

# CITY OF COMMERCE, CALIFORNIA

## Artist Agreement and Responsibilities

**PLEASE PRINT OR TYPE**

**NAME(S) ("Artist"):** \_\_\_\_\_ **DATE:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

**CITY STATE/ZIP** \_\_\_\_\_

**TELEPHONE NO.:** \_\_\_\_\_

**ARTIST: Date of Birth** \_\_\_\_/\_\_\_\_/\_\_\_\_

**EMAIL:** \_\_\_\_\_

This is an Agreement, made and entered into by and between the City of Commerce ("City"), and \_\_\_\_\_ ("Artist") listed above. From time to time City and Artist are referred to as "Party" or "Parties." The Parties agree to the following terms and conditions in this Agreement:

### **Artist Compensation:**

For services rendered herein, City shall pay the Artist the sum of \$\_\_\_\_\_, this is inclusive of all artist fees, paints, and materials. The Parties agree that the City shall pay the Artist an initial disbursement of funds at 25% (\$\_\_\_\_\_) prior to the commencement of the artwork, with the remaining 75% (\$\_\_\_\_\_) paid upon completion of the artwork.

The first payment (\$\_\_\_\_\_) will be available for pick up at the City before the scheduled date of painting. The date will be coordinated between the Artist and the City. City Hall is open Monday through Thursday between 8:00 am to 6:00 pm.

The second payment (\$\_\_\_\_\_) will be paid to the Artist once the artwork is completed and verified by City staff to the City's satisfaction before the funds are disbursed.

### **Artist Schedule and Painting:**

Name of Artist(s)	Artwork	Location of Artwork	Date of Painting

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### **Artist(s) Responsibilities:**

- The Artist agrees that an essential element of this Agreement is the skill and creativity of the Artist. The Artist shall not assign the creative or artistic portions of the artwork to another party for the production of the artwork, including volunteers, without the written consent of the City. Failure to conform to this provision may be cause for termination of this Agreement, at the sole option of the City.
- The Artist shall be responsible for providing services described in the table above including and depicted in Exhibit A, but not limited to, the quality and timely completion of the services. The Artist shall be responsible for designing the artwork so that it can be constructed without exceeding the approved overall budget for the artwork. The Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his/her work.
- The Artist is responsible for and ensure cleanup of their area and safe disposal of all paint materials. The Artist agrees to wear a safety vest provided by the City for the duration of the painting job and to return the safety vest after completion.
- The Artist agrees to complete all artwork by \_\_\_\_\_, unless the Parties mutually agree in writing to extend the date. Failure to complete the artwork by the completion date may result in the termination of the Agreement and the Artist's forfeiture of the second payment.
- The Artist shall faithfully perform the services required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the artwork described in this Agreement.

### **Artist must adhere to the following:**

- Do not paint over/obliterate any identification numbers/codes on the wall, if any. Paint around them.
- Do not use airbrush or spray equipment for the mural.
- Do not block or obstruct the pedestrian travel path.

**PR:** The Artist grants the City permission to take photographs, videotape, other images and/or voice recordings of the artwork, the Artist, and/or the Artist's likeness in connection to the artwork, or during a City event. The City may use these images and/or recordings to share a reproduction of the artwork, the Artist's story or experience in publications, presentations, media stories, web sites, social media, City programs and services, and for any other related reason or purpose, without any further or future payment or compensation.

**Ineligible Artwork & Removal:** The Artist understands and agrees that the artwork will be owned by the City. The Artist acknowledges that the City has the right to:

- Deem the artwork ineligible, at any time, even after Artist has painted it on the wall.
- Remove the artwork, at any time, for any reason.
- Deem the artwork ineligible or cause the removal of same if the artwork, or a component of same, is unlawful, illegal, obscene, defamatory, gives rise to civil liability, is inappropriate, or is otherwise in violation of any law, including any City law, regulation, or policy.

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**Original Artwork:** The Artist represents that the artwork, whether created by the Artist alone or in collaboration with others, is wholly original art and does not infringe upon or violate any patent, copyright, trademark, trade name, intellectual property rights, privacy rights, or other proprietary right of any person, organization, or entity.

**Copyright Compliance:** The Artist agrees that the artwork and services performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. The Artist further agrees that the artwork will not utilize any protected patent, trademark or copyright in performance of artwork under this Agreement unless the Artist has obtained proper permission and all releases and other necessary documents. If the Artist specifies any material, equipment, process or procedure which is protected, the Artist shall disclose such patents, trademarks and copyrights in the construction drawings and technical specifications.

The Artist agrees to indemnify, defend, and hold harmless the City, its officers and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind resulting from the performance of the artwork or services under this Agreement which infringes upon any patent, trademark or copyright protected by law.

**Assignment of Copyright:** As a material part of the consideration provided by the Artist under the terms of this Agreement, the Artist waives any and all rights created by any state or federal law that the Artist may have with respect to the artwork and any and all works of art produced under the terms of this Agreement. The Artist agrees to assign to City all rights, title, and interest, including copyright, in and to the artwork.

**Authority to Perform Agreement:** The Artist represents that the Artist has read this Agreement and fully understands its contents, and has the full power to:

- Enter into and perform this Agreement; and
- Make the grant of rights stated in this Agreement, and indemnify and hold the City harmless

**Indemnification:** The Artist agrees to defend, indemnify, and hold harmless the City, its officials, officers, employees, volunteers, and agents to the fullest extent permitted by law, from any and all claims, liability, demands, damages, losses, expenses, attorneys' fees or costs arising out of or in any way related to the Artist's or the Artist's employees', subcontractors', volunteers', officers' or agents' acts, errors, omissions or willful misconduct while performing the artwork hereunder or any failure to comply with any of their obligations pursuant to this Agreement, except for any liability arising from the negligence or willful misconduct by the City.

**Termination:** Either Party may terminate this Agreement with or without cause by providing fifteen (15) days notice, in writing, to the other Party. Upon the expiration date of said notice, this Agreement shall become of no further force or effect whatsoever and each of the Parties shall be relieved and discharged here from.

In the event that the Agreement is terminated by the City without cause, the City shall pay the Artist for all artwork performed and services rendered up to the effective date of the termination.

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In the event that the Agreement is terminated by the Artist without cause, the Artist shall promptly reimburse the City for all payments made under this Agreement prior to the termination by the Artist.

In the event that the City determines that the Artist has substantially failed to fulfill his/her obligations as provided under this Agreement, the City shall provide the Artist with written notice detailing the specific obligations which the City claims the Artist has failed to fulfill and notifying the Artist that he/she is deemed to be in breach of the Agreement. If the breach is not cured or if the City and the Artist cannot agree on a schedule for curing the breach, the Agreement will be deemed terminated on a date specified by the City which will be no sooner than ten (10) days from the date of issuance of the notice. In the event the Agreement is terminated by the City, the Artist shall promptly reimburse the City for all payments made under this Agreement prior to the termination by the City.

**Release of All Claims and Potential Claims:** The Artist on his/her own behalf and on the behalf of their respective predecessors and related persons and entities, hereby release and forever discharge the City, from any and all claims, causes of action, and demands relating to or arising from any disputes, as well as their respective present and former officials, council members, board members, directors, employees, heirs, representatives, agents, governing bodies, attorneys, insurers, predecessors-in-interest, successors-in-interest, and assigns, and any and all persons acting by, through, under, or in concert with any of them, except for such claims, causes of action, or demands as may be based upon the commitments expressly undertaken in this release.

**Release of Unknown Claims:** For the purpose of implementing a full and complete release and discharge of the Parties, as well as their respective present and former officials, council members, directors, employees, heirs, representatives, agents, governing bodies, attorneys, insurers, predecessors-in-interest, successors-in-interest, assigns, and any and all persons acting by, through, under, or in concert with any of them, the Parties expressly acknowledge that this release is also intended to include in its effect, without limitation, all claims that the Parties do not know of or expect to exist in their favor at the time of the execution hereof, and the Parties agree that this release contemplates the extinguishment of any such claim or claims that in any way relate to or arise from the disputed City assessment.

In addition, the Parties expressly waive and relinquish all rights and benefits afforded by California Civil Code section 1542 relating to the subject matter hereof, and, in doing so, understand and acknowledge the significance and consequences of such specific waiver of said provisions of law, Civil Code section 1542 states as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT.**

Initialed by:

City \_\_\_\_\_ Artist \_\_\_\_\_

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**Modifications:** All modifications to this Agreement shall require a written amendment signed by all parties prior to any modification.

**Assignment:** This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by the Artist, without the prior written consent of the City.

**Compliance with Laws:** The Artist shall comply with all applicable laws and ordinances of the United States, State of California and the City of Commerce.

**Disputes:** If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which he or she may be entitled. The Los Angeles County Superior Court shall have jurisdiction over any such action and that Court shall be authorized to determine which party is the prevailing party and what amount constitutes reasonable attorneys' fees to be awarded to the prevailing party.

**Entire Agreement:** This Agreement contains the entire agreement between the Parties hereto, and they shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein stated.

**Severability:** In the event any of the provisions or applications thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions or applications thereof shall not be affected.

**Counterparts:** This Agreement may be executed on one or more copies and each counterpart will be considered an original and binding to the Party executing it. A scanned, electronic, facsimile or other copy of a Party's signature shall be treated the same as an original.

**IN WITNESS WHEREOF,** the Parties have executed this agreement as of the day and year first above written.