

THE CITY OF MANHATTAN BEACH

UTILITY BOX BEAUTIFICATION PROGRAM ART AGREEMENT

This Agreement, is made and entered into as of this [redacted] day of [redacted], 2023, by and between the City of Manhattan Beach, a municipal corporation (the "City") and [redacted] (the "Artist") (collectively referred to herein as the "Parties").

RECITALS

- A. The City issued a Request for Proposals for the Utility Box Beatification Program on [MONTH] [DATE], [YEAR] (the "RFP").
- B. Pursuant to the RFP, City has selected a number of artists to create artwork for utility boxes throughout the City of Manhattan Beach; and
- C. The Artist represents that he/she has the appropriate background, training, and experience to create 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 into this Agreement, the Artist shall create artwork in a format suitable for a utility box in accordance with the RFP (the "Artwork").
- B. The Artwork 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

In consideration for the Artist's creation of the Artwork and the City's use of the image of the Artwork on a vinyl wrap covering an electric utility box, the City shall pay the Artist a fee of \$[redacted]. The City shall pay \$[redacted] to the Artist upon execution of this Agreement, and shall pay the remaining \$[redacted] to the Artist upon successful installation of artwork. The fee shall be paid in accordance with City's usual accounting procedures following

submission of an invoice from Artist to City. City requires three weeks to process invoices and will not make payment available any sooner than three weeks.

III. RIGHT AND TITLE TO, AND INTEREST IN, THE ARTWORK

- A. Copyright of the image is retained by the Artist. The Artist agrees to license to the City the image of the Artwork for use on a vinyl wrap covering an electric utility box. The City may use images of the Artwork for promotional purposes.
- B. The Artist hereby waives, releases and disclaims any rights, demands or claims as may arise at any time and under any circumstances against the City, its elected officials, officers, agents, employees, attorneys, servants, volunteers, successors and assigns arising under the federal Visual Artists Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 *et seq.*), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A, California Civil Code § 987 *et seq.*, or any other type of moral right protecting the integrity of works of art. The Artist acknowledges and agrees that the City, in its sole and exclusive discretion, may, among other acts, temporarily or permanently modify, alter, change, destroy or replace the vinyl wrap on the utility box or the image of the Artwork without compensation to the Artist.
- C. The Artist represents and warrants that (i) the Artwork is and will be original; (ii) at the time of agreement to license the image of the Artwork to the City, the Artist is the sole owner of the Artwork 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 Artwork; (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 any of the Artwork to any third party; (vi) the Artwork 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 Artwork 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 or her, and including any action or proceeding brought against the City based on any claim

that the Artwork, or any portion thereof, or the use of the Artwork, or any part thereof, constitutes infringement on any United States patent, copyright or trademark, now or hereafter issued, except those claims, demands, damages, costs, expenses (including attorneys' fees), judgments or liabilities resulting from the sole negligence of the City. The Artist is not required to 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, judgments, or liabilities arising out of the installation of the vinyl wrap on the utility box.

V. 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 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 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 the 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 the City. The Artist 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 Artist's personnel practices. The City shall have the right to offset against the amount of any fees due to the Artist under this Agreement any amount due to the City from the Artist as a result of the Artist's 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 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 the 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 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 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 Artwork 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.

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 Artist:

If to the City:

City of Manhattan Beach
1400 Highland Avenue
Manhattan Beach, CA 90266
ATTN: Eilen Stewart
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. MINORS

If the Artist is a minor, the Artist's parent or guardian shall complete the Acknowledgment for Minor attached as Exhibit B and hereby incorporated into this Agreement.

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

ARTIST

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

The Artist is responsible for creating the Artwork in a format suitable for print in vinyl and placement on a utility box within the City of Manhattan Beach. The Artist is also responsible for working directly with the printer/installer of vinyl to assist in adjusting the Artwork and all files and necessary materials for printing and installation on the utility boxes.

The Artwork should be visible from a distance, and it cannot restrict any vents or airflow through the box(es). Any nameplates, keyholes, ID numbers, and windows cut out and left uncovered. Installation of the Artwork will begin only after design approval and completion of all required liability and contract forms. The Artist must complete and submit the Artwork to installer no later than _____.

