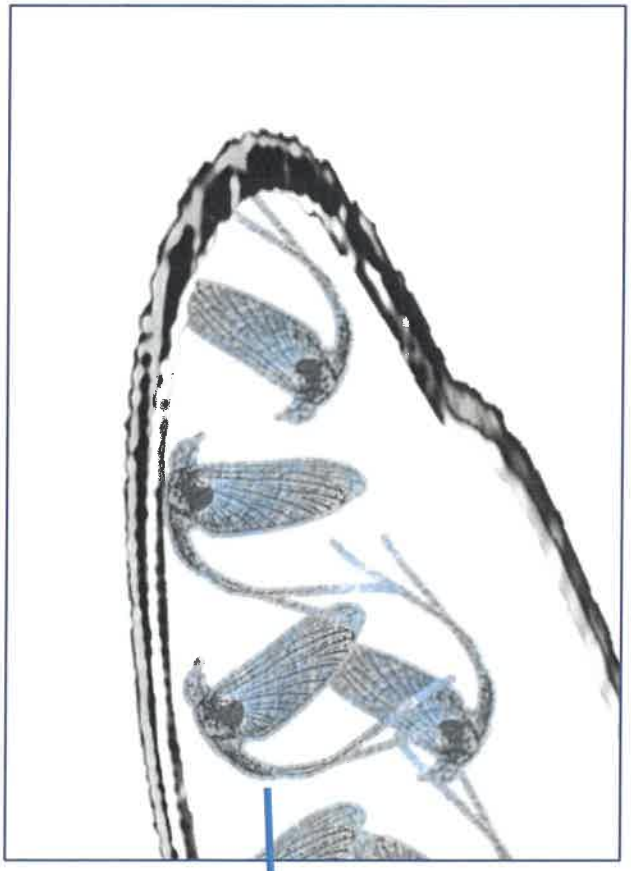
Mayflies (Ephemeroptera) Stenacron interpunctatum

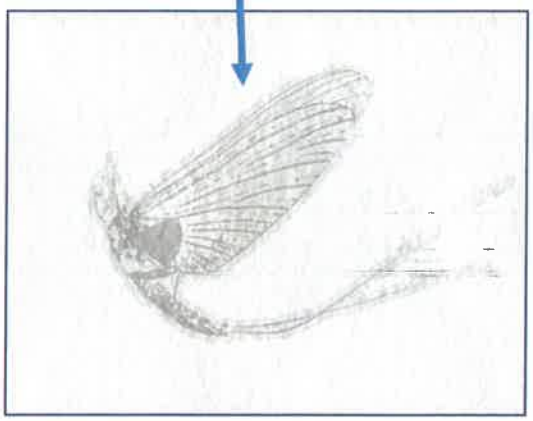
Rendering of the precut & preprinted watercolor canvas for the Mayfly:
(note the print will be faint and light to allow the participants to paint over with watercolor as desired)



Rendering of sculpture concept. Single standalone sculpture. Depicted is the mayfly piece:

Stenacron interpunctatum: 7'x2.5'x2.5' (aprox.), wood, plexiglass, stainless
The pedestal is made of wood shaped to mimic stone in stratified layers; reminiscent of the layers of earth that water travels through. The mayfly is made of stained carved wood. The wings are made of plexi-glass; rimed with stainless steel. Between the plexiglass wings are depiction of multiple watercolors; simulating watercolors produced by event participants and used as the visual elements in the glass wings.





Rendering of sculpture concept. Full composition with 3 pedistals depicted:

Please note, we were unable to complete all 3 renderings in the time frame given. Depicted is the mayfly concept. Missing are the painted turtle and Salamander concept. Three mayfly concepts stand in as visual references; but the turtle and salamander concepts will be made in similar style. Also important to note is a depiction of the watershed map is present; showing the shallow relief in stained wood containing the shapes produced by the watershed.

Thammavong Artworks 33060 Dawn Drive, Kingston IL 60145 Cell: 785-691-6824 bounnakt@gmail.com www.bknock.com

WDM WQPAP-WQEA 2019 (AQUA STRATA) PROJECT BUDGET:

City of West Des Moines
Attn: Sally Ortgies
4200 Mills Civic Pkwy.
P.O. Box 65320
West Des Moines, IA 50265

Dear Sally Ortgies and Committee Members:

The following is a detailed budget of "Aqua Strata", our proposal for the City of West Des Moines Water Quality Public Art Project (Water Quality Event Artwork 2019

Bounnak Thammavong, Thammavong Artworks Lead Artist & Engineer
33060 Dawn Drive, Kingston IL 60145
785-691-6824 bounnakt@gmail.com

BUDGET SUMMARY:

CLIENT: City of West Des Moines

PROJECT NAME: ***WDM WQPAP-WQEA 2019 (AQUA STRATA) (Water Quality Event Artwork)***

Budget:

Raw Materials		cost	qty	total
Watercolor Set	set of 10 colors premium	35	20	700
Watercolor paper	1250 packs 6"x9"	150	4	600
air shutoff valve	in line air shut off; 1 each sculpture	10	4	40
watercolor pencil set	watercolor set 72 pencils	30	10	300
wood	osb & reclaimed 4x8; 8 per sculpture 18 per base	9	42	378
plexiglass	3/16 x 4x8	130	10	1300
stainless	10g 4x8	370	2	740
stainless welding consumables	wire, gas, tips	250	1	250
wood stains and paints	wood stains and paints	12	20	240
caster wheels	2" poly with breaks and mount plate; set of 4	20	10	200
msc. Hardware	screws, nuts, bolts, rivets	350	1	350
				5098

equipment/supplies		cost	qty	total
tent	20x40	1000	1	1000
tables	30x72	50	6	300
buckets	5 gallon	6	20	120
watercolor paint brush set	set of 5	17	40	680
cups	200 8 oz	20	12	240
aprons	3 pack	14	30	420
paper towels	16 pack	40	10	400
utility totes	30 gal 6 pack	50	6	300
grinding/sanding discs	50 pack	100	1	100
stain brushes		10	6	60
				3620

BUDGET SUMMARY (continued):

CLIENT: City of West Des Moines

PROJECT NAME: ***WDM WQPAP-WQEA 2019 (AQUA STRATA) (Water Quality Event Artwork)***

Budget (continued):

labor		cost	qty	total
labor in shop	40/hr 3 people	40	120	19200
labor on site	40/hr 1 people	40	36	1440
				20640

Insurance		cost	qty	total
general art insurance	1 of 3 projects	900	0.34	306
general art insurance	transport rider	300	1	300
				606

artist commission		cost	qty	total
commission	3 artists	1345.333	3	4036
				4036

project cost			29964
total project budget			34000

DESCRIPTION: TERMS:

$40/HOUR;
55.99% DUE UPON PROJECT START AT CONTRACT SIGNING (Raw Materials & Event equip & supplies & 50% Labor) ($19,038.00)
22% DUE UPON SUBSTANTIAL COMPLETION (READY TO INSTALL)
22% DUE UPON PROJECT COMPLETION (INSTALLATION AT PERMANENT LOCATION)

(Paypal funds transfer preferred via bounnakt@gmail.com)
Cash or personal/cashier check acceptable

net 15 terms with 10% per month late fee after 15 days.

QUOTED COST TOTAL: **$ 34,000.00**