



**DATE:** July 19, 2016

**TO:** Parks, Recreation, Marina and Cultural Commission

**FROM:** Barbara Patchin, Recreation Coordinator

**SUBJECT:** Marina Vista Bridge Mural

**RECOMMENDATION:**

1. Approve by motion to approve the completed Marina Vista Bridge Mural.
2. Approve by motion to recommend to the City Council for final approval of the Marina Vista Bridge Mural.

**BACKGROUND:**

On November 17, 2015 Heidi Perryman of Worth a Dam gave a presentation to Parks Recreation Marina and Cultural Commission on painting a mural near Alhambra Avenue Park. The mural would be located on the south facing side of the north concrete wall of the Marina Vista Bridge at Alhambra Creek. The mural is intended to represent the wildlife in and around the creek, to remind people of the “living” creek that runs through the center of downtown Martinez and that we can work together to solve problems.

Worth a Dam has chosen Mario Alfaro to paint the mural. The cost of the mural is \$6,000. Funding will be provided by Worth a Dam. Mario Alfaro is familiar with Martinez. One of his murals is painted in the Main Street Plaza.

Heidi Perryman has met with the Cultural Art Sub-committee on two occasions to go over Worth a Dam’s recommendations and to share Mr. Alfaro’s ideas for the mural.

After a seven month process the Marina Vista Bridge Mural has been completed, Mario Alfaro started the project on May 4, 2016. The mural was completed on May 30, 2016. The artist complied with all terms in the agreement. The art work is in conformance with the City Council’s Final Design Approval.

**Attachments:**

Agreement for the Design and Installation of Artwork (Marina Vista Bridge Mural)

**AGREEMENT FOR THE DESIGN AND  
INSTALLATION OF ARTWORK**

THIS AGREEMENT is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2016, by and between the City of Martinez (“City”) and \_\_\_\_\_ (“Artist”).

WHEREAS, the City of Martinez is home to many murals; and

WHEREAS, the City received a request from resident Heidi Perryman and muralist Mario Alfaro to create a mural with a theme of wildlife in and around Alhambra Creek; and

WHEREAS, \_\_\_\_\_ is an experienced artist and trained in designing, painting and installing murals; and

WHEREAS, the mural was inspired by the beavers and other wildlife living in the creek; and

WHEREAS, community workshops and the Parks Recreation Marina and Cultural Commission’s (PRMCC) Cultural Subcommittee helped define and develop the artwork; and

WHEREAS, after an exhaustive search for locations for the mural it was determined that the Marina Vista Bridge was the most appropriate place. The particular location and edifice upon which the mural is proposed to be installed is shown on Exhibit “A” attached hereto and incorporated by this reference; and

WHEREAS, based on the PRMCC’s recommendation, the City Council, on April 6, 2016, approved the design, colors, and painting of the mural as depicted in Exhibit “B” which is attached hereto and incorporated by this reference; and

WHEREAS, no costs incurred in designing, envisioning and painting the mural shall be borne by the City of Martinez.

NOW, THEREFORE, the City and the Artist, for the consideration and under the conditions herein after set forth, agree as follows:

## **AGREEMENT**

### **1. Definitions**

The following words and phrases shall have the meaning set forth below in connection with this Agreement:

- A. "Artist" shall mean Mario Alfaro.
- B. "Art Work" shall mean the painted mural as depicted in Exhibit "B" and as approved by the City.
- C. "City" shall mean the City of Martinez, a municipal corporation.
- D. "City Council" shall mean the City Council of the City of Martinez, California.
- E. "City Manager" shall mean the City Manager of the City of Martinez, California.
- F. "Commission" shall mean the City's Park Recreation Marina and Cultural Commission, including any subcommittees of the Commission.
- G. "Project Manager" shall mean Barbara Patchin, Recreation Coordinator, or other designee approved by the City Manager.
- H. "Project Site(s)" shall mean the Marina Vista Bridge and the location for the installation of the Art Work as shown on Exhibit "A."
- I. "Final Design" shall mean the City Council approved design for the Art Work which is shown in Exhibit "B."
- J. "Final Acceptance" shall mean the written determination of the Project Manager that the Art Work has been timely completed in accordance with this Agreement to the satisfaction of the City

### **2. Agreement Term**

This Agreement shall commence upon execution of this Agreement by the City and be completed in accordance with the schedule of services attached hereto as Exhibit C, which

schedule may be extended in writing by the City for good cause. The Agreement shall not be deemed completed until Final Acceptance of the Art Work by the Project Manager.

### **3. Services to Be Performed By Artist**

- A. Artist shall install the Art Work as shown in Exhibit "B" at the Project Site.
- B. Artist will be responsible for the professional quality, technical accuracy and coordination of the services required to adequately perform the Art Work. Artist will, without compensation, correct or revise any errors or deficiency in the Art Work.
- C. Artist will keep City informed on a regular basis as to whether Artist's services are being performed in accordance with the requirement and intentions of this Agreement.
- D. If applicable, Artist has designated those persons listed in Exhibit "D" to provide the services necessary to perform the Art Work. Artist will not change or reassign those persons described in Exhibit "D" without prior written notice to the City, and will not replace those individuals with individuals with whom City has a reasonable objection.
- E. Artist acknowledges that in entering into this Agreement, City is relying on Artist's special skills and experience to do and perform the Art Work consistent with the best standards of professional practice. While installing the Art Work, Artist will exercise the reasonable professional care and skill customarily exercised by reputable members of Artist's profession practicing in the Northern California area. The Final Acceptance of the Art Work by City does not release Artist from these obligations.
- F. Artist will be responsible for employing or engaging all persons necessary to perform the Art Work. All of Artist's staff will be qualified by training and experience to perform their assigned tasks. Artist will give his personal attention to the installation of the Art Work and the fulfillment of the provisions of this Agreement by all of Artist's employees and subcontractors, if any, and will keep the performance of the Art Work under Artist's control.
- G. Artist shall provide the City with the reports, documentation and description of maintenance requirements as required by this Agreement as well as a written report regarding the intent of the Art Work and the materials and processes used in the design and execution of the Art Work. Artist shall also provide the City with two complete sets of 35 mm. color transparencies and negatives for program and archival purposes. Digital images may be substituted if approved by the Project Manager.

#### **4. Conditions to Final Acceptance**

The City Council shall not issue the notice of Final Acceptance, until the Project Manager has determined that each of the following conditions has been completed.

A. The installation of the Art Work is in conformance with the City Council's Final Design approval of the Art Work.

B. The timely completion of the Art Work.

C. The completed Art Work has been reviewed by the Commission and the Commission has recommended that the Art Work be approved by the City Council

D. The Artist has substantially complied with all other terms and conditions contained in this Agreement, including the submission to the City of all reports and documents required by this Agreement.

#### **5. Final Design Approval and Deviation from Approved Specifications**

Artist shall install the Art Work in strict conformity with the Final Design approved by the City Council. However, Artist may at any time make a request of the City for its approval of a deviation from the approved Final Design. Such requests must be made with reasonable specificity and with reasonable advance notice to provide the City with sufficient information and time to make an informed and considered decision. City reserves the right to bring such requests to the Commission and/or City Council for approval prior to their implementation. In no event shall any deviation increase the project scope without prior City Council approval. The City may withhold approval to any such requested deviation for any reason or no reason.

#### **6. Preparation of and Access to Project Site/ Notice of Conflicting Conditions**

A. The preparation of the Project Site necessary to successfully install and/or implement the Art Work shall be the sole responsibility of the Artist. Artist shall not transport or install the Art Work until access to the Project Site has been approved by and scheduled in coordination with the Project Manager.

B. Where the Artist's work is associated with, dependent upon or affected by the work or activities of any other contractor or person ("Third Party Work"), the Artist shall examine the Third Party Work and report in writing to the Project Manager of any visible defect or condition preventing the proper performance of Artist's Art Work. Likewise, if for any reason the Project Site prevents or impedes Artist from initiating, implementing and/or completing the Art Work, Artist must report same to the Project Manager in writing. If Artist proceeds without giving such notice, the Artist shall be deemed to have accepted the Third Party Work, the existing

conditions, and/or the Project Site, as the case may be, in their "as is" condition and shall be responsible for any defects in his own work consequent thereof, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection.

C. Artist shall not be entitled to any damages for delays in the installation or Final Acceptance of the Art Work due to any actions of the City, its consultants or contractors.

## **7. Compensation, Method of Payment, Audit and Records**

A. Artist shall bear all costs incurred in connection with the design, installation, painting and completion of the Art Work, including but not limited to the costs of materials, equipment or supplies utilized by the Artist in connection with the Art Work, as well as the payment of all insurance and all other expenses associated with the work Artist is to perform under this Agreement. The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the costs of transporting the Art Work and any materials or equipment to the Project Site and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

B. Artist will be responsible for payment of all Artist's subcontractors, employees and agents. Prior to commencing work, the Artist shall confer with the Project Manager to determine whether the work to be performed under this Agreement is subject to the payment of prevailing wages as determined by the Department of Industrial Relations. If the work is determined to be subject to prevailing wages, Artist shall be responsible for complying with the applicable wage orders and shall provide the City with certified payrolls for all work performed.

C. The City shall not pay the Artist any compensation or remuneration as the result of Artist's performance under this Agreement.

D. During normal business hours and as often as the City may deem necessary, the Artist shall make available to the City for examination all records with respect to all matters covered by this Agreement. The Artist shall permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all data relating to all matters covered by this Agreement.

## **8. Liability for Damage to Equipment or Art Work**

Prior to Final Acceptance, the City shall bear no responsibility, nor incur any liability, for loss or damage to the Art Work. At no time shall the City be responsible for, nor incur any

liability for, loss or damage to any equipment owned, rented or borrowed by the Artist in connection with the Artist's performance under this Agreement.

## **9. Termination of Agreement**

A. This Agreement and all obligations hereunder may be terminated at any time, with or without cause, by the City within its sole discretion upon written notice to Artist. Artist may terminate this Agreement upon 30 days' written notice to the City only for good cause, including without limitation, Artist's serious illness preventing him from completing the Art Work pursuant to this Agreement or material breach of this Agreement by the City. Artist's written notice of termination shall contain a full explanation of the facts and circumstances constituting good cause. In the event of termination by Artist or City pursuant to this Section 9(A), Artist shall be reimbursed only for the Artist's costs and expenses incurred (i) prior to Artist receiving the City's notice of termination or prior to the Artist delivering Artist's notice of termination, as the case may be, and (ii) in connection with performing under this Agreement. In the event this Agreement is terminated pursuant to this section, Artist shall not be entitled to any compensation other than for reimbursement of costs and expenses pursuant to the immediately preceding sentence; nor shall Artist be entitled to payment for damages or injuries (including lost opportunity damages) purportedly caused by the termination of this Agreement by the City pursuant to this section.

B. Should the Artist fail to perform any of its obligations hereunder, within the time and in the manner provided or otherwise violate any of the terms of this Agreement, the City may terminate this Agreement by giving written notice of such termination, stating the reasons for such termination. If this Agreement is terminated under this subsection B, the Artist shall not be entitled to reimbursement for any of her costs or expenses incurred in connection with performing under this Agreement.

## **10. Independent Contractor**

Artist shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which the Artist performs the service required by the terms of this Agreement. Nothing contained herein shall be construed as creating an employment or City employer/employee relationship between the City and the Artist. Artist is solely responsible for hiring and paying subcontractors and employees, as well as responsible for the acts of these subcontractors and employees.

## **11. Artist Warranties**

A. Artist hereby expressly warrants to the City that the Art Work, and all services and materials incorporated therein, shall conform to all plans and specifications of the Final Design

as approved by the City Council. The Art Work shall be subject to inspection by the City from the beginning of design until the final completion and Final Acceptance. An inspection by the City of any work or material shall not be deemed to be a waiver of any future right of inspection or of any right to demand correction of any subsequently discovered defect. Any work or material found to be unsatisfactory or defective before Final Acceptance of the Art Work shall be corrected or replaced by the Artist within a reasonable time. Inspection shall not relieve the Artist of the Artist's obligation to furnish materials and workmanship in accordance with this Agreement.

B. Artist warrants that the work will be fit for the intended purpose; will be safe and will not have any nuisance or harmful effects; and will be free of defects in workmanship or materials, including inherent defects. Artist warrants that Artist shall, at Artist's cost and expense, remedy such defects in workmanship or materials that appear within 18 months of Final Acceptance.

C. In the event the Art Work should deteriorate due to an inherent defect, the Artist will replace the work at Artist's expense. "Inherent defect" refers to a quality within the material or materials which comprise the Art Work which, either alone or in combination, results in the tendency of the work to deteriorate. "Inherent defect" does not include any tendency to deteriorate which is specifically identified by the Artist in the documents Artist is required to provide the City pursuant to this Agreement.

D. The Artist represents and warrants that: (a) the Art Work is solely the result of the artistic effort of the Artist; and (b) the Art Work is unique, original and does not infringe on any copyright.

## **12. Maintenance, Repairs, Alterations and Removal**

A. As a condition to Final Acceptance by the City of the Art Work, the Artist shall provide the City with a documentation and final maintenance plan. The plan shall include the following:

1. Specification of the types of paint and/or other mediums (collectively "paint") used in creating the mural. The manufacturer and current product codes of the paint should be included.
2. Descriptions of the manner and/or method of applying the paint and creating the mural (one coat, many coats, dabbing, spray gun, brush, scratching, spatula application, etc.).
3. Descriptions of how to remove the mural and paint.

4. Descriptions of the routine, time lines and methods of protecting and preserving the mural, if the city decides to undertake such effort, including periodic washing and the appropriate cleaning materials. Also, applying clear coats, if necessary, what product should be used, how frequently, and the suitable weather conditions.

5. Any other pertinent and relevant information that will assist the city in preserving, maintaining, enhancing, repairing, or removing the mural over time.

- B. After Final Acceptance, routine maintenance of the Art Work shall be the responsibility of the City. The Artist shall be available, at no charge, for consultation on maintenance and repair. If the City determines in its sole and total discretion that necessary maintenance and repairs cannot be made in accordance with the Artist's specifications, or if the Artist has provided insufficient information to the City, the City may use its best judgment to effect necessary repairs in a timely fashion.
- C. City intends to make its best efforts to display the Art Work at the Project Site as originally created by Artist and to maintain the Art Work in good condition. However, the City must preserve complete flexibility to operate and manage City properties. Therefore, subject to its obligation to make good faith efforts to consult with Artist as set forth in this section, the City retains the absolute right to Alter (defined below) the Art Work. Artist hereby acknowledges that the Art Work, when installed, will be incorporated within and made a part of the Project Site in such a way that removing the Art Work from the Project Site, or the destruction or modification of the Project Site may cause the destruction, distortion, mutilation or other modification of the Art Work. Artist therefore agrees that the City shall have the absolute right incidental to its ownership of the Art Work to remove, relocate, move, replace, destroy, transport, or transfer, in whole or in part (such actions being referred to herein as "Alterations" or "Alter"), the Art Work at such time as the City shall deem necessary in order to exercise its powers and responsibilities with respect to public property and public works and improvements in furtherance of City's operations. For example, the City may modify the Art Work to eliminate hazards, to comply with the ADA, to otherwise aid in the management of the City's property and affairs, or through neglect or accident. If, during or after the term of this Agreement, the City finds the Project Site to be inappropriate, the City has the right to install the Art Work at an alternate location that it chooses in its sole, reasonable discretion. The City shall make a good faith effort to provide the Artist with prior notice (at the last phone number or address provided by Artist to the City) of the City's intent to undertake any Alterations to the Art Work so that the Artist may consult with the City as to the manner in which the Artist recommends the Art Work to be Altered. In

this regard, the Artist's recommendations are advisory only and not binding upon the City. To the extent the provisions of this Section are inconsistent with the provisions of federal or state law, including without limitation the California Art Preservation Act (California Civil Code Sections 987 et seq.) and the federal 1990 Visual Artists' Rights Act (17 U.S.C. Sections 106A and 113(d)), Artist hereby waives (i) any right to preservation of the Art Work provided by those laws and (ii) any and all claims against the City, its officers, agents, employees, successors and assigns, arising under those laws or any other type of moral right protecting the integrity of works of art; provided, however, that the Artist shall retain any right to disclaim authorship of the Art Work pursuant to and under the conditions set forth in the California Art Preservation Act and the 1990 Visual Artists' Rights Act.

C. Artist warrants to the City that the Art Work as installed does not contain features, materials or elements that pose a foreseeable danger to the public. In the event that the City determines that the Art Work presents an imminent hazard to the public, the City may authorize the removal of the Art Work without approval of or consultation with the Artist. The Artist shall be notified within ten (10) days of any such action, and the City shall then consider options for the final disposition, repair, reinstallation, maintenance or disposition of the Art Work. In the event that the Art Work cannot be removed without being irreparably damaged or destroyed, the Artist hereby agrees to waive any rights the Artist may have under the California Art Preservation Act and the 1990 Visual Artists' Act and any other laws that convey rights of the same nature as those conveyed under 17 U.S.C. Section 106A, Cal. Civ. Code Section 987 et seq., or any other type of moral right protecting the integrity of works of art; provided, however, that the Artist shall retain any right to disclaim authorship of the Art Work pursuant to and under the conditions set forth in the California Art Preservation Act and the 1990 Visual Artists' Rights Act.

D. In the event that the City consults with the Artist regarding any Modification to the Art Work, such consultation shall be without charge by Artist unless otherwise specifically agreed in writing. If the Art Work is Altered and the City intends to maintain the Art Work on display, the City shall make a reasonable good faith effort to engage Artist in the restoration of the Art Work and to compensate Artist for Artist's efforts at fair market value, which may be the subject of a future agreement between the Artist and the City. However, the City has no obligation under this Agreement to restore the Art Work or to compensate Artist for any restoration work.

E. The Artist agrees and acknowledges that the City is under no obligation to repair and/or restore the Art Work in the event it becomes damaged, in whole or in part, or is destroyed or altered from any cause whatsoever.

F. The Artist expressly waives any and all rights the Artist may possess or be entitled to under California Civil Code Section 987 and successor statutes. The Artist expressly releases the City from any and all liability, obligation or responsibility which might otherwise be imposed upon the City under California Civil Code Section 987 and successor statutes with respect to the Art Work covered by this Agreement.

G. The Artist shall notify the City of any change in Artist's address. Failure to do so shall be deemed a waiver by Artist of any rights to notice or consult granted under this Section.

H. Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of the City, the Artist retains Artist's moral rights in the Art Work, as established in the Visual Artists' Rights Act (17 U. S.C. Sections 106A and 113(d)), the California Art Preservation Act (Cal. Civ. Code Sections 987 and 989), or any other moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent Artist from pursuing a claim against a third party who is not an officer, employee, agent, successor or assign of the City for Alteration of the Art Work. The City has no obligation to pursue claims against third parties to remedy or prevent Alteration of the Art Work. However, as owner of the Art Work, City may pursue claims against third parties for damages or to restore the Art Work if the Art Work has been altered without City's authorization.

### 13. Insurance

A. Artist shall place and maintain and shall cause any subcontractors to maintain, for the periods stated below, and pay the cost thereof, the following insurance policies:

(1) General Liability Insurance. Artist shall procure and maintain Comprehensive General Liability Insurance with limits not less than \$1,000,000 for each occurrence combined single limit for bodily injury and property damage, including coverage for contractual liability, broad form property damage, completed operations, and if any subcontracted work, independent contractors.

(2) Comprehensive Automobile Insurance. Artist shall procure and maintain, and cause any subcontractors to procure, Comprehensive Automobile Liability insurance with single limit for bodily injury and property damage of \$500,000, including coverage for owned, non-owned and hired automobiles, as applicable. Any deductible under such policy shall not exceed \$20,000 for each occurrence.

(3) Worker's Compensation. If Artist has employees, Artist shall procure and maintain statutory Worker's Compensation Insurance in the jurisdiction where the work is being performed and provide a waiver of subrogation against the City. Artist shall also procure and maintain Employer's Liability Insurance with a limit of no less than \$1,000,000 each accident, covering all employees. If Artist warrants that it is not an employer and has no employees as defined by the California Labor Codes Sections 3351-3351.5, then Artist must execute the

Acknowledgment of No Worker's Compensation Insurance and Release a true and correct form of which is attached hereto as Exhibit "E", and based there on the City waives the requirement for Worker's Compensation and Employer's Liability Insurance under this Agreement. Artist shall ensure that Artist's subcontractors who do qualify as employers as defined by the California Labor Code Sections 33351-33351.5 procure prior Worker's Compensation, with Employer's Liability insurance, with limits of no less than \$1,000,000 each accident, covering all employees employed by Artist's subcontractor to provide statutory benefits as required by the laws of California, said policy shall be endorsed to provide that the insurer waives all rights of subrogation against the City.

B. All insurance policies obtained pursuant to this Section shall be endorsed to provide:

(1) That thirty (30) days written notice of cancellation, nonrenewal or reduction in coverage or limits shall be given to the Project Manager;

(2) That such insurance is primary to any other insurance available to an additional insured with respect to claims arising out of this Agreement and that insurance applies separately to each insured against whom a claim is made or a suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.

(3) The policies shall contain a waiver of subrogation for the benefit of the City.

C. All insurance policies required under this Agreement shall be issued by companies reasonably acceptable to the City and shall be admitted to do business in the State of California.

D. The liability insurance policies required above shall be endorsed to name as an additional insured the City and its respective officials, officers, directors, agents and employees.

E. Copies of all insurances shall be provided to the City, and complete copies of any insurance policies obtained pursuant to this Agreement shall be provided to the City if requested at any time. Prior to commencement of work under this Agreement, Artist shall provide the City certificates of insurance evidencing the above policies in forms acceptable to the City.

#### **14. Indemnification and General Liability**

A. Artist shall defend, indemnify and hold harmless the City and its officials, officers, employees, agents, contractors, consultants and members of its boards, committees and commissions (an "Indemnified Person") from and against any and all Losses arising directly or indirectly, in whole or in part, out of any injury to or death to any person or damage to or destruction of any property, from any cause whatsoever, relating to Artist's performance, attempted performance or failure to perform under this Agreement or breach of this Agreement, whether such Loss is caused by the Artist or her agents, employees, contractors, or subcontractors, or by any third party.

B. In the event any action or proceeding is brought against an Indemnified Person by reason of a claim arising out of any Loss covered by this indemnity, and upon written notice from such Indemnified Person, Artist shall at the Artist's sole cost and expense answer and

otherwise defend such action or proceeding using counsel approved in writing by the Indemnified Person. Each Indemnified Person shall have the right to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment covered by the indemnity set forth in this Section.

C. For purposes of this Section, the term "Losses" shall mean any and all claims, demands, losses, damages, liens, liabilities, injuries, deaths, penalties, fines, lawsuits and other proceedings, judgments and awards rendered therein, and costs and expenses, including, but not limited to, reasonable attorney's fees.

D. The Artist shall defend, indemnify and hold the City harmless from all Losses, including attorney's fees, court costs, and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark and all other intellectual property claims of any third party persons arising from the Artist's work under this Agreement.

#### **15. Incidental and Consequential Damages**

Artist shall be responsible for consequential damages for personal injury including death or tangible property damages due to the Artist's negligence or intentional acts. This Agreement shall not limit any cause of action arising between the parties which are based upon wrongful acts which are independent of the Agreement.

#### **16. Notices**

Submittals, payments, requests, notices and reports required under this Agreement shall be delivered as follows:

For the City:

City of Martinez

525 Henrietta Street  
Martinez, CA 94553-2394  
Attn: Barbara Patchin  
Telephone: 925 372 3547  
Email: bpatchin@cityofmartinez.org

For the Artist

Mario Alfaro

\_\_\_\_\_  
\_\_\_\_\_  
Telephone:  
Email:

A change in the designation of the person or address to which submittals, requests, notices and reports shall be delivered is effective when the other party has received notice of the change by certified mail.

#### **17. Ownership of Art Work; Copyright and Patents; Documentation**

A. Artist and City intend this to be a contract for services, and each considers the products and results of the services to be rendered by Artist hereunder (the "Art Work") to be a work made for hire as that term is defined in the Copyright Laws of the United States. Artist acknowledges and agrees that the Art Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of City.

B. If for any reason the Art Work would not be considered a work made for hire under applicable law, Artist does hereby sell, assign, and transfer to City, its successors and assigns, the entire right, title and interest in and to the copyright in the Art Work and any registrations and copyright applications relating thereto and any renewals and extensions thereof, and in and to all works based upon, derived from, or incorporating the Art Work, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present, or future infringement based on the copyrights or other intellectual property rights, and in and to all rights corresponding to the foregoing throughout the world.

C. If the Art Work is one to which the provisions of 17 U.S.C. 106A apply, the Artist hereby waives and appoints City to assert on the Artist's behalf the Artist's moral rights or any equivalent rights regarding the form or extent of any Alteration to the Art Work or the making of any derivative works based on the Art Work, including, without limitation, photographs, drawings or other visual reproductions of the Art Work, in any medium, for City purposes.

D. Artist agrees to execute all papers and to perform such other proper acts as City may deem necessary to secure for City or its designee the rights herein assigned.

**E. Artist warrants that the Art Work will (i) not use any protected patent or trademark and (ii) contain no material from other copyrighted works without a written consent of the holder of the patent, trademark and/or copyright, as the case may be. The Artist will obtain such consents at her own expense after consultation with the City and will provide such consents to the City at the time the Art Work is delivered. Any obligations associated with securing said permissions will be the responsibility of the Artist.**

F. The City hereby agrees to credit the Artist for the Art Work upon publication of any two-dimensional reproductions of the work as stated in this Section.

#### **18. Subcontracting**

The Artist shall not subcontract or assign this Agreement or any part of it unless such subcontracting or assignment is approved by the City. Neither party shall, on the basis of this

Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

**19. Compliance with Laws**

In the performance of this contract, Artist agrees to comply with applicable laws and regulations. All work performed by Artist under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals. Artist shall not discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, or disability.

**20. Business License**

A Martinez business license is not required

**21. Miscellaneous**

A. Termination of this Agreement shall not affect City's right to enforce any and all indemnities, representations or warranties given or made by Artist to City under this Agreement, nor shall it affect any other provision of this Agreement that expressly states it shall survive termination.

B. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any court action brought by either party shall be in Contra Costa County, California.

C. The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of Artist and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Agreement.

D. This Agreement contains all the agreements of the parties hereto relating to the subject matter addressed herein, and cannot be amended or modified except by a written agreement mutually executed between each of the parties hereto.

E. The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

F. The parties intend that this Agreement (including all of the attached exhibits, which are made a part of this Agreement) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings.

G. Should any provisions or portions of this Agreement be held unenforceable or invalid, the remaining provisions and portions shall be unaffected by such holdings.

H. The recitals are incorporated by this reference.

I. The following exhibits are attached hereto and incorporated by this reference:

- 1) Site Plan - Exhibit A
- 2) Depiction of Art Work - Exhibit B
- 3) Schedule- Exhibit C
- 4) List of Persons Authorized to Work – Exhibit D
- 5) No Worker’s Compensation Insurance Acknowledgment – Exhibit E

INWITNESS WHEREOF, the parties have executed this Agreement on the day and year indicated below, effective as of the day the City Manager executes the Agreement on behalf of the City.

CITY OF MARTINEZ

Dated: \_\_\_\_\_, 2016

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

ARTIST:

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
, Artist

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney