



**CITY OF SAND CITY  
PUBLIC ART POLICY  
(May 2020)**

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**1. PURPOSE OF POLICY**

The City of Sand City is a committed proponent of public art. Public art plays an important role in increasing the understanding and enjoyment of art by creating a shared cultural experience for the community. Public art integrates art into the urban fabric of the city thereby enhancing the physical attractiveness of the City. Public art can transform spaces.

The purpose of this Public Art Policy is to have procedures in place for the acquisition, removal and maintenance of public art in Sand City (“City”). This policy shall apply to artwork that is donated, leased or loaned to the City for display for an extended period of time, as well as City sponsored Artwork such as murals. Artwork displayed for short periods of time (less than 2 months) is not covered by this policy.

Changes to this Public Art Policy shall be considered for approval by the City Council of Sand City (“City Council”) taking into account any recommendation submitted by the Sand City Arts Committee.

**2. DEFINITIONS**

“Art” or “artwork” as described in this policy shall include, but not be limited to, sculptures, murals, paintings, graphic arts, mosaics, photography, crafts, mixed media, and environmental works.

**3. PROCEDURE FOR APPLICATIONS TO DONATE, LEASE OR LOAN ARTWORK**

Applications to donate, lease, or loan artwork to the City shall be made to the City Manager and will be routed to the Sand City Arts Committee appointed by the City Council, consistent with Sand City Municipal Code chapter 2.60 (“Committee”). The documentation of the proposed public art will be available for review through the City Clerk’s office.

Any person wishing to loan, lease or donate artwork to the City of Sand City must submit a description of the artwork to the City Manager. The description shall include the following:

- a. Photo, plans, model or other visual representation of proposed artwork.
- b. Proposed location of the artwork.
- c. Statement of reason for donation, loan or lease.
- d. Description of the artwork, including year of creation, medium, dimensions, weight, finish, color, and system for mounting or displaying the artwork.

- e. Any special maintenance, mounting or display requirements.
- f. Name of Artist and, if possible, Artist's biography.
- g. A statement of the approximate value of the artwork.
- h. Whether donation, lease or loan is proposed, and the length of any proposed lease or loan.
- i. Whether the art, if donated, is donated with any restrictions.

The Committee will consider the application based on the criteria set forth below and make a recommendation to the City Council whether to accept the artwork and also recommended a site upon which to display the artwork.

#### **4. ART COMMITTEE SELECTION/ACCEPTANCE PROCESS OF DONATED, LEASED OR LOANED ARTWORK**

When reviewing works of art for possible loan, lease or gift to the City, the Committee shall determine the following:

- a. is the art thought-provoking, memorable or enduring and reflects the diverse social, cultural, or historic values of the City;
- b. is the art appropriate in terms of scale, form, content, and the environment;
- c. is the art durable relative to theft, vandalism and the environment;
- d. whether the art acknowledges and is sensitive to the importance of the contributions by local and regional artists to the City;
- e. whether the art is not religious iconography which might be perceived as government endorsement of religion in violation of the Establishment Clause of the Federal and State Constitutions;
- f. ensure that the art would not, when displayed, create a hostile work environment for public employees;
- g. ensure that the art does not depict graphic violence or overt sexual activity;
- h. is the art repetitive in that the City already has sufficient examples or better examples of the same type of object;
- i. whether the City has the facilities and resources necessary to accept the object, knowing that the City has limited facilities and resources;
- j. whether the person wishing to loan, lease or donate the artwork to the City is prepared to execute a contract or other document which, in the estimation of the City Attorney and City Manager, protects and serves the fiscal and other interests of the City;
- k. whether the artist who created the artwork that will be to loaned, leased or donated to the City is prepared to execute a waiver of their rights under California Art Preservation Act (Civil Code 987 and 989), the Visual Artist Rights Act (17 U.S.C. 106A, 113), and other applicable state and federal laws.

## 5. SITE SELECTION

When recommending sites for works of art for loan, lease, or gift to the collection, the Committee shall consider:

- a. whether the artwork can be properly installed, placed to be seen, and displayed with patron safety in mind;
- b. the compatibility of design and location within unified design, environmental or historical character of the site;
- c. landscaping, drainage, grading, lighting, and seating considerations;
- d. environmental impacts such as noise, sound and light;
- e. public accessibility to the artwork;
- f. impact on adjacent property owner's views; and
- g. impact on operational functions of the City.

Any site chosen for display of art shall not, however, be eligible for art display if the Director of Public Works and/or City Engineer determines that the use of the location for display of public art would interfere with use by pedestrians or vehicles, would create a safety hazard, or would otherwise be inappropriate.

## 6. PROCESS AFTER COUNCIL APPROVAL

The City Manager will notify applicants of the City Council's decision and ensure that the donor fill out the **Art Donation Agreement**, attached as Appendix 1. The offer to donate, lease or loan artwork may be withdrawn at any time up until execution of the agreement between the City and the donor(s). In addition, the artist must execute the **Waiver of Proprietary Rights** form attached as Appendix 2.

City shall not accept the artwork without the executed Art Donation Agreement and Waiver of Rights forms.

## 7. MAINTENANCE OF ART IN PUBLIC PLACES:

The City Clerk shall maintain detailed records of all artworks currently owned by the City and all artworks accepted by the City.

Upon receipt of the work of art pursuant to this policy, the City Manager will insure the work of art under its Insurance Coverage. The estimated value of the artwork will be the value provided on the Art Donation Agreement.

Maintenance of City-owned artwork shall be the responsibility of the City. The Public Works Director shall consider the condition of City-owned artwork each year in time for budget preparation and make recommendations to the Council regarding the estimated cost of

appropriate maintenance activities. The Council shall have sole discretion to decide whether to undertake these activities.

Maintenance of loaned or leased artwork shall be the responsibility of the person loaning or leasing the art to the City. Prior to undertaking any such maintenance on City property, the person loaning or leasing the art to the City shall obtain the approval of the City.

## **8. REMOVING (DEACCESSIONING) ARTWORK**

Leased or loaned art shall be removed at the end of the prescribed term, unless the Committee determines that early removal is appropriate under the criteria described below. Any artwork may be removed from public display following review by the Committee if:

- a. the artwork's physical or structural condition poses a threat to public safety;
- b. the artwork requires excessive maintenance, has faulty design or workmanship, and repair or remedy is impractical or unfeasible;
- c. the artwork has been damaged and repair or remedy is impractical or unfeasible;
- d. the condition or security of the artwork cannot be reasonably protected;
- e. significant changes in the use, character or design of the site have occurred and affect the integrity of the artwork;
- f. significant, adverse public reaction to artwork owned by the City has continued unabated over an extended period of time;
- g. the artwork violates the selection criteria in section 4 of this policy; or
- h. removal is requested by the artist or donor.

Removal of art should be a seldom-employed action that operates with a strong presumption against removing works from public display. Where removal of the artwork may cause damage to it, the City shall comply with sections 987 and 989 of the California Civil Code.

Prior to removal of an artwork, the Committee shall prepare a full condition report, including any repair rendered, and shall make arrangements for removal. The City shall determine the estimated cost of removal. It shall be the responsibility of the person loaning or leasing artwork to the City to pay the cost of removing the loaned or leased artwork.

In addition, staff shall prepare a statement of reasons for the removal of (1) any leased or loaned artwork that is proposed to be removed before the end of its predetermined term, and (2) any City-owned artwork that is proposed to be removed. Staff shall also fill out the **Deaccessioning Request Form** attached as Appendix 3. A copy of the form and the statement of reasons shall be distributed to each member of the Committee for review at least one week prior to the meeting at which the removal of the work will be considered. Each member of the Committee shall physically inspect the work and the Committee shall vote on whether or not to remove the artwork. Prior to the Committee meeting, staff shall make a reasonable effort to locate the donor or his/her heirs to advise them of the City's consideration to remove the artwork and reasons for the decision.

A report of the decision to remove the artwork will be provided to the City Council. The decision of the Committee will be deemed final, unless a member of the City Council, within thirty (30) days of the Council's receipt of the report, makes a successful motion, during the matters initiated portion of a City Council meeting, to place review the Committee's decision on a future Council agenda for consideration. Disposition of artwork shall be handled in accordance with the requirements of California Civil Code sections 987 and 989 and shall follow City procedures for disposition of surplus property as appropriate.

## **9. POLICY REGARDING LOANED AND LEASED ARTWORK**

The City shall not accept loaned or leased artwork with a value of more than fifty thousand dollars (\$50,000.00).

## **10. FUNDING FOR ART IN PUBLIC PLACES**

The City of Sand City shall establish a special reserve account designated as the Art in Public Places Fund. This reserve account shall be credited annually, with any funds allocated by the City through the budgetary process and monies received through donations or grants or otherwise obtained. The fund is to be maintained and administered by the City Manager.

This account shall be used for public art. Expenditures of funds may include, but are not limited to, the following uses: costs associated with the purchase, lease, transportation, installation, insurance, maintenance, repair, removal or restoration of artwork, and any costs to administer the Art in Public Places Program or purchase objects necessary for the proper presentation of the artwork. If individuals, entities, or groups donate undesignated funds to the Art in Public Places Program, the funds shall be deposited into the Art in Public Places Fund. The Committee may make recommendations to the City Council regarding the use of such funds.

Expenditures of funds may include the following uses:

- The cost of the public art itself including the artist's fee for design, structural engineering, and fabrication, the transportation and installation of the work at the site, identification signs, if any, mountings, anchorages, containments, pedestals, bases, or materials necessary for the property presentation and installation of the art.
- Water works, lighting, and other objects which are an integral part of the artwork.
- Walls, pools, landscaping, or other architectural elements necessary for the proper aesthetic and structural placement if the artwork.
- Maintenance and repair of the art through the Art in Public Places Fund.
- The design, construction, operation, and maintenance of art gallery space or cultural arts' display, demonstration, and performance space to be utilized by individuals and non-profit arts organizations.
- Developing and sponsoring artistic programs and events for the enjoyment and appreciation of art, heritage, and culture within the Sand City community. Funding the design,

construction, operation, and/or maintenance of cultural and/or arts facilities, either at the development or off-site.

## **11. SPECIFIC POLICY REGARDING MURALS**

### **A. Murals on Public and Private Property, sponsored by City**

It is of great importance to the City to integrate art into its urban fabric. A collection of murals on buildings in Sand City would improve the resident and visitor experience while in the City, and enhance Sand City's distinct character.

#### **i. The we. Mural Festival.**

For the Fiscal year 2019-2020 Sand City has already dedicated revenue in its budget to be used for a mural festival called "we.". The process for selection of artists and sites for that festival is already underway. Many of the procedures set forth in this policy will therefore apply only to future City Sponsored murals. However, the City Manager should ensure all agreements required under this policy in place for all public murals including the "we." festival, and should further ensure that all finalists' renderings receive City Council approval prior to installation.

#### **ii. Procedure for selection of Sites for murals**

The Art committee will consider proposed sites and make a recommendation based on extent to which: the site is situated in a prominent location that can easily be viewed from the public right-of-way, safety considerations, the extent of interest of the property owner, landscaping, and any existing murals in surrounding area.

#### **iii. Procedure for selection of Artists for City-sponsored murals**

The City encourages the commission of works by artists from the Monterey County arts community. Sand City residents are especially to be considered to contribute to the unique identity of the City. However, this policy does not preclude consideration given to commissioning of regional, national, and international artists where appropriate.

Methods of selecting artists for public artwork may be based on the following:

- Open Competition – Publicly advertised calls for entry; any artist may submit proposals and/or qualifications.
- Limited Competition – Between invited parties.
- Specific Commission or Acquisition by the Arts Committee – This method would apply where limited or open competition would be impractical or inappropriate.

Artists' proposals or responses to a request for proposals (RFP) will be presented to the Arts Committee. Artists considered should have the credentials and/or track record and the ability to execute works of the scale envisaged, but this does not exclude opportunities for other artists of

merit. Representatives of the City may choose to visit the artist's workspace or request that the artist present their portfolio of commissioned works prior to contract with the City. Applications and background reports prepared by City staff shall be presented to the Arts Committee. If, after careful examination, the Arts Committee determines that the submission meets the required criteria, staff will work with the Committee to prepare a report to present to the City Council at a regularly scheduled City Council meeting.

Before the City funds any City-sponsored art, the following form must be completed by the proposed artist: **Agreement for Public Art**, Attached as Appendix 4.

#### iv. Procedure for approving design of City-sponsored murals

After the Arts Committee has selected an artist and a site for installation of the mural, the Committee must review the design of the mural, and make recommendations to City Council for final approval.

The Arts Committee will review sketches submitted by the artist and select two preferred sketches to be presented to the property owner(s) of the intended site. The City Manager and the Arts committee chair must ensure that the property owner has the opportunity to provide concept input regarding the design of the Mural prior to approval by City Council in the following manner:

- a. Property owner will be allowed to review up to two design sketches.
- b. If desired, property owner may request one revised sketch, then select the design he/she prefers (the "Final Sketch").
- c. If property owner is not satisfied with the Final Sketch, he/she has seven calendar days in which to object in writing.
- d. If no such objection is received by the City Manager within seven days of presenting the Final Sketch to the property owner, the City Manager will present the final design to the City Council.
- e. If the Council rejects the final sketch, the City Manager will ensure that the property owner has input on any redesign of the mural in the same manner as set forth above.

#### v. Procedure for Installation of City-sponsored mural.

Before any City employee or artist begins any preparatory or installation work of the mural on a building, the City Manager shall ensure that the property owner has executed the **Authorization and Release Agreement**, attached as Appendix 5, and will obtain the City Attorney's approval that all required agreements are in place.

The City Manager will coordinate with the property owner, and the artist to find a reasonable time and date for both preparation of the wall and for installation of the mural to occur. The City Manager will confirm the dates in writing and will notify the property owner of his/her obligation to: (1) remove any debris (including advertisements and brackets) from the wall on

which the mural will be installed, and/or the workspace in front of the wall, in order to provide City Staff and/or Artists unobstructed access to a clean surface; and (2) if applicable, to notify all tenants of the property of the date of any work Installation and to distribute to them any literature provided by the City in advance of any work on the wall.

#### **vi. Maintenance of City-sponsored murals**

The property owner is encouraged but not required to maintain the mural after it is installed. The property owner may not however destroy or cover the mural for two years after it is installed. After two years, the property owner may remove the mural at his or her own expense.

For two years after installation of the mural, the City will be responsible for touch-ups of the mural if needed due to graffiti and for removal of graffiti when it is reasonable to do so. If the mural is damaged, defaced, altered or destroyed the City may remove or repair or replace the mural.

No work on the site must be performed by an artist or City staff until and unless access to the building has been obtained in writing from the property's owner.

#### **B. Murals on Private Property, not sponsored by City**

Any Sand City private property owner wishing to create/install a mural at his/her own expense, but which will be visible from any public place within the City, shall submit a written description of the proposed mural to the City Manager, including the following information ("Application"):

- a. Proposed location of the artwork, including which wall on the location.
- b. Photo, plans, model or other visual representation of proposed artwork.
- c. Description of the artwork, including dimensions, and color.
- d. Name of Artist and if possible, Artist's biography.
- e. Documented approval by building owner.

2. The City Manager will forward the Application to the Arts Committee and the City's Planning Department.

3. The City's Planning Department shall review the Application in consideration of any applicable City ordinances (e.g., sign and design review requirements) and forward a recommendation to the City Manager and the Arts Committee.

4. The Arts Committee shall review the Application and any recommendations from City Planning Department to ensure the proposed mural does not include subject matter that is apparent representation of violence, inappropriate nudity, denigration of individuals or cultures, or desecration of significant cultural symbols. The Committee will schedule the application to be reviewed by the City Council.



5. The City Council shall approve, conditionally approve, or deny the request to install the mural based on these guidelines, with consideration of recommendations from the Art Committee, Planning Department and the City Attorney (in the case of any First Amendment implications or other legal issues).

6. The City Manager will notify the applicant of the City Council's decision.



**ART DONATION AGREEMENT**

**I. ACCEPTANCE**

At its regular city council meeting on \_\_\_\_\_, the City Council of Sand City (hereafter "City Council") voted to accept your donation of art to the City of Sand City ("City"). The City Council is grateful for your generosity.

**II. DONOR**

NAME: \_\_\_\_\_

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

PHONE: \_\_\_\_\_ EMAIL: \_\_\_\_\_

**III. ART WORK**

TITLE: \_\_\_\_\_

Year of Creation: \_\_\_\_\_

MEDIUM: \_\_\_\_\_

ART SIZE: \_\_\_\_\_

FRAMED/UNFRAMED? \_\_\_\_\_ ARTIST: \_\_\_\_\_

ESTIMATED or APPRAISED VALUE: \_\_\_\_\_

*NOTE: The City will not appraise the value of any gift for any reason, including income tax deductions. However, City staff, upon direction from the City Manager, will issue a gift receipt acknowledgement form at the donor's request.*

**IV. TERMS**

By signing below, the donor understands and agrees to the following terms:

1. The donor attests that he/she is the rightful owner of the artwork, and it is unencumbered, at the time of donation to the City.
2. Once an item is accepted, the City shall be the sole owner of the donated item and will have the right to deaccession the item without providing notice to or obtaining the consent of the donor. The donated artwork may be sold, donated, given away, or otherwise disposed of by the City at its sole discretion.
3. The donor grants the item with no terms or conditions attached.
4. The donated art may not always be on display in the City.
5. As of the date below, the donation becomes final and irreversible.
6. In no event shall the City be obligated to pay the donor or any third party any fees or cover any expenses related to the donation, unless expressly agreed to in writing below.

**V. SPECIAL PROVISIONS**

\_\_\_\_\_  
\_\_\_\_\_

**VI. ADDITIONAL TERMS**

This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be brought in the Superior Court of the State of California, County of Monterey, or, in the case of any federal claims, in the United States District Court, Central District of California.

This agreement contains the entire understanding of the parties relating to its subject matter. No change or modification of this agreement will be binding upon either party unless it is made by a written instrument. A waiver by either party of any provision of this agreement in any instance shall not be deemed to waive such provision for the future. All remedies, rights, undertakings, and obligations contained in this agreement shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, or obligation of either party. Should any provision of this agreement be determined to be void, it shall not affect the validity of any other provision of this agreement.

**VII. SIGNATURES**

***For the City of Sand City:***

\_\_\_\_\_  
CITY MANAGER

\_\_\_\_\_  
DATE

***The Donor:***

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
DATE



**ARTIST'S WAIVER OF PROPRIETARY RIGHTS  
(To be used for any Artwork Placed Upon City Property)**

Artist has designed a work of visual art. In consideration of the City's acceptance of the artwork for its public collection \_\_\_\_\_ ("Artist") agrees as follows:

Full Name of Artist

1. Definitions. "Artwork" in this Agreement means: (Add description, such as type, mural, medium):

\_\_\_\_\_ TITLE,  
DATE: \_\_\_\_\_

DIMENSIONS: \_\_\_\_\_

CURRENT LOCATION: \_\_\_\_\_

2. Waiver. Artist agrees to waive and does hereby waive voluntarily all rights to attribution and integrity with respect to the Artwork and any and all claims as may arise under the Visual Artists Rights Act of 1990, 17 U.S.C. §§106A and 113(d) ("VARA"), the California Art Preservation Act (Cal. Civ. Code §§987 and 989) ("CAPA"), or any other local, state, foreign or international law, as currently drafted or as may be hereafter amended, that conveys the same or similar rights ("Moral Rights Laws"), with respect to the Artwork, its display, removal from display, exhibition, installation, conservation, storage, study, alteration and any other activities conducted by the City, its officers, employees, agents, contractors, licensees, successors or assigns. If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without physical defacement, mutilation, alternation, distortion, destruction, or other modification (collectively, "Modification") of the Artwork, artist waives any and all such claims under any Moral Rights Laws arising out of or against any current or future owners of the site, and its agents, officers and employees, for Modification of the Artwork.

The City has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the Artwork, in whole or in part, in City's sole discretion.

The City has no obligation to pursue claims against third parties for modifications or damage to the Artwork done without the City's authorization. However, the City may pursue claims against third parties for modifications or damage or to restore the Artwork if the work has been modified without the City's authorization. In the event that the City pursues such a claim, it shall notify the Artist, and Artist shall cooperate with the City's efforts to prosecute such claims.

If the City modifies the Artwork without the Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with 17 U.S.C. § 106A (a) (2).

3. Notices. Artist bears the sole responsibility for providing the City with any changes to the Artist's Address for Notice. Notice of changes must be mailed to the City of Sand City, 1 Pendegrass Way, Sand City, CA 93955

Artist's address: \_\_\_\_\_.

Artist's Phone number: \_\_\_\_\_ Email: \_\_\_\_\_

Artist understands the effect of this waiver and hereby acknowledges that Artist is surrendering the rights described herein with respect to the Work.

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

\_\_\_\_\_/\_\_\_\_\_/\_\_\_\_\_



**ART REMOVAL (DEACCESSIONING) REQUEST FORM**

**REQUESTOR INFORMATION**

Name \_\_\_\_\_ Phone \_\_\_\_\_  
Address \_\_\_\_\_ Email \_\_\_\_\_  
Relationship to Artwork \_\_\_\_\_

**BACKGROUND REPORT**

Title of Artwork \_\_\_\_\_  
Artist \_\_\_\_\_  
Medium/materials \_\_\_\_\_  
Maintenance procedure/schedule \_\_\_\_\_  
Date of Installation \_\_\_\_\_  
Current Location \_\_\_\_\_  
Value (\$) \_\_\_\_\_

**Reason why removal is requested:** \_\_\_\_\_

**To be completed by City:**  Approval of City Attorney (attach supporting documents)  Approval of City Manager (attach supporting documents)  Approval of Public Works Foreman (attach supporting documents)

**Suggested Course of Action** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**Approved/Rejected by Arts Committee** \_\_\_\_\_

**Approved/Rejected by City Council** \_\_\_\_\_



**AGREEMENT FOR PUBLIC ART**

(To be used for City-sponsored public art)

THIS AGREEMENT is executed this \_\_\_ day of \_\_\_\_, 20\_\_ by and between the City of Sand City, a municipal corporation, (hereinafter "City") and \_\_\_\_\_ (hereinafter "Artist").

WHEREAS, the City has selected Artist to design and execute \_\_\_\_\_ ("Artwork") to be installed at \_\_\_\_\_ within Sand City.

**NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

- 1. **Scope.** Artist hereby agrees to provide to the City of Sand City, as the scope of services under this Agreement, the following services:

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Additional information is further described on the following attachments: City’s request for proposals (“RFP”), attached as Exh.A; the Artist’s proposal, attached as Exh.B.

- 2. Additional Duties of Artist.
  - a. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in the Agreement.
  - b. Artist must obtain design approval from the Sand City Arts Committee (“ARTS Committee”) by presenting designs as required by the RFP prior to receiving a Notice to Proceed by City.
  - c. Upon issuance of a Notice to Proceed by City, Artist shall commence the final design and execution of the Artwork.
  - d. Artist must obtain approval from the Arts Committee regarding final placement of the Artwork. The location of the Artwork shall be referred to herein as the "Site."
  - e. If applicable, Artist shall provide City with the names of all subcontractors along with a copy of the agreement between the Artist and each subcontractor, and the subcontractor’s

City of Sand City business license. Artist represents that Artist will only employ people with all required licenses and certifications.

f. Artist shall take reasonable measures to protect or preserve the integrity of the Artwork with the application of a protective sealant, patina, or anti-graffiti coating, if applicable.

g. Artist must coordinate installation of Artwork with the City Manager, or designee, and the City's Public Works Director.

h. If installation does not meet criteria, to be determined by City Manager at his/her sole discretion, Artist shall continue working, at his/her own cost, until such time as final approval is obtained from the City.

i. Artist will notify the City Manager, or designee, immediately with any changed to scope or design of the Artwork.

j. Artist agrees to meet and confer with City regarding services set forth herein, as may be required by City.

k. Indemnification/Duty to defend: To the fullest extent permitted by law (including without limitation, California Civil Code sections 2782 and 2782.6) Artist shall indemnify defend and hold harmless City and any and all of its officials, employees and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities, damages, costs and expenses, including legal counsel's fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of Artist, its officers, agents, employees or subconsultants in the performance of services under this Agreement. Artist's duty to indemnify, defend and hold harmless City shall not extend to the City's sole or active negligence.

l. Acknowledgment of no general liability insurance. Artist fully understands that Artist is solely responsible for Artist's actions and inactions while on this assignment, and fully understands that any liability, damage or difficulty caused, or alleged to be caused, by Artist, is solely Artist's responsibility, legally, financially, or otherwise. Artist understands that Artist can obtain general liability insurance to cover these risks but has chosen not to. Artist understands and acknowledges that the City will not supply or extend any insurance coverage or benefit to Artist for any liability, damage or difficulty caused by Artist during the term of this Agreement. *[NOTE TO CITY - this section should be added only if applicable – if artist does not carry general liability insurance. ]*



m. Acknowledgment of No Workers Compensation Coverage. Artist fully understands that Artist is solely responsible for Artist's health, welfare and general well-being, and for that of Artist's employees or subcontractors, while conducting any activities required by the scope of work of this Agreement. Artist understands and acknowledges that the City will not supply or extend any workers compensation benefit required by any jurisdictions to anyone with independent contractor status and accepts no liability for the general health of Artist's employees/subcontractors during the term of this Agreement. Artist acknowledges that Artist may have an obligation to obtain workers compensation insurance on the behalf of Artist's or others but has declined to do so. [NOTE TO CITY - this section should be added only if applicable – if artist does not carry Workers Compensation Coverage. ]

**3. Duties of City.**

- a. City shall provide, at no cost to Artist, any documents or information available to City that is reasonably required by Artist for performance of their duties.
- b. City shall assist Artist in securing all required city licenses; city permits and similar city required legal authorizations at the City's expense, as may be necessary for the installation of the artwork at the Site.

**4. Time for Performance.**

- a. Artist shall promptly commence the Artwork on, \_\_\_\_\_, 2020, however, no work shall begin prior to issuance of the Notice to Proceed.
- b. Installation of artwork must be completed by, \_\_\_\_\_, 2020, unless otherwise notified in writing by City. Artist shall notify the City of any adverse Site conditions that will impact the installation of the Artwork. Failure to do so by the Artist shall be deemed as an acceptance of the Site conditions. Failure to perform in accordance with this provision will be deemed a material breach of this agreement.

**5. Compensation.**

- a. For services rendered herein, City shall pay Artist a sum not to exceed \_\_\_\_\_ dollars (\$\_\_\_\_\_) for the performance of this Agreement. Artist shall furnish services as described in Exhibit A and B of this Agreement. Terms and Conditions for Payment are attached in Exhibit C of this Agreement.

b. Payment is contingent upon performance of terms and conditions of this agreement to the satisfaction of City.

c. In the event that City should request additional services not covered by the terms of this Agreement, said services will be provided by Artist and paid for by City only after a fee for said services has been agreed upon between City Manager and Artist and City Manager has provided written authorization for the additional work

b. Artist shall keep the terms of this Compensation Section confidential. Any breach of this Section may result in termination of this Agreement and/or any forfeiture of rights to participate in future Festivals or other City events.

**6. Artist Warranties.**

a. Warranty of Title. Artist represents and warrants that Artist is the sole author of the Artwork and that at the time of executing this Agreement, Artist is the sole owner of any and all copyrights pertaining to the Artwork. Artist further represents that the Artwork is free and clear of any license and that there are no outstanding disputes in connection with property rights, intellectual property rights or any other rights in the Artwork or any parts of the Artwork.

b. Originality. Artist warrants that the design of the Artwork is an edition of one, and that neither Artist nor Artist's agents will execute or authorize another to execute another work of the same or substantially similar image, design, dimensions and materials as the Artwork.

c. Public Safety. Artist represents and warrants that the Artwork will not pose a danger to the safety of persons or property in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement. Artist agrees to cooperate with City in making or permitting adjustment to the Artwork if necessary, to eliminate hazards that become apparent after the Artwork is accepted by City.

d. Acceptable Standard of Display. Artist represents and warrants that: (1) general routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display; (2) foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display; and (3) with general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

**7 . Acceptance of Artwork.** The Artist must notify the City when the Artwork is fully installed and complete. No more than thirty (30) days after receiving such notice, the City will provide the Artist a written response, informing the Artist that either (1) the City agrees that the Artwork is fully installed and is complete consistent with the terms of this Agreement, and the City formally accepts the Artwork as completed ("Letter of Acceptance"); or (2) the City does not consider the Artwork to be completed due to unresolved issues or defects that remain, and describing the outstanding issues or defects and the time frame in which the Artist must then cure before the City will issue a Letter of Acceptance. The Artwork is not finally complete for purposes of this Agreement until the City has issued a Letter of Acceptance ("Final Acceptance"). No payments to Artist shall be deemed as a waiver of City's right to refuse to accept the Artwork.

**8. Transfer of Title to Artwork.** Title to the Artwork shall remain in Artist's name until City has accepted the Artwork as completed and it is installed to the satisfaction of City. Once the City has issued a Letter of Acceptance the City will be the sole owner of the Artwork. Transfer of title shall be self-executing upon City's Final Acceptance. Artist shall bear all risk of loss of the Artwork until title has been transferred to City.

**9. Maintenance.** Not later than completion of the Artwork, Artist shall supply City with any instructions for proper care of the Artwork. The City recognizes that maintenance of the Artwork on a regular basis according to the maintenance instructions is essential to the integrity of the Artwork. The City shall nonetheless have the right to determine, in its sole discretion, when and if maintenance, repairs, and restorations to the Artwork will be made.

**10. Artist's Moral Rights; Waiver of VARA and CAPA Rights.**

a. Subject to City's obligation to make good faith efforts to consult with Artist as set forth in subsection (c), below, Artist agrees that City, shall have the absolute right to alter, repair, modify, replace, remove, relocate, sell, dispose of, or destroy (collectively, "Modify") the Artwork in City's sole judgment. For example, City may Modify the Artwork to eliminate hazards, to comply with the ADA, to otherwise aid City in the management of its property and affairs, or through neglect or accident. City also has the right to install the Artwork in an alternate location that the City chooses in its sole discretion.

b. Artist waives any and all claims, arising at any time and under any circumstances, against City, its officers, agents, employees, 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 §106A, Cal. Civil Code §§987 *et seq.*, or any other type of moral right protecting the integrity of works of art. If the Artwork is incorporated

into a site such that the Artwork cannot be removed from the Site without modifying the Artwork, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for modifying the Artwork.

c. To the extent practical, during the ten years following the Final Acceptance of the Artwork, the Artist shall be given the opportunity to consult on repairs or restorations of the Artwork. Such consultation shall be without charge by Artist unless otherwise specifically agreed to the charges in writing. If the Artwork is to be repaired or restored and City intends to maintain the Artwork on display, City shall make a reasonable good faith effort to engage Artist in the restoration of the Artwork and to compensate Artist for Artist's time and efforts at fair market value, which may be the subject of a future Agreement between Artist and City. However, City has no obligation under this Agreement to repair or restore the Artwork and City may contract with any other qualified art conservator or artist for such repair or restoration.

d. If City alters the Artwork without Artist consent in a manner that is prejudicial to Artist's reputation, Artist may disclaim authorship of the Artwork.

e. City shall have the right to donate or sell the Artwork at any time. Before exercising this right during the lifetime of the Artist, City, by written notice to Artist at Artist's last known address, agrees to give Artist the opportunity to purchase the Artwork for the amount of any offer which City has received for the purchase of the Artwork, plus all costs associated with the removal of the Artwork from the Site, clean-up of the Site and delivery to Artist. Artist shall have thirty (30) days from the date of City's notice to exercise the option to purchase the Artwork.

**11. Copyright vested in City.** Upon completion of the work under this Agreement, ownership, title and copyrights to all materials and deliverable produced as part of this Agreement will automatically be vested in the City and no further agreement will be necessary to transfer ownership to the City. The Artist will retain rights for portfolio and personal promotional use in addition to rights to all originals, sketches, comparables or other preliminary work. To the extent reasonably possible, authorship credit in the name of the Artist shall accompany the work when it is reproduced by the City.

**12. Reproduction and Distribution.**

a. Artist agrees that City may use Artist's Submittals for the purposes related to the development and consideration of the Artwork Design, including without limitation, obtaining any and all approvals of the Artwork Design and the Artwork. Artist authorizes City to make, and to authorize the making of, photographs and other two-dimensional reproductions of the Artwork for educational, public relations, arts promotional, and other noncommercial purposes.

b. For purposes of this Agreement, the following are deemed to be reproductions for noncommercial purposes: reproduction of the Site, where the Artwork is incidental; in catalogues, books, slides, photographs, postcards, posters and calendars; in news sections of newspapers; in general books and magazines not primarily devoted to art but of an educational, architectural, historical or critical nature; slides and film strips not intended for a mass audience; and television from stations operated for educational purposes or on programs for educational purposes from all stations; and in electronic newspapers, websites, blogs and other electronic formats for news, review or commentary. Artist shall also allow City to publish reproductions to provide information to the public on the City's public art or to otherwise promote the City's public art program, even if the publication occurs within art publications, on commercial television stations, in other commercial publications or on the internet.

c. On any and all such reproductions, City shall not be required to place a copyright notice in the form and manner otherwise required to protect the copyrights in the works under the United States copyright law.

d. Public Records Requests. Any documents provided by Artist to City are public records and City may authorize third parties to review and reproduce such documents pursuant to the California Public Records Act.

13. Waiver. The parties agree that waiver of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

14. Validity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.

15. No Assignment of Interest. The duties under this Agreement shall not be assignable, delegable, or transferable without the prior written consent of City. Any such purported assignment, delegation, or transfer shall constitute a material breach of this Agreement upon which City may terminate this Agreement and be entitled to damages.

16. Conflict of interest. Artist hereby certifies that it does not now have, nor shall it acquire, any financial or business interest that would conflict with the performance of services under this Agreement.

17. Force Majeure. For purposes of this Agreement, the term "Force Majeure" shall mean earthquake, fire, or other casualty, flood, landslide, epidemic, unforeseeable adverse weather, "acts of God," war, civil disturbance, court ordered injunction, intervention by civil or military authorities or government, strikes, lockouts, boycotts, or other labor disputes, to the extent any of the foregoing are beyond the reasonable control of either City or Artist and which cause such party to be delayed or hindered in or prevented from the performance of any covenant or obligation under this Agreement other than the payment of money. If either Artist or City is delayed or prevented from the performance of any act required by this Agreement by reason of acts of Force Majeure, performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.
18. Counterparts. This Agreement may be executed in multiple originals, each of which is deemed to be an original, and may be signed in counterparts.
19. Termination. City may terminate this Agreement upon ten (10 day's written notice. The amount of damages, if any, as a result of such termination may be decided by negotiations between the parties or before a court of competent jurisdiction.
20. Agency. In performing the services specified in this Agreement, Artist is hereby deemed to be an independent contractor and not an agent or employee of the City.
21. Laws. Artist agrees that in the performance of this Agreement it will comply with all applicable State, Federal, and local laws and regulations. This Agreement shall be governed by and construed in accordance with the laws of the State of California and the City of Sand City. Any action to enforce or interpret this Agreement shall be brought in the Superior Court of the State of California, County of Monterey, or, in the case of any federal claims, in the United States District Court, Central District of California.
22. Entire Agreement. This Agreement constitutes the entire Agreement between the parties hereto and supersedes any and all prior agreements, whether written or oral, relating to the subject matter hereof. Any modification to this agreement will be effective only if it is in writing and signed by both parties.
23. Conflict of Interest. Artist hereby certifies that it does not now have nor shall it acquire any financial or business interest that would conflict with the performance of services under this Agreement.

**IN WITNESS WHEREOF**, this Agreement is entered into by the parties hereto on the day and year first above written in Sand City, California

City:

\_\_\_\_\_  
Aaron Blair, City Manager

\_\_\_\_\_  
Date

Artist:

\_\_\_\_\_  
Name:

\_\_\_\_\_  
Date

Exhibits:

A: Scope of services/RFP if applicable

B: Artist's Proposal C:

**Exhibit A -Services Rendered**

[Note to City: Terms in this exhibit should include who pays for installation/transport of art]

**Exhibit B- Artist's Proposal**

**Exhibit C – Terms and Conditions for Payment**

Note to CITY - Some suggested terms:

- Compensation under this Agreement shall become due and payable [30] days after submission of written invoice to city.
- Invoice shall be submitted monthly.
- invoices must include details of description of work on an hourly basis.





**AUTHORIZATION AND RELEASE**  
(To be used for City-sponsored Mural)

This Sand City Authorization and Release (“Agreement”) is made on \_\_\_\_\_ (“Effective Date”) between the City of Sand City (“City”) and \_\_\_\_\_, the owner(s) of the property listed below (“Property Owner(s)”), together referred to as the “Parties.”

**WHEREAS**, the Sand City public art project was created to replace illegal graffiti with art, revitalize sites within the City, and create a shared cultural experience for the community; and

**WHEREAS**, murals play an intricate role in conveying the history of our community, beautifying the City, and advancing the arts; and

**WHEREAS**, the City has adopted a process for the placement of public art murals on public and private buildings throughout Sand City; and

**WHEREAS**, in order to help revitalize the City in which he/she owns property, the Property Owner desires to make an exterior wall available on his/her property for a public art mural; and

**WHEREAS**, to comply with the City’s public art guidelines, Parties desire to execute an agreement establishing the Parties’ rights and responsibilities with respect to the installation, and maintenance of the mural.

**NOW, THEREFORE**, in consideration of the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. Property Owner is the owner of the property at the following address: \_\_\_\_\_ Sand City, California (“Property”).
2. Property Owner agrees to allow installation of a mural on the Property, with the design approved by Sand City’s City Council (“Mural”), on a wall facing \_\_\_\_\_ (north/south /east/west) (the “Wall”). **Property Owner covenants that he/she is authorized to permit the mural’s installation upon the Wall, and will permit Artist to do so following this Agreement’s execution.**

3. Term. This Agreement begins on the Effective Date, and remains in effect until two (2) years after the Effective Date (the "Term"), unless City grants a written time extension as set forth in this Agreement.
4. Property Owner's Additional Rights & Responsibilities:
  - 4.1. Agreed Mural Selection Process: Property Owner agrees that, while the artist selected by the City ("Artist") is responsible for the execution of the Mural, Property Owner may provide concept input regarding the design of the Mural prior to approval by Sand City's City Council ("Council"). Property Owner will be allowed to review up to two (2) design sketches and request one (1) revised sketch, if desired, before the final design of the Mural is rendered ("Final Sketch"). City will provide Property Owner a copy of the Final Sketch and Property Owner will have seven (7) calendar days in which to object in writing to the Final Sketch. If no such objection is received by the City Manager within seven (7) days, the Property Owner agrees to have no further input on the design of the Mural. If such an objection is received, this Agreement will be considered to be terminated as of the date of City's written receipt of such objection.
  - 4.2. Debris removal. Prior to installation of the Mural, Property Owner agrees to remove any debris (including advertisements and brackets) from the Wall, and/or the workspace in front of the Wall, in order to provide City Staff and/or Artists unobstructed access to a clean surface.
  - 4.3. Access. Property Owner agrees to allow City Staff and/or Artists access to the Property to: (a) prepare the Wall; (b) install the Mural ("Installation"); and (c) provide any required graffiti abatement required in this agreement. Property Owner agrees to allow such access at a time and date agreed upon between the Parties. Property Owner further agrees to provide such access within two (2) weeks of receipt of the City's written request for access.
  - 4.4. Notify Tenants. Property Owner agrees to notify all tenants of the Property (if applicable) of the date of any work Installation and to distribute to them any literature provided by the City in advance of any work on the Wall.
  - 4.5. Optional Coating. Property Owner is allowed the option of granting City Staff and/or Artists access to the Wall to apply an anti-graffiti clear coat to protect the completed Mural from future damage ("Coating").
  - 4.6. Maintenance/Removal. Property Owner is encouraged but not required to maintain the Mural after Installation, provided however that Property Owner agrees not to obstruct, cover, modify, destroy or remove the Mural for two (2) years after Installation. After such two year period, Owner may remove the mural at Owner's expense.
  - 4.7. Indemnification/Hold Harmless: To the fullest extent permitted by law, Property Owner agrees to indemnify and hold harmless City and any and all of its officials, employees

consultants, volunteers and agents (“Indemnified Parties”) from and against any and all claims, losses, liabilities, damages, costs and expenses, including legal counsel’s fees and costs, caused in whole or in part by the negligent or wrongful act, error or omission of Property Owner or its agents (or any entity or individual that Property Owner shall bear the legal liability thereof) in the performance of this Agreement. Property Owner’s duty to indemnify and hold harmless shall not extend to the City’s sole or active negligence. This provision shall remain in effect beyond the expiration of the Term.

5. City’s Rights & Responsibilities:

- 5.1. Non-interference. City will use its best efforts to not interfere with the business of the Property Owner during any preparatory work, Installation or Coating.
- 5.2. Graffiti Abatement. City will be responsible for touch-ups of the Mural if needed due to graffiti and for removal of graffiti when it is reasonable to do so. City’s obligation for such touch-ups will extend for two (2) years after Installation, after which time City will have no continued obligation for such abatement.
- 5.3. Mural Damage. If the Mural is damaged, defaced, altered or destroyed by human acts or by acts of nature, the City retains the right to remove, modify, restore, repair or replace the Mural, provided that any replacement of the Mural with a design other than that set forth in the Final Sketch is subject to Property Owner’s review as required by section 4.1 of this Agreement.
- 5.4. Reproductions. City has a right to photograph and reproduce images of the Mural in any media and for any purpose.

6. Miscellaneous Provisions:

- 6.1. Governing Law: This Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any action to enforce or interpret this Agreement shall be brought in the Superior Court of the State of California, County of Monterey, or, in the case of any federal claims, in the United States District Court, Central District of California.
- 6.2. Notices: Notices or other communications required by this Agreement will be sufficiently made or given if mailed by certified First Class United States mail, postage pre-paid, or by commercial carrier (e.g., FedEx, UPS, etc.) when the carrier maintains receipt or record of delivery, addressed to the address stated below, or to the last address specified in writing by the intended recipient. To CITY: City of Sand City, 1 Pendergrass Way, Sand City, CA 93955, Attention: City Clerk; To Property Owner:\_\_\_\_\_.

- 6.3. Severability: If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force without being impaired or invalidated in any way.
- 6.4. Modification and Amendment. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.
- 6.5. Limitation of Liability. Under no circumstances shall one party to this agreement be liable to the other party for any special, consequential, indirect, or incidental damages, including lost profits, arising out of or in connection with this Agreement, or any activities performed in connection with this Agreement, regardless of whether a claim made by that party is based on contract or tort. The provisions contained in in this section 6.5 shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, this Agreement is entered into by the parties on the date above written in Monterey County, California:

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
Date

**ADDITIONAL PROPERTY OWNER INFORMATION**

\_\_\_\_\_ I agree to allow City and/or Artist to apply anti-graffiti clear coat to protect the completed Mural from future damage.

\_\_\_\_\_ I do not agree to allow City and/or Artist to apply anti-graffiti clear coat to protect the completed Mural from future damage.

\_\_\_\_\_  
Property Owner Name #1 (Please Print)

\_\_\_\_\_  
Signature/date

\_\_\_\_\_  
Phone number

\_\_\_\_\_  
Email

\_\_\_\_\_  
If APPLICABLE: Property Owner Name #2 (Please Print)

\_\_\_\_\_  
Signature/date

\_\_\_\_\_  
Phone number

\_\_\_\_\_  
Email