

CITY OF MANHATTAN BEACH ART LOAN AGREEMENT

This Art Loan Agreement (“Agreement”) is dated April 4, 2023 (“Effective Date”) and is made by and between the City of Manhattan Beach, a California municipal corporation (“City”), and Domisi Keven Parham, DBA INOX Igneous Abstractions (“Artist”), collectively referred to herein as the “Parties,” and individually as a “Party,” with reference to the following facts:

RECITALS

A. Artist desires to loan City artwork entitled “Surf Ascension” (the “Artwork,” as is more particularly described in the Scope of Work attached hereto as Exhibit A) to be placed outside of The North End Caffe, 3421 Highland Ave, Manhattan Beach, CA 90266 (the “Site”); and

B. City desires to publicly display the Artwork.

Now therefore, for good and valuable consideration, including the mutual promises, conditions and covenants contained herein, the Parties hereto agree as follows:

1. Scope of Work.

(a) In accordance with the terms of this Agreement, the Artist shall provide the Artwork to City to be placed on the concrete pad at the Site, as shown in Images 1 and 2 of Exhibit A.

(b) The Artwork shall contain a lighting component that allows the Artwork to change lights and flicker (“Light Show”) or remain unlit. The Artist shall supply and set up a battery pack and related equipment when the Artwork is operated in Light Show mode on a monthly basis (one four-hour period per month, with the date to be agreed upon in writing by the Artist and City); the Artist shall immediately remove such equipment upon the completion of every Light Show.

(c) The Artist shall perform all services required under this Agreement to the highest professional standards and in a manner reasonably satisfactory to the City. The Artist shall comply with all applicable federal, state, and local laws, ordinances, codes, and regulations, including any applicable requirements governing deputy inspections. The Artist shall obtain and maintain during the Agreement term all necessary licenses, permits, and certificates required by law for the services required under this Agreement.

2. Loan. Artist agrees to lend the Artwork to City, and City agrees to borrow the Artwork from Artist, for the purpose of exhibiting the Artwork at the Site. City at all times has the sole discretion to determine the exact location in which to exhibit the Artwork. The Artwork shall remain in the possession of City for the time specified herein, but Artist agrees that the City Manager or City Manager's designee may withdraw the Artwork from display at any time in City's sole discretion, and City may terminate this Agreement at any time with or without cause. If so withdrawn or terminated, City shall provide notice of that action to the Artist.

3. Amount and Manner of Payment.

(a) In consideration of the Artist's loan, transportation, delivery, installation, operation, and maintenance of the Artwork, the City shall pay the Artist a fixed sum of \$2,000 (the "Artist Honorarium"), plus an additional sum not to exceed \$7,000 annually (the "Maintenance Fee") for necessary repair and maintenance of the Artwork as determined in writing by the City's Parks and Recreation Director or Designee. The City shall pay \$1,000 of the Artist Honorarium to the Artist upon the execution of this Agreement, and shall pay the remaining \$1,000 of the Artist Honorarium to the Artist upon satisfactory completion of the Scope of Work including the monthly Light Shows.

(b) In the event that the City deems the Artwork to have sustained damage and wishes the Artist to repair said damage, the City will notify the Artist in writing and request necessary repairs to be completed in accordance with the Maintenance Plan attached hereto as Exhibit B. The Artist shall complete the repairs in a manner satisfactory to the City and present the City with an itemized invoice, not to exceed the agreed upon amount and type of work that the City has requested previously in writing. The City shall pay all undisputed amounts within 45 days. In the event that the sustained damage exceeds the allotted annual Maintenance Fee, the Artist shall, at his expense, remove the Artwork from the Site and return the Site to its original state no later than 14 days after receiving written notice from the City. Should the Artwork require repair or maintenance by the Artist, the City shall determine if said work can be performed on-site or if the Artwork needs to be removed from the Site. Should the City determine that the Artwork cannot be repaired on-site, it shall be the Artist's responsibility to coordinate, schedule, remove, deinstall, and reinstall the Artwork at his own expense in accordance with the Maintenance Plan.

4. Term. The term of the loan of the Artwork shall commence on completion of installation of Artwork and end one year (12 months) after that date, no later than December 31, 2024. The one-year term of the loan may be extended for an additional period of time upon mutual written agreement of the Parties. The City Manager or his designee may extend the term of this Agreement on behalf of City.

5. Transportation, Delivery, Installation, and Removal.

(a) Artist certifies that the Artwork is in such condition as to withstand ordinary strains of transportation, delivery, and handling and that Artist shall coordinate the transportation, delivery, installation, and removal of the Artwork with City. City shall have no liability to Artist for damage to the Artwork which results from the transportation, delivery, installation and removal of the Artwork to and from the Site.

(b) Artist is responsible for the costs of transporting and delivering the Artwork to and from the Site, including any transportation costs. Installation and deinstallation of the Artwork at the Site shall be coordinated with and assisted by two staff members of the City's Public Works Department who will provide and operate one forklift during the time of installation and deinstallation. The Artist shall oversee and participate in the installation and deinstallation in tandem with City staff. The Artist is responsible for the preparation of the Site for installation (further described in Exhibit A) including but not limited to installing hardware, and scheduling, coordinating and overseeing the deputy inspection. Artist hereby releases and holds City, City Council and each member thereof, and every officer, employee and agent harmless from any liability for damage to or loss of the Artwork, regardless of who causes such damage, during the installation and deinstallation of the Artwork.

(c) Upon the expiration of the term of this Agreement or if sooner terminated as set forth herein, Artist shall remove the Artwork from the Site. In order to minimize disruption of pedestrian and/or vehicular traffic, Artist shall schedule the removal with City, at least 10 days in advance of the date of termination. Artist is responsible for the costs of transporting the removed Artwork from the Site. If Artist fails to retrieve the Artwork within 30 days after the termination of this Agreement, City shall have the right to remove and store the Artwork at Artist's cost and expense. Artist shall reimburse City within 30 days following receipt of a written statement. If, after one year, the Artwork has not been reclaimed, then, and in consideration for its storage, insurance, and safeguarding during such period, the Artwork shall be deemed an unrestricted gift to City, that may be, among other acts, temporarily or permanently modified, altered, changed or destroyed.

(d) If the legal ownership of the Artwork shall change during the pendency of this loan, whether by reason of death, sale, insolvency, gift or otherwise, the new owner may, prior to the Artwork's return, be required to establish his or her legal right to receive the Artwork upon proof satisfactory to City.

6. Care, Operation, and Preservation.

(a) Artist shall maintain, operate, and/or repair the Artwork as appropriate and provided herein.

(b) The Artist shall coordinate, conduct, program, and otherwise facilitate 12 monthly four-hour Light Shows in the color schemes and patterns determined by the City and executed by the Artist during times and dates agreed upon in writing at least seven days ahead of each event. The Artist shall arrive at the Site no later than one hour prior to each Light Show on the agreed upon date/time and be ready to execute the Light Show no later than 30 minutes prior to the scheduled start time. The Artist shall remove the battery equipment and return the Artwork to its unlit state no later than 15 minutes after the scheduled termination of the Light Show. Should the Artist desire to clean the Artwork prior to any performance, he may do so no earlier than 24 hours prior to the scheduled time of each performance. The Artist shall use only non-abrasive, non-caustic materials and supplies to clean the Artwork. The Artist shall perform all cleaning, maintenance, programming, and other services not relating to repairs requested by the City, from ground level, utilizing, as needed, long tools (such as extendable handles) to reach the top of the Artwork; such cleanings and maintenance shall be done at the Artist's expense and at his discretion.

(c) City shall exercise the same care with respect to the Artwork as it does in the safekeeping of comparable property of its own. It is understood, however, that the Artwork shall be displayed out of doors and shall be exposed to extremes of rain, wind, heat, sun, humidity, and other features of weather, as well as dirt, pollution, insects, birds, and other animals, and the possibility of theft, vandalism, and malicious mischief.

(d) In the event of any damage to the Artwork which requires immediate repair or removal of the Artwork in order to prevent injury to persons or property, Artist shall immediately repair or remove the Artwork following receipt of notification from City of the need for such repair. The City shall reimburse the Artist for reasonable costs arising from such work in accordance with paragraph 3 of this Agreement. In the event Artist fails to perform the repairs

or removal within a reasonable time, or if the damage to the Artwork is such that immediate action is required in order to prevent injury to persons or property, City may take action to remove, repair and/or secure the Artwork and may require the Artist to reimburse City for certain costs and expenses incurred in connection therewith promptly following receipt of a written statement. Notwithstanding, City reserves the right to require removal of the Artwork if City determines, in its sole discretion, that the Artwork may be a safety hazard. In such case, Artist shall be notified to transport his Artwork from the Site.

(e) Artist hereby releases and holds City, City Council and each member thereof, and every officer, employee and agent harmless from any liability for damage to or loss of the Artwork, regardless of whom or what causes such damage, and City shall not be responsible for the preservation and/or safekeeping of the Artwork, nor shall City have any liability for theft, loss or damage to the Artwork.

7. Insurance. Insurance

(a) Artist shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

- i. Commercial General Liability Insurance with a minimum limit of \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of \$2,000,000.00 per project or location.
- ii. Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of \$1,000,000.00 per accident for bodily injury and property damage.
- iii. Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of \$1,000,000.00 per accident for bodily injury or disease. If Artist has no employees while performing Services under this Agreement, Artist shall execute a declaration that it has no employees.

(b) Other Insurance Provisions. The general liability and automobile liability policies are to contain, or be endorsed to contain, the following provisions:

- i. City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials, are to be covered as additional insureds as respects: liability arising out of activities performed by or on behalf of Artist; products and completed operations of Artist; premises owned, occupied or used by Artist; or automobiles owned, leased, hired or borrowed by Artist. The coverage shall contain no limitations on the scope of protection afforded to City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials which are not also limitations applicable to the named insured.

- ii. For any claims related to this Agreement, Artist's insurance coverage shall be primary insurance as respects City, its officers, officials, employees, designated volunteers and agents serving as independent contractors in the role of City officials. Any insurance or self-insurance maintained by City, its officers, officials, employees, designated volunteers or agents serving as independent contractors in the role of City officials shall be excess of Artist's insurance and shall not contribute with it.
- iii. Artist's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- iv. Each insurance policy required by this clause shall expressly waive the insurer's right of subrogation against City and its elected officials, officers, employees, servants, attorneys, designated volunteers, and agents serving as independent contractors in the role of City officials.

(c) The City may, in writing, amend and/or waive any or all of the insurance provisions set forth herein.

(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, unless waived in writing by City's Risk Manager.

(e) Artist agrees that if it does not keep the aforesaid insurance in full force and effect it will be considered a breach of the contract. If there is a breach, City may immediately terminate this Agreement.

(f) All insurance coverages shall be confirmed by Artist providing certificates of insurance and executed endorsements on forms approved by City. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received and approved by City before services commence.

(g) Any deductibles or self-insured retentions must be declared to and approved by City.

(h) Artist shall require any sub-contractors to maintain insurance coverage that meets all of the requirements of this Agreement.

8. Indemnification. Artist hereby warrants that, to his knowledge, the Artwork is durable, structurally sound, properly constructed, and securely fastened. Artist hereby agrees to indemnify and hold harmless City, and its officers, agents and employees, from and against any and all losses, liability, costs or expenses (including attorneys' fees and costs) arising from or in connection with, or caused by the intentional, reckless, negligent or otherwise wrongful act or omission of Artist or the Artist's agents, employees, subcontractors or other personnel or from and against any and all losses, liability, including property damage or death, and costs or expenses (including attorneys' fees and costs) arising out of or related to defects of the Artwork, faulty

workmanship of Artist and Artwork or otherwise caused by the Artwork.

9. Artist's Warranty. Artist represents and warrants to City that it has the proper legal authority to loan the Artwork to City on the terms and conditions set forth in this Agreement. Artist shall indemnify and hold harmless City, and its officers, agents and employees from any and all losses, liability, costs or expenses (including attorneys' fees and costs) arising from any breach by Artist of such representation and warranty.

10. Photography and Reproduction. Artist authorizes City to photograph, videotape, reproduce and publish the Artwork in any medium for any purpose including but not limited to archival, educational, and publicity purposes related to the Artwork and/or City. In the event City reproduces the Artwork as described in this paragraph, the following credit shall appear as follows: Domisi Parham, Artist. This provision shall survive termination of this Agreement.

11. Sale of Artwork. Artist may sell the Artwork during the term of this Agreement; however, Artist shall, as part of the sale, ensure that this Agreement, and the obligations and rights hereunder, are assigned to the new owner by requiring that Artist and the buyer execute an assignment and assumption agreement in the form approved by City Attorney. Under no circumstances shall the sale of the Artwork adversely affect City's rights under this Agreement, including but not limited to City's right to possess the Artwork during the term hereunder. Upon any sale of the Artwork, the Artist shall deliver to City a duly executed assignment and assumption agreement and shall provide to City written notice as to whom the Artwork should be released to upon expiration or termination of this Agreement.

12. Addresses for Notices. Any notices, demand, or documents 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 as follows:

To City:
City of Manhattan Beach
Director of Parks and Recreation
1400 Highland Avenue
Manhattan Beach, California 90266

To Artist:
Domisi Keven Parham
415 Herondo St. P301
Hermosa Beach, CA 90254

Any Party shall have the right to designate a different address by written notice similarly given. Artist shall notify City promptly in writing if there is any change in ownership of the Artwork (whether through *inter vivos* transfer or death) or if there is a change in the identity or address of Artist. City assumes no responsibility to search for Artist or subsequent owner if it cannot be reached at the address of record provided herein.

13. General. This Agreement represents the entire integrated agreement between City and Artist and supersedes all prior negotiations, representations or agreements, either written or oral. Except as otherwise provided herein, this Agreement may be amended only by a written instrument signed by City, through its City Manager, and Artist. The interpretation and implementation of this Agreement shall be governed by the domestic law of the State of California. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect. In the event any Party shall commence any action against another Party relating to this Agreement or for the breach of any obligation contained herein, the prevailing Party shall be entitled to recover from the losing Party reasonable attorneys' fees, expenses and court costs.

14. Successors, Assigns, and Subcontractors. The terms of this Agreement shall be binding upon and inure to the benefit of the respective heirs, successors in interest and assigns of the parties thereto. Artist shall not assign or subcontract or attempt to assign or subcontract any portion of this Agreement without the prior written approval of City, except as otherwise provided herein.

15. Contract Administration. The City Manager or his designee shall administer the terms and conditions of this Agreement for City.

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

CITY OF MANHATTAN BEACH

ARTIST

By: _____
Name: Bruce Moe
Title: City Manager

By: _____
Name: Domisi Keven Parham

ATTEST:

By: _____
Name: Liza Tamura
Title: City Clerk

APPROVED AS TO FORM:

By: _____
Name: Quinn M. Barrow
Title: City Attorney

EXHIBIT A

SCOPE OF WORK

In accordance with the terms of this Agreement, the Artist shall execute a one of a kind sculpture (the “Artwork”) – “*Surf Ascension*” – located north of the North End Caffe at 3421 Highland Ave., Manhattan Beach, CA 90266 on the concrete pad indicated in Image 1.

The Artwork must strictly adhere to the design, colorway, and details presented in Images 2 – 5. Any significant deviations from the approved design must be approved by City’s Parks & Recreation Director or designee prior to execution.

The Artwork shall consist of a vertical upright surfboard on a low, rectilinear pedestal. The vertical side of the pedestal facing east shall contain a QR code as pictured in Image 5. The Artwork shall be constructed of 316L Stainless Steel and Aquamarine Quartzite, equipped with programmable LEDs mounted behind the Quartzite panels (as seen in Image 4). The Quartzite panels shall be sealed with a removable acrylic coating to prevent damage to the surface. The space between each panel and steel or any adjacent panels shall be sealed with color matched grout.

Roles and Responsibilities

I – The Artist shall be responsible for:

- i. Planning, organizing, coordinating, creating, transporting, and installing the approved Artwork as described in this Agreement and approved by City Council (see Images 2 – 5 below).
- ii. All costs relating to and coordination of any subcontractor, consultant, engineer, electrician, inspector, fabricator, installer, or other persons involved in the creation, transportation, storage, or installation of the Artwork including the deputy inspector.
- iii. All costs relating to and coordination of required permits, engineering specs, drawings, calculations, verifications and inspections, licenses, certifications or other costs associated with acquiring the necessary permits and inspections as determined by City.
- iv. All costs of and coordination related to General and Automobile Liability Insurance, Workers Compensation Insurance, and any and all costs of necessary licenses, and permits as described in this agreement.
- v. Procuring, providing, and any costs relating to all necessary tools and equipment for the execution of the Artist’s responsibilities under this Section I, including but not limited to tools and equipment, scaffolding, ladders, protective materials for the Site, personal protective attire, refuse receptacles and removal, and other necessary items as needed for the installation/creation process with the exception of the agreed upon labor/equipment provided by City as outlined in Section II, items i – iii below.
- vi. Making all approved alterations to the Site including, but not limited to: installing and removing mounting hardware necessary for the installation and deinstallation of the Artwork. The artist must coordinate a date and time for any work done at the Site with the Parks and Recreation Director or designee no fewer than 10 days before the agreed upon date.

- vii. Returning the Site to its original state at the end of any installation session/day including removal and disposal of all garbage/refuse at Artist's expense.

II – The City shall be responsible for:

- i. Presenting the Site in 'as is' condition.
- ii. Providing two Public Works staff, plus a fork lift (to be operated by one of the staff) for a duration not to exceed 2 hours each on one day of installation and one day of deinstallation of the Artwork.
- iii. Scheduling 12 monthly Light Shows in coordination with the Artist to be executed in the manner discussed in this agreement.

Timeline

The Artist shall complete and present the completed Artwork (including lighting and Light Show capability) no later than 3 months after the execution of this Agreement. Any delays in the timeline must be mutually agreed upon in writing.

		
<u>Image 1</u> – Artwork Site	<u>Image 2</u> – Artwork as it appears on Site	<u>Image 3</u> – Back of Artwork



Image 4 – Side of Artwork and glow during Light Show mode



Image 5 – Artwork QR code placement

EXHIBIT B

MAINTENANCE PLAN

In the event that the Artwork sustains damage and the City deems it necessary to repair this damage the City shall contact the Artist via email and agree upon a repair plan based on the fee structure and timeline outlined below.

At no point shall the Artist make repairs or alterations to the Artwork without the written consent from the City.

Type of Damage	Lead Time to Complete	Cost of Repair
Stainless Steel Components		
Minor scratch to steel	2 weeks	\$750
Major scratch to steel	2 weeks	\$1,000
Dent in steel	3 weeks	\$1,000
Buffing of entire surface	45 days	\$3,750
Quartzite Components		
Replacement of protective plastic coating to one panel of any size	2 weeks	\$300
Replacement of protective plastic coating to the entire Artwork	2 weeks	\$3,000
Replacement of Quartzite panel (cost of replacement per square inch of panel)	45 days	\$3.50 per square inch
Other Repairs		
Repair/replacement of grout (per linear inch)	2 weeks	\$0.25 per linear inch
Repair/replacement of LED lights	30 days	\$3,000

For the purposes of this Maintenance Plan, Quartzite panels are measured in square inches by measuring the height and width of panel in question. The cost per square inch of repair work to be done includes but is not limited to: cost of material (Quartzite), labor (cutting, shaping, sanding, buffing, polishing, sealing), cost of consumable materials (polish, sanding/polishing pads/compound/paper etc., protective plastic coating), and installation of new panel (including re-grouting affected seams). No additional costs are to be added to the total resulting from the square inch measurements and calculation.

For the purpose of the Maintenance Plan the “Lead Time to Complete” refers to the time it takes for the repair to be executed in its entirety, starting with the Artist being made aware of the necessary work and concluding in the successful and final completion of the repair. The “Cost of Repair” is the all-inclusive cost for each outlined item, including but not limited to: travel/transportation, materials/supplies, time/labor, equipment, and tools. No additional fees shall be added unless mutually agreed upon in writing prior to the work being done.

The City shall have the sole discretion to determine if the necessary repair may be done on-site or if the Artwork needs to be removed for the completion of the work. In order to minimize disruption or potential risk to pedestrian and/or motorist traffic and assure safety and uninterrupted operation

of nearby businesses, should the City determine that the work can be completed on-site, the Artist shall comply with all safety, timing, and other regulations as determined by the Parks and Recreation Director or designee.