

**CITY OF ARCATA AGREEMENT WITH [ARTIST] AND [FISCAL SPONSOR AGENCY]
FOR COMMISSION AND INSTALLATION OF PUBLIC ARTWORK
FOR DISPLAY IN A PUBLIC PLACE**

This Agreement is entered into this _____, (“Effective Date”) by and between the City of Arcata, a municipal corporation (hereinafter the “City”), _____, a local artist (hereinafter the “Artist”), and _____ a _____ (hereinafter the “Agency”).

RECITALS

Whereas, the City Council for the City of Arcata has determined that art in City-owned parks and other public places provides an aesthetic enhancement to the quality of the park and/or other public place to the beneficial enjoyment of the community; and

Whereas, implementing the Arcata Arts Strategic Plan by working with existing arts efforts is a City Council Priority Project; and

Whereas, the Agency has commissioned (*or*) sponsored the Artist’s production of the following particular piece of art: _____ (“Artwork”), as described in Exhibit “A” (*attach photo or rendering*) and incorporated herein; and

Whereas, the Artist and Agency desire said Artwork to be installed at the following location with the Arcata City limits: _____, and the installation of art in this location is consistent with the goals of the Arcata Strategic Arts Plan;

Whereas, the Agency has agreed to sponsor the Artist’s production and installation of the Artwork via an Agency Sponsorship Agreement with Artist attached and incorporated herein as Exhibit “B”; and

Whereas, on _____, the Parks and Recreation Committee approved the Artist’s Artwork Proposal, attached and incorporated herein as Exhibit "A" and the installation of said Artwork on City property;

NOW, THEREFORE, under the terms, qualifications and conditions set forth in this Agreement, the Parties agree as follows:

1. **Artwork Creation and Installation.** The Artist shall perform all services and furnish all supplies, materials and/or equipment necessary for the design and fabrication of the Artwork, as described in the Exhibit “A” and in accordance with the terms and conditions of this Agreement. Upon completion of Artwork installation, the Artist shall prepare and submit its invoice to the person and address specified in Section 10 of this Agreement.
2. **Acceptance of and Compensation for Artwork.** The City shall pay the Artist on a time and materials basis, not to exceed \$ _____. Upon the City’s acceptance of and payment for the Artwork in accordance with the terms and conditions set forth in this Agreement, the Artist hereby conveys the Artwork and its legal title to the City, and the City accepts the Artwork. The Artist intends by this Agreement to relinquish all legal claim of right to title, royalties, copyright or trademark of the Artwork.
3. **Warranty.** The Artist warrants that they possess full legal title and ownership of the Artwork, and that it is a unique work of art created by the Artist, and is not subject to third party claims of royalties, or copyright or trademark infringement.

4. **Term.** The Agreement shall be effective as of the date of the last party signing below and remain in effect until 30 days following the date written on the City's "Notice of Acceptance," which will be issued to Artist upon completion of the Artwork installation, per Section 9 of this Agreement, unless sooner terminated as provided herein. No work, services, material or equipment shall be performed or furnished under this Agreement until the City has delivered a fully executed Agreement to the Consultant. A signed Agreement is considered notice to proceed.
5. **Removal or Relocation.** The City retains the right to relocate or permanently remove the Artwork from public display for any reason, in the sole discretion of the City, including, but not limited to: hazards to public health, safety or welfare; unsightly or deteriorated conditions of the Artwork; or the need to access, repair and maintain public facilities.
6. **Artist's Option.** *(If Applicable.)* The Artist shall have the option of reacquiring title and possession of the Artwork upon permanent removal of the Artwork by the City as follows: Prior to permanent removal of the Artwork, the City shall provide notice to the Artist addressed and delivered in accordance with Section 9 of this Agreement. If the Artist chooses to exercise its option to reacquire the Artwork, the Artist shall notify the City and remove the Artwork at the Artist's own expense within 60 days of notification from the City. Legal title to the Artwork shall be deemed conveyed to the Artist at the time of removal. Artist and City may coordinate such work via amendment to this Agreement, in accordance with Section 13. Failure by Artist to either respond to the City's notification or to remove the Artwork within the specified 60 day period shall be deemed a waiver by the Artist of the Artist's option to reacquire title and possession of the Artwork upon its permanent removal, and the City may thereafter use the Artwork for any purpose, including without limitation, dismantling, salvaging or sale.
7. **Maintenance.** Should refurbishment of the Artwork become necessary to maintain slightly conditions, City and Artist may coordinate such work via amendment to this Agreement, in accordance with Section 13.
8. **Construction and Installation Requirements.**
 - a. The Artist and the Agency shall be responsible for all labor and materials costs associated with building, transporting and installing the Artwork in accordance with Exhibit "A" – Artwork Proposal and Installation Plan.

The Artwork Installation Plan is briefly summarized as follows:

 - b. The Artist shall give at least seven (7) calendar days' advance notice of the installation date. The installation notice shall be directed to the attention of: **(City Contact Person)**; email: _____; phone: _____.
 - c. The City may, at City's option, assist the Artist with installation of the Artwork on City property.
 - d. The risk of loss and damage during construction, transportation, and installation of the Artwork shall be borne solely by the Agency on behalf of the Artist.

- e. Any impediments to vehicular or pedestrian traffic during the installation may require the Artist to obtain an Encroachment Permit from the City's Engineering Department prior to beginning work, as determined by the City Manager:

➤ Installation ___ will ___ will not require an Encroachment Permit. _____
(CM initials)

- f. When work is finished, Artist shall provide the City a "Notice of Artwork Installation Completion."

9. **City Acceptance.** Within seven (7) business days of receipt of "Notice of Artwork Installation Completion," City shall inspect Artwork for conformity with the Installation Plan and will notify Artist if additional work is required to finalize installation. Upon approval of the Artwork installation, City will issue to Artist a formal "Notice of Acceptance" of the Artwork and its legal title.
10. **Notice.** Notice when required herein, shall be deemed properly given and complete when provided either by 1) email communication sent to the email address provided below, or 2) upon five (5) calendar days after mailing U.S. first class mail, postage prepaid to the following addresses, or to any other updated email or mailing address which may have been provided in writing from one party to the other:

<u>If to Artist:</u>	<u>If to City:</u>	<u>If to Agency:</u>
Name: _____	Karen Diemer	Name: _____
	City Manager	Title: _____
Address: _____	736 F Street	Address: _____
_____	Arcata, CA	_____
Phone: _____	(707) 822-5953	Phone: _____
Email: _____	citymgr@cityofarcata.org	Email: _____

Each party shall ensure that the other party is properly notified in writing of any revisions or updates to these addresses.

11. **Indemnification.** To the fullest extent permitted by law, the Artist and the Agency shall hold harmless, defend and indemnify City and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with the performance of work under this Agreement by Artist or by any individual for which Artist is liable, or arising out of or in connection with Artist's failure to comply with any of its obligations contained in the Agreement, except such loss or damage which was caused by the sole negligence or willful misconduct of the City.
12. **Insurance.** The Agency shall, on the Artist's behalf, procure and maintain in full force and effect during the term of the Agreement a policy of insurance from an insurance company meeting the requirements of the City's insurance pool and authorized to do business in the state as follows:
- A. **General Liability Insurance:** A General Liability policy, including property damage, bodily injury and personal and advertising injury with limits no less than \$2,000,000 per occurrence for all covered losses.
- B. Endorsements or policy language stating the following:
- i. The "**City of Arcata, its officers, officials, employees, agents and volunteers**" are named as additional insureds;

- ii. The insurance will be **primary and non-contributory**;
- iii. The insurance will not be cancelled without 30-day prior written notice given to the City of Arcata.

C. Automobile Insurance. *(When applicable.)*

- i. If use of a **commercial automobile** is required for installation of the Artwork, Agency shall provide evidence of auto liability coverage no less than \$2,000,000 per accident.
- ii. If use of a **personal automobile** is required for installation of the Artwork, Artist shall provide evidence of personal auto liability coverage.

D. Workers Compensation Insurance. *(When applicable.)*

If Artist shall employ any person in any matter so as to become subject to the workers' compensation provisions of Section 3700 of the Labor Code, then Agency shall provide evidence of workers compensation insurance covering all employees and volunteers as required by the State of California on a state-approved policy form, and Employer's Liability insurance with a limit of no less than \$1,000,000 per accident for bodily injury or disease.

- E. The City reserves the right to obtain a full certified copy of any insurance policy and any endorsement. Failure to exercise this right shall not constitute a waiver of the City's right.

If the City Manager reasonably determines that a particular Artwork installation does not present a substantial or significant public liability or property damage exposure for the City, its boards, officials, employees, agents or volunteers, the City Manager may give written approval of a reduction to the limits of insurance required for this Agreement. Any requests for reduction or alternate treatment of the insurance requirements shall be made in writing prior to the execution of the Agreement and any such reductions or alternate treatments, if approved by the City Manager, shall be stated and attached herein by Exhibit.

- 12. **Termination.** Notwithstanding any other provision of this Agreement to the contrary, this Agreement may be terminated by any party at any time and for any reason upon 30 calendar days' prior written notice of termination to the other party. If Artist terminates the Agreement prior to end of the term, Artist and Agency are responsible for all costs associated with de-installation of Artwork.
- 13. **Modification, Amendment:** No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
- 14. **Entire Agreement.** This Agreement together with the exhibits identified below constitutes the entire Agreement between City, the Artist, and the Agency for installation of the Artwork and supersedes all prior written or oral understandings.

Exhibits Included: Exhibit "A" - Artwork Proposal and Installation Plan
 Exhibit "B" – Agency Sponsorship Agreement with Artist

The parties hereto have executed this agreement to have effect as of the day and year first written above.

ARTIST:

By: _____

Name: _____

Artist

Date: _____

CITY OF ARCATA:

By: _____

Karen Diemer

City Manager

Date: _____

AGENCY:

By: _____

Name: _____

Executive Director

Date: _____