

THE CITY OF MANHATTAN BEACH

ART AGREEMENT
[Community Arts Grant Program]

This Agreement, is made and entered into as of this ___ day of ___, 2019, by and between the City of Manhattan Beach, a municipal corporation (the "City") and ___ (the "organizations or individuals") (collectively referred to herein as the "Parties").

Project title:

RECITALS

- A. On _____ (the "RFP"), The City issued a Request for Proposals for organizations or individuals to be included in the City's Community Arts Grant Program.
B. Pursuant to the RFP, the City has selected a number of organizations or individuals to develop proposals for artistic projects and programs throughout the City of Manhattan Beach.
C. The organizations or individuals represent that they have the appropriate background, training, and experience to create and implement a project or program 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, organizations or individuals are to develop proposals for the City's Community Arts Grants Program at various locations in Manhattan Beach.
B. Organizations or individuals shall prepare and propose a project or program in accordance with the RFP (the "Community Arts Grant Program").
C. The organizations or individuals shall perform all services required under this Agreement to the highest professional standards and in a manner reasonably satisfactory to the City. The organizations or individuals 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 organizations or individuals preparation and submission of the Community Grants Program application and its approval by the City Council, the City shall pay the organizations or individuals a fixed sum of \$_____,80% upon the execution of the agreement and 20% upon satisfactory completion of the project.
- B. After completing the project and receiving final approval from the Cultural Arts Manager, the organizations or individuals shall submit an invoice to the City for final payment. The City shall pay all undisputed amounts within thirty days of the City's approval of the invoice.
- C. All invoices shall be directed to the attention of the Cultural Arts Manager.

III. INDEMNIFICATION

The organizations or individuals 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 organizations or individuals or their agents or employees or other independent contractors directly responsible to them, except those claims, demands, damages, costs, expenses (including attorneys' fees), judgments or liabilities resulting from the sole negligence of the City.

IV. 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 wrongful or negligent acts by the organizations or individuals.
 - 2. A policy or policies of Comprehensive Vehicle Liability Insurance covering personal injury and property damage, with minimum limits of \$1,000,000 for an organization or \$100,000/\$300,000 for an individual, per occurrence combined single limit, covering any vehicle utilized by the organizations or individuals in performing the work required by this Agreement wrongful or negligent acts by the organizations and individuals.
 - 3. Workers' compensation insurance as required by the State of California.
- B. The organizations or individuals 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. of this section. In such case, organizations or individuals 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 organizations or individuals agree that if it does not keep the aforesaid insurance in full force and effect, the City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, the City may take out the necessary insurance and pay, at the organizations or individuals expense, the premium thereon.
- F. At all times during the term of this Agreement, the organizations or individuals 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 organizations or individuals 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 the 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 organizations or individuals shall be primary to any coverage available to the 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 the City. At the option of the City, the organizations or individuals shall either reduce or eliminate the deductibles or self-insured retentions with respect to the City, or the organizations or individuals shall procure a bond guaranteeing payment of losses and expenses.

V. INDEPENDENT CONTRACTOR

The Parties agree, understand, and acknowledge that the organizations or individuals is not an employee of the City, but is solely an independent contractor. The organizations or individuals expressly acknowledges and agrees that the 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 organizations or individuals shall not be in any way an employee of the City. As such, the organizations or individuals 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 the City nor any of its agents shall have control over the conduct of the organizations or individuals or any of the organizations or individuals employees. The organizations or individuals 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 the City. The organizations or individuals shall indemnify and hold harmless the 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 organizations or individuals personnel practices. The City shall have the right to offset against the amount of any fees due to the organizations or individuals under this Agreement any amount due to the City from the organizations or individuals as a result of the organizations or individuals failure to promptly pay to the City any reimbursement or indemnification arising under this section.

VI. TERMINATION OF CONTRACT

- A. The City retains the right and privilege of canceling, suspending, or abandoning the execution of any work in connection with this Agreement.
- B. The City shall have the right to terminate this Agreement for any reason, or for no reason, upon seven calendar days' written notice to the organizations or individuals. The organizations or individuals 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 the City, due to no fault or failure of performance by the organizations or individuals, the organizations or individuals shall be paid based on the percentage of work satisfactorily performed at the time of termination. In no event shall the organizations or individuals be entitled to receive more than the amount that would be paid to the organizations or individuals for the full performance of the services required by this Agreement. The organizations or individuals shall have no other claim against the City by reason of such termination, including any claim for compensation.

VII. 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.

VIII. LIMITATION ON ASSIGNMENT

- A. The personal skill, judgment, and creativity of the organizations or individuals are an essential element of this Agreement. Therefore, although the Parties recognize that the organizations or individuals may employ qualified personnel to work

under the organizations or individuals' supervision, the organizations or individuals shall not assign, transfer or subcontract the project or program 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 organizations or individuals 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.

IX. 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.

X. 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 the : organizations or individuals

If to the City:

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

XI. 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.

XII. 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.

XIII. 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.

XIV. 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.

XV. 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

Representatives 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 RFP, the Artist shall design and execute a mural on or in City facilities in the location approved by the City Council.

SAMPLE