

THE CITY OF MANHATTAN BEACH

\*\*\*\*\*

ART AGREEMENT
[Conceptual Design Proposal]

This Agreement, is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the City of Manhattan Beach, a municipal corporation (the "City") and \_\_\_\_\_ (the "Artist") (collectively referred to herein as the "Parties").

RECITALS

- A. The City issued a Request for Qualifications for the City Hall Public Art Project on November \_\_\_\_\_, 2018 (the "RFQ").
B. Pursuant to the RFQ, City has selected a number of artists to develop proposals for the design of a site-related art piece at Manhattan Beach City Hall; and
C. Artist represents that [he or she] has the appropriate background, training, and experience to design and implement a work of public art for the City.

NOW, THEREFORE, in consideration of the mutual obligations, covenants, and conditions hereinafter set forth, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SCOPE OF WORK

- A. In accordance with the terms of this Agreement and with the more detailed Scope of Work set forth in Exhibit A and hereby incorporated, the Artist shall prepare and propose a design for an original site-related art piece in accordance with the RFQ (the "Design").
B. The Design shall be certified by the Artist as unique and shall not be duplicated for any other site.
C. The Artist shall perform all services required under this Agreement to the highest professional standards and in a manner reasonably satisfactory to City. The Artist shall comply with all applicable federal, state, and local laws, ordinances, codes, and regulations.

II. AMOUNT AND MANNER OF PAYMENT

- A. In consideration of the Artist's preparation and submission of the Design, the City shall pay the Artist a fixed sum of \$3,000.00 ("Honorarium").
B. The Artist is also eligible for reimbursement of certain expenses, as follows:

1. Up to \$1,000 as reimbursement for travel expenses, if such travel and expenses is pre-approved by City's Cultural Affairs Manager.

2. Up to \$4,000 as reimbursement for shipping of the proposal display materials for the required presentation, if such shipping costs are pre-approved by City's Cultural Affairs Manager.

C. After presenting the Design to the Arts in Public Places Committee ("APPC"), the Artist shall submit an invoice to the City for the Honorarium and the expense reimbursement (if any). City shall pay all undisputed amounts within thirty days of City's approval of the invoice.

D. All invoices shall be directed to the attention of the Cultural Arts Manager.

### III. RIGHT AND TITLE TO, AND INTEREST IN, THE DESIGN

A. The copyright to the Design and all related materials will belong exclusively to the Artist.

B. The Artist grants the City an irrevocable license to make two-dimensional, photographic reproductions of the Design for non-commercial purposes, including but not limited to, reproductions used in informational brochures, media publicity, the City's website, posters, and catalogues or similar publications. In all such publications, the City shall make prominent reference to the fact that the Design was created by the Artist.

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

### IV. INDEMNIFICATION

The Artist shall defend, indemnify, and hold harmless the City, its elected and appointed officials, officers, agents, and employees from any and all claims, demands, damages, costs, expenses (including attorney's fees), judgments, or liabilities arising out of this

Agreement or occasioned by the performance or attempted performance of the provisions hereof; including, but not limited to, any act or omission to act on the part of the Artist or his or her agents or employees or other independent contractors directly responsible to him, except those claims, demands, damages, costs, expenses (including attorneys' fees), judgments or liabilities resulting from the sole negligence of the City.

V. INSURANCE

- A. The Artist shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:
  - 1. A policy or policies of Comprehensive General Liability Insurance, with minimum limits of \$1,000,000 for each occurrence, combined single limit, against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Artist.
  - 2. A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 per occurrence combined single limit, covering any vehicle utilized by the Artist in performing the work required by this Agreement.
  - 3. Workers' compensation insurance as required by the State of California.
- B. The Artist shall require each of its sub-contractors (if any) to maintain insurance coverage that meets all of the requirements of this Agreement.
- C. The City's Risk Manager may, in writing, amend and/or waive the insurance provisions set forth in paragraph (a) herein. In such case, the Artist shall comply with the insurance provisions required by the City's Risk Manager.
- D. The policy or policies required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A-;VII in the latest edition of Best's Insurance Guide.
- E. The Artist agrees that if it does not keep the aforesaid insurance in full force and effect, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may take out the necessary insurance and pay, at the Artist's expense, the premium thereon.
- F. At all times during the term of this Agreement, the Artist shall maintain on file with the City Clerk a certificate or certificates of insurance on the form approved by the City's Risk Manager, showing that the aforesaid policies are in effect in the required amounts. The Artist shall, prior to commencement of work under this Agreement, file with the City Clerk such certificate or certificates. The general liability insurance and vehicle insurance shall contain an endorsement naming the City as an additional insured. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City, and specifically stating

that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

- G. The insurance provided by the Artist shall be primary to any coverage available to City. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.
- H. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, the Artist shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or the Artist shall procure a bond guaranteeing payment of losses and expenses.

## VI. INDEPENDENT CONTRACTOR

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

## VII. TERMINATION OF CONTRACT

- A. City retains the right and privilege of canceling, suspending, or abandoning the execution of any work in connection with this Agreement.
- B. City shall have the right to terminate this Agreement for any reason, or for no reason, upon seven calendar days' written notice to the Artist. The Artist agrees to cease all work under this Agreement on or before the effective date of such notice.
- C. In the event of termination or cancellation of this Agreement by City, due to no fault or failure of performance by the Artist, the Artist shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall the Artist be entitled to receive more than the amount that would be paid to the Artist for the full performance of the services required by this

Agreement. The Artist shall have no other claim against City by reason of such termination, including any claim for compensation.

VIII. FAILURE TO OBJECT NOT A WAIVER

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

IX. LIMITATION ON ASSIGNMENT

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

X. APPROVAL

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

XI. NOTICES

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

If to ARTIST:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the City:

City of Manhattan Beach  
1400 Highland Avenue  
Manhattan Beach, CA 90266  
ATTN: Martin Betz  
Cultural Arts Manager

XII. AMENDMENTS

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

XIII. LAW AND VENUE

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

XIV. ATTORNEYS' FEES

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

XV. ENTIRE AGREEMENT

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

XVI. SEVERABILITY

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

*[Remainder of this page intentionally left blank]*

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

CITY OF MANHATTAN BEACH  
A Municipal Corporation

---

BRUCE MOE  
City Manager

---

Artist Signature

ATTEST:

APPROVED AS TO CONTENT:

---

LIZA TAMURA  
City Clerk

---

MARK LEYMAN  
Parks & Recreation Director

APPROVED AS TO FORM:

---

QUINN M. BARROW  
City Attorney

## **EXHIBIT A**

### **SCOPE OF WORK**

In accordance with the requirements for the site-specific art project as stated in the RFQ, the Artist shall design and present to the City a proposal for the City Hall Public Art Project, which shall include the tasks listed below.