

City of Moreno Valley

PUBLIC ART MAINTANANCE AGREEMENT

This Agreement is made by and between the City of Moreno Valley, California, a municipal corporation, with its principal place of business at 14177 Frederick Street, Moreno Valley, CA 92552, hereinafter referred to as the “City”, and [ARTIST NAME], an individual with his/hers principal place of business at [INSERT ADDRESS], hereinafter referred to as the “Artist,” based upon City policies and the following legal citations:

RECITALS

- A. Government Code Section 53060 authorizes the engagement of persons to perform special services as independent contractors;
- B. The goal of the Art in Public Places program is to provide a collection of permanent artwork that includes a wide range of quality artwork styles, themes and media.
- C. Artist desires to perform and assume responsibility to create a [TYPE OF ART] contracting services required by the City on the terms and conditions set forth in this Agreement. Artist represents that it is experienced in providing professional [DETAILED DESCRIPTION OF ART] contracting services, is licensed in the State of California, if applicable;
- D. City desires to engage Artist to render such services for the [TYPE OF ART] as set forth in this Agreement;
- E. Artist represents that they are fully qualified to perform such professional services by virtue of their experience, training, education and expertise. Artist further presents they are willing to accept responsibility for performing such services in accordance with the terms and conditions of this Agreement.
- F. The public interest, convenience, necessity and general welfare will be served by this Agreement; and
- G. This Agreement is made and entered into effective the date the City signs this Agreement.

TERMS

1. ARTIST INFORMATION:

Artist’s Name: _____

Address: _____

City: _____ State: ____ Zip: _____

Business Phone: _____ Fax No. _____

Other Contact Number: _____

Business License Number: _____

Federal Tax I.D. Number: _____

2. **ARTIST SERVICES, FEES, AND RELEVANT DATES:**

- A. The Artist's scope of service is described in Exhibit "A" attached hereto and incorporated herein by this reference.
- B. The City's responsibilities, other than payment, are described in Exhibit "B" attached hereto and incorporated herein by this reference.
- C. Payment terms are provided in Exhibit "C" attached hereto and incorporated herein by this reference.

The term of this Agreement shall be from _____ to _____ unless terminated earlier as provided herein.

3. **STANDARD TERMS AND CONDITIONS:**

- A. Control of Work. Artist is solely responsible for the content and sequence of the work and will not be subject to control and direction as to the details and means for accomplishing the anticipated results of services. The City will not provide any training to Artist or his/her/its employees.
- B. Intent of Parties. Artist is, and at all times shall be, an independent contractor and nothing contained herein shall be construed as making the Artist or any individual whose compensation for services is paid by the Artist, an agent or employee of the City, or authorizing the Artist to create or assume any obligation or liability for or on behalf of the City, or entitling the Artist to any right, benefit, or privilege applicable to any officer or employee of the City.
- C. Artist's Services. Scope of Services. Subject to the terms and conditions set forth in this Agreement, Artist shall perform the services identified required in the Scope of Services, Exhibit A. City shall have the right to request, in writing, changes in the Scope of Services as provided in Exhibit A, attached hereto and incorporated herein as though set forth in full. Any changes mutually agreed upon by the parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.
 - a. Time for Performance. Artist agrees to shall complete the Work Product no later than **[DUE DATE]**, unless extended by the City Manager or their designee.
- D. Standard of Performance. Artist shall perform all services in the Scope of Services required under this Agreement to the highest professional standards and in a manner

reasonably satisfactory to City. Artist shall comply with all applicable federal, state and local laws, ordinances, codes and regulations. Artist shall obtain and comply with any and all applicable city permits required and conditions imposed thereon, which may include, but not be limited to, building permits or encroachment permits. Artist understands and agrees that City is acting in its proprietary capacity as property owner in execution of this Agreement and nothing herein or in the Art in Public Places Program shall be deemed or construed to be a grant of any City regulatory permits or approvals, which shall be subject to separate review by City.

E. Artist's Work Product; Assignment of Rights; Limited License.

- a. As part of the Art in Public Places Program, Artist may produce, create, or otherwise develop work product, including but not limited to, photographs, pictorials, graphics, audiovisual works, documents, images, creative visual concepts, any other work containing Intellectual Property Rights (as defined below), including, but not limited to, characters, plots, and all other concepts and ideas that make the work product original ("Work Product"). Artist hereby perpetually, irrevocably and unconditionally assigns, conveys and transfers to City and its successors and assigns, any and all of Artist's rights, title and interest in and to the Work Product and all components and parts that comprise the Work Product, including without limitation any and all Intellectual Property Rights, as defined below. Artist hereby further perpetually, irrevocably and unconditionally assigns, transfers and conveys to City and its successors and assigns, all claims and rights to claims for past, present and future infringement or misappropriation of the Work Product. Included in such rights are all rights to sue for and to receive and recover all profits and damages accruing from infringement or past infringements and misappropriations. Without limiting the generality of the foregoing, City shall have the right to create derivative works, exclusively, in perpetuity, and worldwide, including all rights to enforce the same, including but not limited to, the right to sue and recover any sums now or hereafter due or payable with respect to any of the Work Product; all at no cost to City. As sole owner of the Work Product, City shall have the sole right to use the Work Product in any way it determines in its sole and absolute discretion without further compensation to Artist or to any other party. City shall be the sole copyright owner of the Work Product. For purposes of this Agreement, "Intellectual Property Rights" shall include any and all rights in, arising out of, or associated with Work Product in any jurisdiction, including without limitation: rights in, arising out of, or associated with trademarks, including without limitation rights granted under the Lanham Act, and copyrights; rights in, arising out of, or associated with confidential information, including without limitation rights granted under the Uniform Trade Secrets act; rights of attribution and integrity and other moral rights of any author; and rights in, arising out of, or associated with domain names.

- b. City is hereby granted the right to use Artist's name, likeness and biographical material, including any such logos, trademarks, or copyrights associated therewith, at no charge to City, in connection with the use, promotion and exploitation of any Work Product; provided, however, as sole owner of Work Product, City shall not be required to include any photo credit to Artist, or otherwise reference Artist in any way, in the use, promotion and exploitation of Work Product but may do so at City's sole and absolute discretion.
- c. Artist will take all action and execute all documents as City may reasonably request to effectuate the transfer of the Work Product and the vesting of complete and exclusive ownership of the Work Product in City. In addition, Artist will, at the request and sole cost and expense of City, but without compensation to Artist, promptly sign, execute, make, and perform all such deeds, documents, acts, and things as City may reasonably require:
 - i. to apply for, obtain, register, maintain and vest in the name of City alone (unless City otherwise directs) Intellectual Property Rights protection relating to any or all of the Work Product in any country throughout the world, and when so obtained or vested, to renew and restore the same;
 - ii. to defend any judicial, opposition, or other proceedings in respect of Intellectual Property Rights applications and any judicial, opposition, or other proceedings or petitions or applications for revocation of such Intellectual Property Rights; and
 - iii. to assist City with the defense and enforcement of its rights in any registrations issuing from Intellectual Property Rights applications and in all Intellectual Property Rights protection in the Work Product.
- d. Power of Attorney. In order to address circumstances where at any time City may be unable, for any reason, to secure Artist's signature on any letters patent, copyright, or trademark assignments or applications for registrations, or other documents or filings pertaining to any or all of the Work Product, whether because of Artist's unwillingness, or for any other reason whatsoever, Artist hereby irrevocably designates and appoints City and its duly authorized officers and agents as its agents and attorneys-in-fact, to act for and on its behalf and stead to execute and file any and all such applications, registrations, and other documents and to do all other lawfully permitted acts to further the prosecution thereon with the same legal force and effect as if executed by Artist. This Section shall survive in perpetuity.
- e. Artist hereby waives and agrees not to enforce any and all moral rights and personality rights, including, without limitation, rights of attribution, integrity, and disclosure that may hold in connection with the Work Product, if any, together with all claims for damages and other remedies asserted on the basis

of moral rights. Additionally, Artist hereby assigns, transfers, and conveys to City any and all such moral rights, to the fullest extent permitted by law.

- f. Subject to prior written approval by City Manager or his or her designee, Artist may use the Work Product for the limited purposes of illustrating and providing samples of Artist's work in private demonstrations. By way of example, Artist may use Work Product in resumes or for other private demonstrations for the purpose of providing potential clients of Artist an example of Artist's work, upon written approval of City. Artist shall have no rights other than as expressly set forth herein. Notwithstanding the foregoing, City shall at all times remain the sole and exclusive owner of the Work Product and all rights contained therein. Artist shall take action reasonably necessary to protect the confidentiality of the Work Product to prevent the possibility of unauthorized use or copying of the Work Product. Upon written approval of use of Work Product by City, in accordance with this Section, Artist shall include in all such Work Product a copyright notice, approved as to form by City ("Copyright Notice"). Artist shall immediately notify City of any unauthorized use of the Work Project which Artist knows or reasonably should have known.
 - g. Artist further warrants that the Work Product does not contain any libelous material; infringe upon any trade name, trademark, or copyright; or invade or violate any right of privacy, personal right, or other common law or statutory right. Artist hereby waives any right it may have to sue or otherwise pursue any action or claim against the City related in any way, either directly or indirectly, to the City's use of the Work Product in accordance with the terms of this agreement.
 - h. This Section shall survive termination and expiration of this Agreement.
- F. Originality of Work Product. Artist represents and warrants that (i) the Work Product is and will be original; (ii) it owns all rights in and to the Work Product and that Artist has the necessary authority to grant the aforementioned license; (iii) that the Work Product does not contain any libelous material; infringe upon any trade name, trademark, or copyright; or invade or violate any right of privacy, personal right, or other common law or statutory right, nor has any claim (whether or not embodied in legal action, past or present) of such infringement been threatened or asserted, nor is such a claim pending, against Artist (or, insofar as Artist is aware, against any entity from which Artist has obtained any rights); (iv) Artist has not granted any person or entity any rights to the Work Product which would be in conflict with the grant of rights herein, and that Artist is unaware of any facts that would put a reasonable person on notice of the likelihood of any claims in connection with the Work Product; (v) Artist is at least eighteen (18) years of age and has the legal right to enter into this agreement at the time of transfer hereunder, Artist is the sole owner of the Work Product and of all rights therein; (vi) Artist is and will be the sole creator of the Work

Product; (vii) Artist is not under any obligation to transfer or sell the Work Product to any third party; and (viii) the Work Product has not been and will not be published under circumstances which have or will cause a loss of any copyright, trademark or other proprietary rights therein.

G. Maintenance and Warranty of Work Product.

a. The Artist shall have a one (1) year obligation for maintenance to maintain the Work Product in a manner reasonably acceptable to the City, and complete the required maintenance information set forth in Maintenance Plan. This information includes a schedule of maintenance, specifications of cleaning techniques, and cleaning materials and their sources for all art objects.

b. Artist hereby warrants that the Work Product will be free of defects in workmanship (due to faulty design or fabrication), materials and finish, including inherent vice, and that the Artist will, at the Artist's own expense, remedy, repair or replace any such defects in workmanship, materials and finish, including inherent vice, and if necessary, replace the Work Product, which appear within a period of sixty (60) days following the date the Work Product is completed. "Inherent Vice" shall mean a quality within the material or materials, which comprise the Work Product which, either alone or in combination, results in the tendency of the Work Product to deteriorate.

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

I. City's Representative. The City hereby designates the City Manager, or his or her designee, to act as its representative for the performance of this Agreement ("City's Representative"). Artist shall not accept direction or orders from any person other than the City's Representative or his or her designee.

J. Artist's Representative. Artist hereby designates [INSERT NAME OR TITLE], or his or her designee, to act as its representative for the performance of this Agreement ("Artist's Representative"). Artist's Representative shall have full authority to represent and act on behalf of the Artist for all purposes under this Agreement. The Artist's Representative shall supervise and direct the services, using his or her best skill and attention, and shall be responsible for all means, methods, techniques, sequences and procedures and for the satisfactory coordination of all portions of the services under this Agreement.

K. Legal Considerations. The Artist shall comply with applicable federal, state, and local laws in the performance of this Agreement. Artist shall be liable for all violations of such laws and regulations in connection with services. If the Artist performs any work knowing it to be contrary to such laws, rules and regulations and without giving

written notice to the City, Artist shall be solely responsible for all costs arising therefrom. Artist shall defend, indemnify and hold City, its officials, directors, officers, employees and agents free and harmless, pursuant to the indemnification provisions of this Agreement, from any claim or liability arising out of any failure or alleged failure to comply with such laws, rules or regulations.

- L. Artist Indemnification. Artist shall indemnify, defend and hold the City, the Moreno Valley Housing Authority, and the Moreno Valley Community Services District (CSD), their officers, agents and employees harmless from any and all claims, damages, losses, causes of action and demands, including, without limitation, the payment of all consequential damages, expert witness fees, reasonable attorney's fees and other related costs and expenses, incurred in connection with or in any manner arising out of Artist's performance of the work contemplated by this Agreement and this Agreement. Acceptance of this Agreement signifies that the Artist is not covered under the City's general liability insurance, employee benefits, or worker's compensation. It further establishes that the Artist shall be fully responsible for such coverage. Artist's obligation to indemnify shall survive expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by the City, the Moreno Valley Housing Authority, and the CSD, and their officers, agents and employees.
- M. Additional Indemnity Obligations. Artist shall defend, with counsel of City's choosing and at Artist's own cost, expense and risk, any and all claims, suits, actions or other proceedings of every kind covered by Section "J" and "L" that may be brought or instituted against City, the Moreno Valley Housing Authority, and the CSD, and their officers, agents and employees. Artist shall pay and satisfy any judgment, award or decree that may be rendered against City, the Moreno Valley Housing Authority, and the CSD, and their officers, agents and employees as part of any such claim, suit, action or other proceeding. Artist shall also reimburse City for the cost of any settlement paid by City, the Moreno Valley Housing Authority, and the CSD, and their officers, agents and employees as part of any such claim, suit, action or other proceeding. Such reimbursement shall include payment for City's attorney's fees and costs, including expert witness fees. Artist shall reimburse City, the Moreno Valley Housing Authority, and the CSD, and their officers, agents and employees for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided.
- N. CalPERS Indemnity. To the fullest extent permitted by law, in addition to obligations set forth in this section, in the event that any person providing services under this Agreement is determined by a court of competent jurisdiction or CalPERS to be eligible for enrollment in CalPERS as an employee of the City, to the fullest extent of the law, Artist shall indemnify, defend, and hold harmless City for any costs and expenses incurred by City, including without limitation, payment that City is required

as a result to make to CalPERS, whether in the form of employee and/or employer contributions, taxes, or any similar obligations, as well as for the payment of any penalties and interest.

- O. CalPERS Participation. As set forth in this Agreement, City has an obligation to treat all persons working for or under the direction of Artist as an independent Contractor of City and agents and employees of Artist, and not as agents or employees of City. Artist and City acknowledge and agree that City participates in a defined benefit plan ("CalPERS"), and that it is possible that CalPERS may find that persons providing services pursuant to this Agreement are employees of City and should be registered with the CalPERS as employees of City.
- P. CalPERS Retiree Disclosure. Artist hereby expressly agrees to clearly and conspicuously disclose to City in writing any and all persons working for Artist who are retirees under the California Public Employees' Retirement System (CalPERS) whom receives a monthly CalPERS retirement allowance, and whom are, subject to City approval, assigned by Artist to provide services to City under the Agreement, prior to such person performing any services hereunder. Nothing herein shall be deemed or interpreted to limit a CalPERS retiree's obligations under applicable law, rules or regulations.
- Q. Joint Cooperation. In the event that CalPERS initiates an inquiry that includes examination of whether individuals providing services under this Agreement to City are City's employees, Artist shall within five days and share all communications and documents from CalPERS that it may legally share. In the event that either Artist or City files an appeal or court challenge, Artist and City each agree to cooperate with each other in responding to the inquiry and any subsequent administrative appeal or court challenge of an adverse determination.
- R. Insurance Requirements. Throughout the life of this AGREEMENT, Artist shall pay for and maintain in full force and effect all insurance as required.

If at any time during the life of this Agreement or any extension, Artist or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to Artist shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City pursuant to this section shall in any way relieve ARTIST of its responsibilities under this Agreement. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that

an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

The fact that insurance is obtained by Artist shall not be deemed to release or diminish the liability of Artist, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Artist. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Artist, its principals, officers, agents, employees, persons under the supervision of Artist, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

Upon request of City, Artist shall immediately furnish City with a complete copy of any insurance policy and associated documentation required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

Where determined applicable by the City, Artist will comply with the following insurance requirements at its sole expense. Insurance companies shall be rated (A Minus: VII-Admitted) or better in Best's Insurance Rating Guide and shall be legally licensed and qualified to conduct business in the State of California.

Minimum Scope of Insurance: Coverage shall be at least as broad as:

- 1) The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 covering on an "occurrence" basis, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations, products and completed operations, and contractual liability.
- 2) The most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, which shall include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto).
- 3) Workers' Compensation insurance as required by the State of California, California Labor Code and Employer's Liability Insurance, with Statutory Limits, and Employer's Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
- 4) Professional Liability (Errors and Omissions) insurance appropriate to ARTIST'S profession.

Minimum Limits of Insurance:

- a. General Liability Insurance. Without limiting the generality of the forgoing, to protect against loss from liability imposed by law for damages on account of bodily injury, including death, and/or property damage suffered or alleged to be suffered by any person or persons whomever, resulting directly or indirectly from any act or activities of the Artist, sub-contractor, or any person acting for the Artist or under its control or direction. Such insurance shall be maintained in full force and effect throughout the terms of this Agreement and any extension thereof in the minimum amounts provided below:
- \$1,000,000 per occurrence for bodily injury and property damage
 - \$1,000,000 per occurrence for personal and advertising injury
 - \$2,000,000 aggregate for products and completed operations
 - \$2,000,000 general aggregate
- b. Automobile Liability
- \$1,000,000 per accident for bodily injury and property damage
- c. Employer's Liability (Worker's Compensation)
- \$1,000,000 each accident for bodily injury
 - \$1,000,000 disease each employee
 - \$1,000,000 disease policy limit
- d. The Workers' Compensation insurance policy: In such amounts as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Artist and the City, HA, and CSD against any loss, claim or damage arising from any injuries or occupational diseases happening to any worker employed by the Artist in the course of carrying out this Agreement. Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Artist and its insurer shall waive any right of subrogation against City of Moreno Valley, CSD, Housing Authority and each of their officers, officials, employees, agents and volunteers.
- e. Professional Liability (Errors and Omissions): Limits of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.
- f. Endorsements. Unless otherwise specified hereunder, each insurance policy required herein shall be with insurers possessing a Best's rating of no less than A,VII and shall be endorsed with the following specific language:
- The insurer waives all rights of subrogation against the City, its appointed officials, officers, employees or agents.

Other Insurance Provisions: The General Liability, Automobile Liability and Workers Compensation insurance policies are to contain, or be endorsed to contain, the following provisions:

- a. City of Moreno Valley, the City of Moreno Valley Community Services District, the Moreno Valley Housing Authority and each of their officers, officials, employees, agents and volunteers are to be covered as additional insureds.
- b. The coverage shall contain no special limitations on the scope of protection afforded to City, CSD, Housing Authority and each of their officers, officials, employees, agents and volunteers.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice by certified mail, return receipt requested, has been given to the City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Artist shall furnish the City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for the City, Artist shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers: All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide; or authorized by the City Manager or designee.

Verification of Coverage: Artist shall furnish City with all certificates(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the City Manager or designee prior to City's execution of this Agreement and before work commences. The following applicable endorsements will be required:

1. Additional Insured endorsement for ongoing operations, completed operations and primary & non-contributory endorsement for general liability coverage
 2. Additional Insured endorsement for auto liability coverage
 3. Waiver of Subrogation for workers compensation coverage
- S. Confidentiality. The City and the Artist agree that to the extent permitted by law, until final approval by the City, all data shall be treated as confidential and will not be released to third parties without the prior written consent of both parties.
- T. Entire Agreement. This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations of warranties, expressed or implied, not specified in this Agreement. This Agreement applies only to the current proposal as attached. This Agreement may be modified or amended only by a subsequent written Agreement signed by both parties. Assignment of this Agreement is prohibited without prior written consent.

- U. (a) The City may terminate the whole or any part of this Agreement at any time without cause by giving at least ten (10) days written notice to the Artist. The written notice shall specify the date of termination. Upon receipt of such notice, the Artist may continue work through the date of termination, provided that no work or service(s) shall be commenced or continued after receipt of the notice which is not intended to protect the interest of the City. The City shall pay the Artist within thirty (30) days after receiving any invoice after the date of termination for all non-objected to services performed by the Artist in accordance herewith through the date of termination.
- (b) Either party may terminate this Agreement for cause. In the event the City terminates this Agreement for cause, the Artist shall perform no further work or service(s) under the Agreement unless the notice of termination authorizes such further work.
- (c) If this Agreement is terminated as provided herein, City may require Artist to provide all finished or unfinished documents and data and other information of any kind prepared by Artist in connection with the performance of services under this Agreement. Artist shall be required to provide such documents and other information within fifteen (15) days of the request.
- (d) In the event this Agreement is terminated in whole or in part as provided herein, City may procure, upon such terms and in such manner as it may determine appropriate, similar to those terminated.
- V. Payment. Payments to the Artist pursuant to this Agreement will be reported to Federal and State taxing authorities as required. The City will not withhold any sums from compensation payable to Artist. Artist is independently responsible for the payment of all applicable taxes. Where the payment terms provide for compensation on a time and materials basis, the Artist shall maintain adequate records to permit inspection and audit of the Artist's time and materials charges under the Agreement. Such records shall be retained by the Artist for three (3) years following completion of the services under the Agreement.
- W. Restrictions on City Employees. The Artist shall not employ any City employee or official in the work performed pursuant to this Agreement. No officer or employee of the City shall have any financial interest in this Agreement in violation of federal, state, or local law.
- X. Choice of Law and Venue. The laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement, and shall govern the interpretation of this Agreement. Any legal proceeding arising from this Agreement shall be brought in the appropriate court located in Riverside County, State of California.

- Y. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

Artist:

[ARTIST
ADDRESS
ADDRESS
Attn: [INSERT NAME]

City:

City of Moreno Valley
14177 Frederick Street
P.O. Box 88005
Moreno Valley, CA 92552
Attn: [INSERT TITLE & DEPARTMENT]

Such notice shall be deemed made when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

- Z. Time of Essence. Time is of the essence for each and every provision of this Agreement.
- AA. City's Right to Employ Other Artist. City reserves right to employ other Artists in connection with this program.
- BB. Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both parties.
- CC. Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, such attempted assignment, hypothecation or transfer.
- DD. Supplementary General Conditions (for projects that are funded by Federal programs). The following provisions, pursuant to 44 Code of Federal Regulations, Part 13, Subpart C, Section 13.36, as it may be amended from time to time, are included in the Agreement and are required to be included in all subcontracts entered into by Artist for work pursuant to the Agreement, unless otherwise expressly provided

herein. These provisions supersede any conflicting provisions in the General Conditions and shall take precedence over the General Conditions for purposes of interpretation of the General Conditions. These provisions do not otherwise modify or replace General Conditions not in direct conflict with these provisions. Definitions used in these provisions are as contained in the General Conditions.

1. Artist shall be subject to the administrative, contractual, and legal remedies provided in the General Conditions in the event ARTIST violates or breaches terms of the Agreement.
2. City may terminate the Agreement for cause or for convenience, and Artist may terminate the Agreement, as provided the General Conditions.
3. Artist shall comply with Executive Order 11246 of September 24, 1965, entitled Equal Employment Opportunity, as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60). (All construction contracts awarded in excess of \$10,000 by City and/or subcontracts in excess of \$10,000 entered into by Artist.)
4. Artist shall comply with the Copeland Anti-Kickback Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and subcontracts for construction or repair.)
5. Artist shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a7) as supplemented by Department of Labor regulations (29 CFR Part 5).
6. Artist shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327330) as supplemented by Department of Labor regulations (29 CFR Part 5).
7. Artist shall observe City requirements and regulations pertaining to reporting included in the General Conditions.
8. Patent rights with respect to any discovery or invention which arises or is developed in the course of or under the Agreement shall be retained by the City.
9. Copyrights and rights in data developed in the course of or under the Agreement shall be the property of the City. FEMA/CalOES reserve a royalty-free, nonexclusive, irrevocable license to reproduce, publish or otherwise use or authorize to others to use for federal purposes a copyright in any work developed under the Agreement and/or subcontracts for work pursuant to the Agreement.
10. Artist shall provide access by the City, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers, and records of the Artist which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions.

11. Artist shall retain all required records for three years after City makes final payments and all other pending matters relating to the Agreement are closed.
12. Artist shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (This provision applies to contracts exceeding \$100,000 and to subcontracts entered into pursuant to such contracts.)
13. Artist shall comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94163, 89 Stat. 871).
14. Artist must satisfactorily complete project with City Acceptance within one year of City Council approval. Any requests for extensions must be in writing and explain the extenuating circumstances for the delay in completion. The Director of Parks & Community Services will have sole discretion on whether an extension will be granted.

EE. Authority To Execute. The representative executing this Agreement on behalf of each party hereby represents and warrants that he or she has full power and authority to execute this Agreement on behalf of such party and that all approvals and other actions necessary in connection with the effective execution by him or her have been obtained and are in full force and effect as of his or her execution hereof.

FF. No Disparagement. The Artist agrees not to disparage the City or any of its officers, directors, employees, agents or services to any third party, either orally or in writing. In the event that Artist violates this section of this Agreement at any time, they agree that the City shall have the right to terminate this Agreement, seek recovery of all funds issued to Artist, seek all legal remedies available to City to cure any damages caused by the disparaging remarks made by Artist, and ban artist from consideration for future programs provided public funds to Artists.

SIGNATURE PAGE TO FOLLOW

IN WITNESS HEREOF, the parties have each caused their authorized representative to execute this Agreement.

City of Moreno Valley

Insert Name of Artist

BY: _____

BY: _____

City Manager

(Select only one please)

TITLE: _____

Date

INTERNAL USE ONLY

ATTEST:

City Clerk
(only needed if Mayor signs)

APPROVED AS TO LEGAL FORM:

City Attorney

Date

RECOMMENDED FOR APPROVAL:

Department Head
(if contract exceeds 15,000)

Date

BY: _____

TITLE: _____
(Corporate Secretary)

EXHIBIT A

ARTIST SCOPE OF SERVICES

Description of Artwork

PROVIDE MAINTENANCE INFORMATION/PLAN

PROVIDE A DETAILED DESCRIPTION OF THE ART:

- THEME
- SIZE
- SHAPE
- MATERIALS
- COLORS
- WORDS/LOGOS/ETC.
- PAINT
- PREPERATION, SEALANT AND FINISHING
- ADDITIONAL DETAILS (LETTERING, ETC.)

IMAGE OF THE ARTWORK

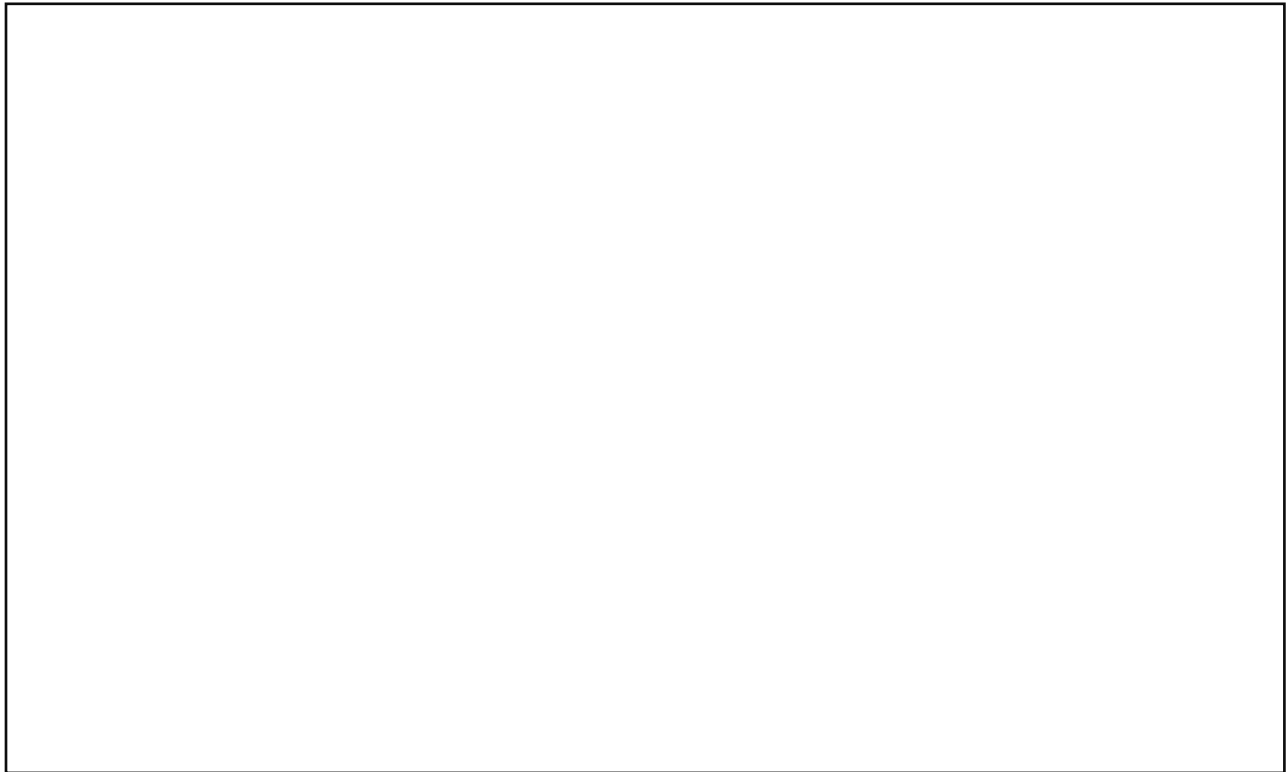


EXHIBIT B

CITY RESPONSIBILITIES

City will provide city liaison to assist with the approval process for Artist and appointment of Public Space area. City shall be responsible for the review of artwork for consideration of public safety and provide to artist the plan of installation.

EXHIBIT C

TERMS OF PAYMENT

1. The Artist's compensation shall not exceed \$_____.
 - a. Payment Schedule:
 - i. LIST AMOUNT \$ (40% of the total project) paid within two weeks of the signing of Agreement
 - ii. LIST AMOUNT \$ (60% of the total project and balance of full compensation) paid two weeks after the completion and approval of Art by City staff.
2. The Artist will obtain, and keep current during the term of this Agreement, the required City of Moreno Valley business license. Proof of a current City of Moreno Valley business license will be required prior to any payments by the City. Any invoice not paid because the proof of a current City of Moreno Valley business license has not been provided will not incur any fees, late charges, or other penalties. Complete instructions for obtaining a City of Moreno Valley business license are located at: http://www.moval.org/do_biz/biz-license.shtml
3. The Artist will electronically submit an invoice to the City on a monthly basis for progress payments along with documentation evidencing services completed to date. The progress payment is based on actual time and materials expended in furnishing authorized professional services since the last invoice. At no time will the City pay for more services than have been satisfactorily completed and the City's determination of the amount due for any progress payment shall be final. The Artist will submit all original invoices to Accounts Payable staff at AccountsPayable@moval.org
 - a. Accounts Payable questions can be directed to (951) 413-3073.
 - b. Copies of invoices may be submitted to the Parks & Community Services Department at
 - c. claudiat@moval.org or calls directed to (951) 413-3289.
4. The Artist agrees that City payments will be received via Automated Clearing House (ACH) Direct Deposit and that the required ACH Authorization form will be completed prior to any payments by the City. Any invoice not paid because the completed ACH Authorization Form has not been provided will not incur any fees, late charges, or other penalties. The ACH Authorization Form is located at:
http://www.moval.org/city_hall/forms.shtml#bf
5. The minimum information required on all invoices is:
 - a. Artist Name, Mailing Address, and Phone Number
 - b. Invoice Date
 - c. Artist Invoice Number
 - d. City-provided Reference Number (e.g. Project, Activity)
 - e. Detailed work hours by class title (e.g. Manager, Technician, or Specialist), services performed and rates, explicit portion of a contract amount, or detailed billing information that is sufficient to justify the invoice amount; single, lump amounts without detail are not acceptable.

6. The City shall pay the Artist for all invoiced, authorized professional services within thirty (30) days of receipt of the invoice for same.
7. Reimbursement for Expenses. Artist shall not be reimbursed for any expenses unless authorized in writing by City.
8. Maintenance and Inspection. Artist shall maintain complete and accurate records with respect to all costs and expenses incurred under this Agreement. All such records shall be clearly identifiable. Artist shall allow a representative of City during normal business hours to examine, audit, and make transcripts or copies of such records and any other documents created pursuant to this Agreement. Artist shall allow inspection of all work, data, documents, proceedings, and activities related to the Agreement for a period of three (3) years from the date of final payment under this Agreement.

Artist shall provide the following Art Maintenance information to ensure the longevity of the art:

ARTIST INFORMATION

Artist Name: _____ Address: _____

Phone Number: _____ Email address: _____

Type of Artwork:

ARTWORK INFORMATION

Name of Art:

Type of Art:

Principal Materials Used in Fabrication:

Be specific including hardware, etc., list brand names of materials, attach product sheets and provide manufacture names).

Equipment Used in the Creation of Art: _____

Final Work Methods (cast, welded, carved, etc.):

Was protective coating applied? _____ Describe Application: _____

MAINTENANCE PLAN

Describe existing environmental factors which may affect the condition of the artwork (I.E.: direct sunlight, air moisture or dryness, wind, etc.):

Any precautionary measures which should be taken:

Describe normal changes in the materials that may occur as part of the normal process of being exposed to the environment:

Provide detailed instructions regarding the methods and frequency of maintenance for the artwork (with observations regarding permanency/durability of materials and techniques):

Provide detailed maintenance routine (I.E.: removal of dust and dirt; disassemble and inspect, repainting, reapplication of sealant, etc.):

Artist signature:

Date:
