

**Meeting Date:** 9/16/2014

**Report Type:** Consent

**Report ID:** 2014-00675

**Title:** Approval of Artwork Designs for the 12th Street Underpass

**Location:** District 3

**Recommendation:** Pass a Motion 1) approving the artwork designs (“Artworks”) depicted in Attachment 3 for placement on the east and west sides of the 12th Street underpass between North B and C streets in Sacramento; and 2) authorizing the City Manager or his designee to enter into an agreement with L/C Mural and Design, Inc. for the fabrication and installation of the Artworks on the 12th Street Underpass for \$5,000.

**Contact:** Shelly Willis, Executive Director, (916) 808-3971, Sacramento Metro Arts Commission; Jody Ulich, Director, (916) 808-5105, Convention & Cultural Services

**Presenter:** None

**Department:** Convention & Cultural Services

**Division:** Metro Arts-APP

**Dept ID:** 17001821

**Attachments:**

1-Description/Analysis

2-Contract

3-Artworks

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**City Attorney Review**

Approved as to Form

Kourtney Burdick

9/9/2014 9:36:58 AM

**Approvals/Acknowledgements**

Department Director or Designee: Judy Goldbar - 8/29/2014 3:25:55 PM

## Description/Analysis

**Issue Detail:** This report recommends City Council authorize the placement of the Artwork identified in Attachment 3 on the 12<sup>th</sup> Street underpass between North B and C streets in Sacramento and authorize the execution of an agreement with L/C Mural and Design, Inc. (shown in Attachment 2) to fabricate and install the Artwork.

**Policy Considerations:** The Sacramento Metropolitan Arts Commission's approval of the designs for the 12<sup>th</sup> Street mural project meets standard Art in Public Places (APP) policies and procedures and the goal of site-specific public art.

**Economic Impacts:** None.

**Environmental Considerations:** California Environmental Quality Act (CEQA): Under the CEQA guidelines, Title 14, Section 15378(b), continuing administrative activities do not constitute a project and are therefore exempt from CEQA review.

**Sustainability:** Not applicable.

**Commission/Committee Action:** : In accordance with City Code section 2.84.080(E), the Sacramento Metropolitan Arts Commission (the "Commission") has the authority to make recommendations to the City on all works of art to be acquired by the city either by purchase or gift. For the 12<sup>th</sup> Street Mural Public Art Project, the Commission approved the mural design (the "Artwork"), recommending it for purchase by the City for placement on the 12<sup>th</sup> Street underpass.

**Rationale for Recommendation:** As envisioned by staff, the goals of the 12th Street Mural Project are to:

- Enhance the enjoyment and quality of life for City residents and visitors;
- Encourage revitalization of the area;
- Increase the public's experience of contemporary art;
- Create a more vibrant art scene; and
- Discourage graffiti tagging of public property.

The Artwork is being recommended for approval because:

- It is visually interesting, appealing and engaging on many levels;
- Represents a high quality of craftsmanship;
- Has a relationship to the site where it is located; and,
- The artists have the ability and experience to complete the designs as proposed.

If approved by council, the Artwork will be fabricated and installed by L/C Mural and Design, Inc.

By approving the Artwork, the City does not intend to create a forum for public expression, but rather is expressing its own government speech. City staff worked with the Commission to review the design proposal, consistent with the Commission's authority to make recommendations on all works of art to be acquired by the City either by purchase or gift. The City Council has ultimate approval authority over the Artwork. The City will hold title to the Artwork and will, accordingly, retain the right to remove it at any time.

**Financial Considerations:** L/C Mural and Design, Inc. will fabricate the Artwork and perform ongoing maintenance of the piece, as necessary, at a cost of \$5,000 to the City. The City will retain \$2,500 of the \$5,000, for a period of three years from the City's acceptance of the Artwork, to fund necessary maintenance of the piece. At the conclusion of the three-year period, the City will remit the remaining balance to the artists.

**Local Business Enterprise (LBE):** L/C Mural and Design, Inc. is a Local Business Enterprise.

Department: Convention and Cultural Services  
Division: Sacramento Metropolitan Arts Commission

### PRODUCTION AND INSTALLATION OF CITY ARTWORK

This **Agreement**, is made \_\_\_\_\_, 2014, between the City of Sacramento, a California municipal corporation (the "City"), and

L/C Mural and Design, Inc.

Address

Phone/Fax

Email

("Artist"), who agree as follows:

1. **Scope of Work.** Subject to the terms and conditions set forth in this Agreement, Artist shall:
  - A. *Installation of Work.* Purchase on Artist's account all labor, supplies, materials, and equipment required to design, fabricate, and install an exterior artwork ("Work") on the 12<sup>th</sup> Street Underpass, between North B and C streets in Sacramento ("Site"), in a good and workmanlike manner, to the satisfaction of the City and in substantial conformance with Artist's Design Proposal ("Proposal") as depicted in Exhibit A. The Work is to be installed on a scheduled determined by the City. Artist may not commence work prior to receiving a written notice to proceed from the City.
  - B. *Maintenance.* Maintain, repair, and replace the Work so as to keep it in a clean and presentable condition, mirroring the Artist's Proposal, for up to three years or throughout the period of exhibition, whichever is less.
  - C. *Presentations.* Artist, at City's option, shall be available to present the Proposal, in the form approved by the City, at one or more meetings. Artist shall attend project meetings and make presentations to City staff, the Commission, the Project Architect, or other individuals and organizations, as needed by the City. Artist agrees to collaborate closely with City through in-person meetings and other necessary means of communication to thoroughly integrate the Proposal into the architectural design of the site.

2. **Payment.** Within 60 days of receipt of invoice from Artist, the City shall pay Artist up to \$5,000 for services rendered pursuant to this Agreement. Artist shall be responsible for the cost of supplying all documentation necessary to verify the billings to the satisfaction of City. Artist agrees that the City has no obligations regarding commissions or any agreements with galleries or agents with whom Artist may have contracted. City is not responsible for paying sales tax. Payments to Artist will be made as follows:
  - A. \$1,000 upon execution of this Agreement and dispatch of purchase order;
  - B. \$1,500 upon acceptance of the City's acceptance of the completed Work, the Maintenance Report attached hereto as Exhibit B, and 20 high resolution digital images documenting the processes of Work fabrication, installation, and the completed Work submitted on a compact disc (CD).
  - C. \$2,500 less the City's cost to maintain the Work for a period of three years from the City's acceptance of the completed Work or throughout the exhibition period, whichever is less, three years from the City's acceptance of the completed Work.
3. **Time of Performance; Documentation of Work.** Time is of the essence in this Agreement. Artist shall dedicate such time and effort as is necessary to fulfill Artist's obligations to completely finish and install the Work to the satisfaction of City within six months from the date of execution of this Agreement, except as the Work may be delayed by circumstances described in section 19, below. City shall make its staff and contractors reasonably available to Artist for consultation and assistance in order to achieve the purposes of this Agreement. Artist shall provide to the City twenty (20) high resolution (300 dpi minimum) digital images documenting the processes of Work fabrication and installation. Artist shall also provide City with a complete schedule for the maintenance of the Work in the form reflected in Exhibit B hereto.
4. **Artist Warranties.**
  - A. **Restoration of Work Site.** Artist agrees and warrants that within 24 hours after the Work is accepted by the City, Artist shall restore the Work site (including the entire area affected by the fabrication and installation of the Work) to a state

and condition that is substantially similar to that which existed when the Work was begun. Artist further agrees and warrants that, throughout the period of exhibition or three years, whichever is less, Artist shall repair or replace, as is determined necessary by City, and to the reasonable satisfaction of City, all property (real, personal or otherwise), which has been damaged, injured or otherwise adversely affected by the acts or omissions of Artist, Artist's agents, contractors, or employees. Artist shall be solely responsible for all expenses and costs that may be necessary to comply with the requirements of this paragraph, and City shall have no responsibility or liability therefore.

- B. **Originality of Work.** Artist warrants that the Work is original and is solely the product of Artist's own creative efforts and does not infringe the rights of any person or entity. Artist also warrants that, unless otherwise stipulated in writing, the Work is original, that it is an edition of one, and that Artist shall not perform or reproduce a substantially similar copy of the Work other than for purposes of prints and reproductions as described below without the prior written consent of City. However, nothing contained herein shall prevent the Artist from creating future works in her style and manner of working or from producing, licensing, or otherwise selling prints or reproductions of the Work.
  - C. **Work Free from Defects.** Artist shall warrant and maintain the Work free from all faults or defects related to material or workmanship for a period of one year after the Work is accepted by City.
  - D. **Compliance with all Laws.** Artist agrees to fabricate and install the Work in conformance with all applicable laws. Artist shall be solely responsible, at Artist's sole cost, for obtaining and complying with the terms and conditions of any and all approvals, licenses, and permits necessary to install the Work.
5. **Transfer of Title to Work.** Title to the original Work shall remain in Artist until City has accepted the Work as completed and it is installed to the satisfaction of City. When City has so certified, title shall transfer to City. Artist shall bear all risk of loss of the Work until title has been transferred to City, and City agrees to inspect Work and accept Work within thirty (30) days of Artist's notification of completion, unless the provisions of 7 A. or B. apply.

6. **Performance Made Impossible.** In the event it becomes impossible for Artist to complete the Work because of illness, death or injury, this Agreement may be terminated at the sole discretion of City, and, in such event, all completed work, materials, and supplies related to the Work shall be delivered to City and shall, along with the Proposal, become the City's sole property. City shall thereafter have no obligation to make any additional or further payments to Artist, and Artist shall have no further or additional claims against City with respect to the Work or such portion thereof as may be completed, or the Proposal, or with respect to any matter whatsoever pertaining to, affected by or embodied in this Agreement. In the event of such termination, City may take such action as may appear to it appropriate under the circumstances, including, without limitation of the generality of the foregoing, commissioning another artist to complete the Work. In the event that City completes the Work or arranges to have it completed, Artist's name shall be publicly displayed at, on or near the Work, unless Artist and City mutually agree otherwise.
7. **Acceptance of Work.** City agrees to accept the completed Work unless:
- A. The Work was not completed in substantial conformance with the Proposal or the Specifications; or
  - B. The Work as completed or any portion thereof does not conform to a reasonable standard of artistic or technical quality. City shall provide its reasons for this finding to Artist in writing no later than ten (10) days after Artist has tendered the Work to the City for City's acceptance. Where the Artist disputes this finding, the dispute may, if the Parties so agree, be submitted to Arts Arbitration and Mediation Services ("A.A.M.S."), of California Lawyers for the Arts, Sacramento for resolution., and any decision by A.A.M.S. shall be binding upon City and Artist and neither shall have any further recourse or cause of action regarding the matters so resolved; or
  - C. Upon the City's refusal to accept the Work for the reasons stated in subparagraphs A or B, City shall have the right to: 1) request that Artist correct the deficiencies in the Work within a reasonable time, or 2) terminate this Agreement and recover all sums previously paid to Artist. Both remedies shall be independent and cumulative and in addition to any other remedy available to the City at law or equity. Enforcement of one such remedy shall not be exclusive nor shall it be deemed an election of such remedy to the exclusion of any other

or further remedy. However, nothing contained herein shall limit City's available remedies at law and equity.

- D. No payments to Artist shall be deemed as a waiver of City's right to refuse to accept the Work.
8. **City's Care of Work.** City agrees that it will not intentionally destroy damage, alter, modify or change the Work in any way. If an alteration should occur, either intentionally or unintentionally, the Work will no longer be represented as the work of the Artist without her written permission. This does not preclude the City's right to move or remove the Work from display or deaccession the Work at any time.
9. **Repair of Work.** In the event repair of the Work is required within the first three years of exhibition, Artist shall undertake such repairs at its sole cost and expense. In the event Artist refuses to make the repairs, City may arrange for repairs by another qualified person and the City may deduct the cost of those repairs from the City's third installment payment to Artist, as explained in Section 2(C) of this Agreement. When emergency repairs are necessary in order to prevent the loss of or further damage to the Work, such repairs shall be undertaken or arranged by City without advance notice to Artist, and such repairs shall not constitute an artistic alteration. City shall thereafter notify Artist as soon as is practicable. The cost of such repairs shall also be deducted from City's third installment payment to Artist, as explained in Section 2(C) of this Agreement.
10. **Work Authorship.** Artist shall retain the copyright to the Work and the right to claim authorship of the Work. City shall ensure that Artist's name is publicly displayed on, at, or near the Work. In the event the Work is substantially damaged or altered, City shall no longer represent the Work to be the Work of Artist if Artist gives written notice to City that Artist denies authorship of the Work on the grounds stated in this paragraph. In the event City disputes the right of Artist to deny authorship, the matter may be submitted to A.A.M.S for mediation or arbitration. If the parties select arbitration, the determination by A.A.M.S shall be binding upon City and Artist and neither shall have any further recourse or cause of action regarding the matters so determined.
11. **Artist Payment of Contractors and Employees.** In the event Artist hires or contracts with employees, subcontractors, or material suppliers, Artist shall pay these employees, subcontractors, or material suppliers out of the payments made to

Artist by City for completion of the phase of work for which the employees, subcontractors, or material suppliers provided labor or materials and provide proof of payment to the City prior to completion of the next phase of work. In the case of nonpayment of wages or other amounts due the employees, subcontractors, or material suppliers herein, City may withhold from Artist out of payments due a sum sufficient to pay such persons the amounts owed by Artist absent evidence satisfactory to the City of a legal basis for such nonpayment. All subcontractors shall be properly licensed pursuant to the Contractors State License Law (Business and Professions-Code sections 7000 et seq.). Before performing any work, each subcontractor shall provide to the City and Artist evidence that the subcontractor has workers' compensation insurance coverage if this insurance is required by state law.

12. **Indemnity.** Artist shall defend, hold harmless and indemnify City, its officers and employees, and each and every one of them, from and against any and all claims, actions, damages, costs, liabilities, demands, losses, judgments, penalties and expenses of every type and description, including, but not limited to, any fees and/or costs reasonably incurred by City's staff attorneys or outside attorneys and any fees and expenses incurred in enforcing this provision (hereafter collectively referred to as "Claims"), including but not limited to Claims arising from personal injury or death, damage to personal, real or intellectual property or the environment, contractual or other economic damages, or regulatory penalties, that arise out of, pertain to or relate solely to any negligent act or omission, recklessness or willful misconduct of Artist, its subcontractors or agents, and their respective officers and employees, in connection with performance of or failure to perform this Agreement, whether or not such Claims are litigated, settled or reduced to judgment; provided that the foregoing indemnity does not apply to liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense to the extent arising from the sole negligence or willful misconduct of City, its subcontractors or agents, and its respective officers and employees. The existence or acceptance by City of any of the insurance policies or coverages described in this Agreement shall not affect or limit any of City's rights under this Section 12, nor shall the limits of such insurance limit the liability of Artist hereunder. The provisions of this Section 12 shall survive any expiration or termination of this Agreement.

13. **Insurance.** During the entire term of this Agreement, Artist shall maintain the insurance coverage described in this Section 13.

Full compensation for all premiums that Artist is required to pay for the insurance coverage described herein shall be included in the compensation paid to Artist under this Agreement. No additional compensation will be provided for Artist's insurance premiums.

It is understood and agreed by the Artist that its liability to the City shall not in any way be limited to or affected by the amount of insurance coverage required or carried by the Artist in connection with this Agreement.

A. **Minimum Scope & Limits of Insurance Coverage**

- (1) Commercial General Liability Insurance, providing coverage at least as broad as ISO CGL Form 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide contractual liability and products and completed operations coverage for the term of the policy.
- (2) Automobile Liability Insurance providing coverage at least as broad as ISO Form CA 00 01 on an occurrence basis for bodily injury, including death, of one or more persons, property damage and personal injury, with limits of not less than one million dollars (\$1,000,000) per occurrence. The policy shall provide coverage for owned, non-owned and/or hired autos as appropriate to the operations of the Artist.

No automobile liability insurance shall be required if Artist completes the following certification:

"I certify that a motor vehicle will not be used in the performance of any work or services under this agreement." HOC (Artist initials)

- (3) Workers' Compensation Insurance with statutory limits, and Employers' Liability Insurance with limits of not less than one million dollars (\$1,000,000). The Worker's Compensation policy shall include a waiver of subrogation for contracts involving construction or maintenance, or if required by the City by selecting the option below:

\_\_\_\_\_ Workers' Compensation waiver of subrogation in favor of the City is required for all work performed by the Artist.

No Workers' Compensation insurance shall be required if Artist completes the following certification:

"I certify that my business has no employees, and that I do not employ anyone. I am exempt from the legal requirements to provide Workers' Compensation insurance." HJC (Artist initials)

B. Additional Insured Coverage

- (1) Commercial General Liability Insurance: The City, its officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects general liability arising out of activities performed by or on behalf of Artist, products and completed operations of Artist, and premises owned, leased or used by Artist. The general liability additional insured endorsement must be signed by an authorized representative of the insurance carrier for contracts involving construction or maintenance, or if required by the City by selecting the option below:

\_\_\_\_\_ Additional insured endorsement must be signed by an authorized representative of the insurance carrier.

If the policy includes a blanket additional insured endorsement or contractual additional insured coverage, the above signature requirement may be fulfilled by submitting that document with a signed declaration page referencing the blanket endorsement or policy form.

- (2) Automobile Liability Insurance: The City, their officials, employees and volunteers shall be covered by policy terms or endorsement as additional insureds as respects auto liability.

C. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

- (1) Except for professional liability, Artist's insurance coverage shall be

primary insurance as respects City, their officials, employees and volunteers. Any insurance or self-insurance maintained by City, their officials, employees or volunteers shall be in excess of Artist's insurance and shall not contribute with it.

- (2) Any failure to comply with reporting provisions of the policies shall not affect coverage provided to City, their officials, employees or volunteers.
- (3) Coverage shall state that Artist's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- (4) City will be provided with thirty (30) days written notice of cancellation or material change in the policy language or terms.

#### D. Acceptability of Insurance

Insurance shall be placed with insurers with a Bests' rating of not less than A:V. Self-insured retentions, policy terms or other variations that do not comply with the requirements of this Section 13 must be declared to and approved by the City's Risk Management Division in writing prior to execution of this Agreement.

#### E. Verification of Coverage

- (1) Artist shall furnish City with certificates and required endorsements evidencing the insurance required. The certificates and endorsements shall be forwarded to the APP Administrator. Copies of policies shall be delivered to the City on demand. Certificates of insurance shall be signed by an authorized representative of the insurance carrier.
- (2) The City may withdraw its offer of contract or terminate this Agreement if the certificates of insurance and endorsements required have not been provided prior to execution of this Agreement or when demanded by City. The City may withhold payments to the Artist and/or terminate the Agreement if the insurance is canceled or Artist otherwise ceases to be insured as required herein.

#### F. Subcontractors

Artist shall require and verify that all subcontractors maintain insurance

coverage that meets the minimum scope and limits of insurance coverage specified in subparagraph A, above.

14. **Copyright.** Artist expressly reserves every right available to Artist at common law or under the Federal Copyright Act to control the making, sale, and dissemination of copies or reproduction of the Work except as those rights are limited by this Agreement. Artist agrees to give a credit substantially in the following form: "Original owned by the City of Sacramento" in any public showing of reproductions of the Work. Artist authorizes City and its assigns to make photographs, drawings, and other two-dimensional reproductions of the Work without prior consent of Artist if used solely for non-commercial purposes, advertising, descriptive brochures, and similar purposes. All reproductions by City shall contain a copyright notice substantially in the following form: "©, Artist's name, date", in such a manner and location as shall comply with the U.S. Copyright laws.
15. **Waiver of VARA and CAPA Rights.** With the exception of Artist's rights as to third parties, Artist waives any and all rights Artist may have with respect to the Work under the federal Visual Artists Rights Act of 1990 (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. Notwithstanding the waiver of the rights described in paragraph 15 of this Agreement, and provided Artist has provided current contact information to the City, the City shall attempt to provide written notice to the Artist that the City intends to cause or allow the Work to be removed or suffer physical defacement, mutilation, alteration, or destruction.
16. **Location of Work.** The final location of the Work shall be determined by the City's architect, engineer, or Arts Commission following consultation with Artist.
17. **Dispute Resolution.** If any dispute is submitted to a third party for resolution, all fees, expenses, and costs connected therewith shall be borne jointly and equally by City and Artist. The previous sentence notwithstanding, each party shall bear their own attorneys' fees and costs. Each and every obligation under this Agreement to submit any matter to a third party for resolution is conditioned upon the foregoing two sentences of this paragraph. If any matter is to be submitted to A.A.M.S, and if at the time such submission is called for, A.A.M.S is not in existence or is not able or willing to provide such resolution service, then the matter shall be submitted for

resolution to the American Arbitration Association in accordance with their procedures then in use.

18. **Artist Change of Address.** Artist shall notify SMAC in writing of any change of address. Failure to do so shall constitute a waiver of Artist's rights under this Agreement during the time of the omission. Any waiver of a right pursuant to this Agreement for failure to maintain Artist's current address may be cured prospectively only by notifying SMAC of Artist's current address. All rights of Artist pursuant to this Agreement shall be personal to Artist and shall terminate upon either the legal disability or incompetence of Artist or upon the death of Artist, except as provided Artist under copyright laws.
19. **Excuse from Performance.** In the event Artist's performance of any of his obligations or undertakings under this Agreement is delayed, interrupted, or prevented by an act of God, unforeseen conditions, unusually severe weather, or occurrences that are beyond the control of either party to this Agreement, Artist shall be excused from any further performance for whatever period of time after the occurrence necessary to remedy the effects of that occurrence. Artist shall notify City in writing within ten (10) days after any occurrence described in this section that may delay Artist performance. City shall amend the Schedule when, in its determination, Artist's performance has been excused, and the delay or interruption has resulted in a material change in the time for performance.

In the event that the installation site has not been adequately prepared for receipt of the Work as scheduled, or delivery or installation is delayed due to a material failure on the part of the City or its subcontractors, then the City shall promptly act to address the problem(s) identified by Artist. In such events, timelines for performance by Artist shall be extended as needed, provided, that none of the delays are caused in whole or in part by Artist. Site preparation by City shall not include site measurements, which shall be the sole responsibility of Artist.

20. **Public Lecture.** As part of his Agreement, Artist will give one public art lecture regarding the Work after the installation of the Work is completed. Arrangements are to be approved in advance by the APP Administrator.
21. **Conceptual Drawing.** As part of this Agreement, Artist will provide the City of Sacramento, APP program one (1) conceptual drawing or maquette of the proposed artwork.

22. **Exhibits.** All exhibits referred to herein are attached hereto and are by this reference incorporated as if set forth fully herein.
23. **Entire Agreement.** This document, including all Exhibits, contains the entire agreement between the parties and supersedes whatever oral or written understanding they may have had prior to the execution of this Agreement. No alteration to the terms of this Agreement shall be valid unless approved in writing by Artist, and by City, in accordance with applicable provisions of the Sacramento City Code.
24. **Severability.** If any portion of this Agreement or the application thereof to any person or circumstance shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.
25. **No Waiver.** Neither City acceptance of, or payment for, any work performed by Artist, nor any waiver by either party of any default, breach or condition precedent, shall be construed as a waiver of any provision of this Agreement, nor as a waiver of any other default, breach or condition precedent or any other right hereunder.
26. **Choice of Law; Venue.** This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California. Venue of any litigation arising out of or connected with this Agreement shall lie exclusively in the state trial court or Federal District Court located in Sacramento County in the State of California, and the parties consent to jurisdiction over their persons and over the subject matter of any such litigation in such courts, and consent to service of process issued by such courts.
27. **Assignment Prohibited.** The expertise and experience of Artist are material considerations for this Agreement. Artist shall not assign any right or obligation pursuant to this Agreement without the written consent of the City. Any attempted or purported assignment without City's written consent shall be void and of no effect.
28. **Binding Effect.** This Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the parties, subject to the provisions of Section 27, above.

**29. Term; Suspension; Termination.**

- A. This Agreement shall become effective on the date that it is approved by both parties, set forth on the first page of the Agreement, and shall continue in effect until both parties have fully performed their respective obligations under this Agreement, unless sooner terminated as provided herein.
  
- B. City shall have the right at any time to temporarily suspend Artist's performance hereunder, in whole or in part, by giving a written notice of suspension to Artist. If City gives such notice of suspension, Artist shall immediately suspend its activities under this Agreement, as specified in such notice.
  
- C. City shall have the right to terminate this Agreement at any time by giving a written notice of termination to Artist. If City gives such notice of termination, Artist shall immediately cease rendering services pursuant to this Agreement. If City and/or terminates this Agreement:
  - (1) Artist shall, not later than five days after such notice of termination, deliver to City copies of all information prepared pursuant to this Agreement.
  
  - (2) City shall pay Artist the reasonable value of services rendered by Artist prior to termination; provided, however, City shall not in any manner be liable for lost profits that might have been made by Artist had the Agreement not been terminated. In this regard, Artist shall furnish to City such financial information as in the judgment of the City is necessary for City to determine the reasonable value of the services rendered by Artist. The foregoing is cumulative and does not affect any right or remedy that City may have in law or equity.

*(Signature Page Follows)*

Executed as of the day and year first above stated.

**CITY OF SACRAMENTO**  
A Municipal Corporation

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

For: John F. Shirey, City Manager

APPROVED TO AS FORM:

Kenneth C. Burdick  
Deputy City Attorney

ATTEST:

\_\_\_\_\_  
City Clerk

**ARTIST**

TYPE OF BUSINESS ENTITY (check one):

- Individual/Sole Proprietor
- Partnership
- Corporation (may require 2 signatures)
- Limited Liability Company
- Other (please specify: \_\_\_\_\_)

Hennesy Christopher  
Print Name and Title

Hennesy Christopher  
Signature

Sofia La...  
Additional Signature (if required)

Sofia La...  
Print Name and Title

274916373  
Federal I.D. No.

\_\_\_\_\_  
State I.D. No.

1002053  
City of Sacramento Business Op. Tax Cert. No.

**Attachments**

- Exhibit A – Artist’s Design Proposal
- Exhibit B – Maintenance Report

## EXHIBIT A

### PROPOSED DESIGN



ABOVE: View of *Contagious Color* looking South through the 12<sup>th</sup> Street tunnel. Total size of painted area is approximately 10,000 square feet.



ABOVE: Full view of the pedestrian wall. Pedestrian wall size is approximately 450' x sloped height of 1'-17'.



ABOVE: View of median wall looking East to the light rail side mural. Median wall size is 170' x 17'.

## LOCATION



LEFT: 12<sup>th</sup> Street tunnel between North B Street and C Street. Areas to be painted are marked in pink.

**EXHIBIT B**  
**MAINTENANCE REPORT**

Artist: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Home Phone: \_\_\_\_\_ Work Phone: \_\_\_\_\_

Studio Phone: \_\_\_\_\_ Email Address: \_\_\_\_\_

1. Title of the Artwork: \_\_\_\_\_

2. Medium or material: \_\_\_\_\_

3. Edition information, if applicable: \_\_\_\_\_

4. Date and place executed: \_\_\_\_\_

5. Collaborating artist(s), if applicable. \_\_\_\_\_

\_\_\_\_\_

6. Maker(s) other than Artist (fabricators, technicians), if applicable. Include names, addresses, phone numbers and element worked on.

\_\_\_\_\_

7. Location of signature and copyright mark, if it occurs.

\_\_\_\_\_

\_\_\_\_\_

8. Exhibitions pertaining only to the above-named work, if any.

\_\_\_\_\_

\_\_\_\_\_

9. Published reviews or articles concerning the above named work.

\_\_\_\_\_

10. Dimensions (please measure in both inches and centimeters; record height first, then width, then depth if needed or diameter; if a work is irregular or circular in shape, state as such in parenthesis; if work involves multiple pieces, measure the significant parts as well as the whole; measure the work separately from the frame or pedestal; include the dimensions of the frame or pedestal.)

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11. Materials used in the execution of the Artwork (be technical and specific).

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11. Technique or construction methods used in the execution of the Artwork (Attach fabrication drawings, if necessary).

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13. Material finish on the Artwork (glaze, paint color and type, sanding, grit, tool pattern, patina, surface sealer, etc).

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14. Foundation/installation structure (include armature bolt/pin size, grout, etc.).

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15. Handling instructions.

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16. Artist's statement about the Artwork (concept, message, relationship to site, etc.).

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17. Describe recommended general routine maintenance and care for the Artwork (cleaning agent(s), procedure(s) timetable, etc.).

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18. Special handling and/or storage instructions.

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19. Special cautions or concerns regarding the Artwork.

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20. Packing, shipping or storage instructions (should the need arise).

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**ENDORSEMENT**

This Endorsement Changes the Policy - Please Read it Carefully

**PRIMARY AND NON-CONTRIBUTING INSURANCE  
(Third-Party's Sole Negligence)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART  
PRODUCTS/ COMPLETED OPERATIONS LIABILITY COVERAGE PART  
RAILROAD LIABILITY COVERAGE PART  
BUSINESSOWNERS LIABILITY COVERAGE FORM

The following is added to Section IV - Commercial General Liability Conditions, Paragraph 4:

**Section IV: Commercial General Liability Conditions**

4. Other Insurance:

- d. Notwithstanding the provisions of sub-paragraphs a, b, and c of this paragraph 4, with respect to the Third Party shown below, it is understood and agreed that in the event of a claim or "suit" arising out of the Named Insured's sole negligence, this insurance shall be primary and any other insurance maintained by the additional insured named as the Third Party below shall be excess and non-contributory.

The Third Party to whom this endorsement applies is:

ANY PERSON OR ORGANIZATION WITH WHOM THE INSURED HAS AGREED BY WRITTEN CONTRACT TO PERFORM SERVICES AND PRIOR TO ANY LOSS THAT ARE WITHIN THE TERMS AND CONDITIONS OF THIS POLICY TO WHICH THIS FORM IS ATTACHED

Absence of a specifically named Third Party above means that the provisions of this endorsement apply "as required by written contractual agreement with any Third Party for whom you are performing work."

All other terms and conditions of this policy remain unchanged.

This endorsement is effective on the inception date of the policy unless otherwise stated herein. (The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Policy Number: CIP178643

Named Insured: SOFIA LACIN & HENNESSY CHRISTOPHEL  
DBA: LACIN- CHRISTOPHEL MURAL & DESIGN

Endorsement Effective Date:

Endorsement Serial No. AF 001 397 0712  
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED - OWNERS, LESSEES OR  
CONTRACTORS - AUTOMATIC STATUS WHEN  
REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. **Section II - Who Is An Insured** is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
  - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to Section III - Limits Of Insurance:

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**PRIMARY FACILITY  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
SUPPLEMENTAL DECLARATIONS**

These Supplemental Declarations form a part of policy number

CIP178643

<b>LIMITS OF INSURANCE</b>							
General Aggregate Limit (other than Products/ Completed Operations)	\$	2,000,000					
Products/ Completed Operations Aggregate Limit	\$	2,000,000					
Personal and Advertising Injury Limit	\$	1,000,000					
Each Occurrence Limit	\$	1,000,000					
Damage to Premises Rented to You Limit	\$	100,000					
Medical Expense Limit	\$	5,000	any one person				
<b>BUSINESS DESCRIPTION AND LOCATION OF PREMISES</b>							
Form of business:							
<input type="checkbox"/> Individual <input type="checkbox"/> Joint Venture <input checked="" type="checkbox"/> Partnership <input type="checkbox"/> Organization (other than Partnership or Joint Venture) <input type="checkbox"/> Corporation <input type="checkbox"/> LLC							
Business description: PAINTING							
Location of all premises you own, rent or occupy: 1609 DREHER STREET SUITE A, SACRAMENTO, CA 95811							
<b>PREMIUM</b>							
Classification	Code No.	*Premium Basis	PR/Co	Rate All Other	Advance Pr/Co	Premium All Other	
Painting - exterior / mural painting	98304	p) 32,000	INCL	38.70	INCL	1238	
Blanket Additional Insured (CG2033)	99999	INCL	INCL	INCL	INCL	INCL	
 Michael Micheher/Agent MAW MICHEHER AND ASSOCIATES Insurance Agents & Brokers 5620 Birdcage St. Ste #100 Citrus Heights, CA 95610 916-864-8777 Fax 916-864-4110							
<b>FORMS AND ENDORSEMENTS (other than applicable forms and endorsements shown elsewhere in the policy)</b>							
Forms and endorsements applying to this Coverage Part and made part of this policy at time of issue:							
SEE SCHEDULE OF FORMS AND ENDORSEMENTS							
DEDUCTIBLE: \$ 500 BV PD						Per Claim	

\* (a) Area, (c) Total Cost, (m) Admission, (p) Payroll, (s) Gross Sales, (u) Units, (o) Other

THIS SUPPLEMENTAL DECLARATIONS AND THE COMMERCIAL LIABILITY DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS COMPLETE THE ABOVE NUMBERED POLICY.

UNLPPF-SD-1L (09-11)

## EXHIBIT A

### PROPOSED DESIGN



ABOVE: View of *Contagious Color* looking South through the 12<sup>th</sup> Street tunnel. Total size of painted area is approximately 10,000 square feet.



ABOVE: Full view of the pedestrian wall. Pedestrian wall size is approximately 450' x sloped height of 1'-17'.



ABOVE: View of median wall looking East to the light rail side mural. Median wall size is 170' x 17'.

## LOCATION



LEFT: 12<sup>th</sup> Street tunnel between North B Street and C Street. Areas to be painted are marked in pink.