

**CITY OF RICHMOND  
STANDARD CONTRACT**

Department:	Project Manager:
Project Manager E-mail:	Project Manager Phone No:
PR No:                      Vendor No:	P.O./Contract No:
Description of Services:	

The parties to this STANDARD CONTRACT do mutually agree and promise as follows:

1. **Parties.** The parties to this Contract are the City of Richmond (herein referred to as the "City") and the following named Contractor:

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

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

City, State, Zip Code: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

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

Business License No: \_\_\_\_\_

/ Expiration Date: \_\_\_\_\_

A California [  ] corporation, [  ] limited liability corporation [  ] general partnership, [  ] limited partnership, [  ] individual, [  ] non-profit corporation, [  ] individual dba as [specify:] \_\_\_\_\_, [  ] other [specify:] \_\_\_\_\_

2. **Term.** The effective date of this Contract is \_\_\_\_\_ and it terminates \_\_\_\_\_ unless terminated as provided herein.
3. **Payment Limit.** City's total payments to Contractor under this Contract shall not exceed \$ \_\_\_\_\_. City shall not pay for services that exceed the Contract Payment Limit unless a contract amendment has been approved by the City Council or City Manager.
4. **Contractor's Obligations.** Contractor shall provide those services and carry out that work described in the Service Plan (Exhibit A) which is attached hereto and is incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.
5. **City's Obligations.** City shall make to the Contractor those payments described in the Payment Provisions (Exhibit B) which are attached hereto and are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.

6. Authorized Representatives and Notices. This Contract is subject to the Authorized Representatives and Notices Provisions (Exhibit C) which are attached hereto and are incorporated herein by reference.
7. General Conditions. This Contract is subject to the General Conditions (Exhibit D) which are attached hereto and are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein.
8. Special Conditions. This Contract is subject to the Special Conditions (Exhibit E) (if any) which are attached hereto and are incorporated herein by reference, subject to all the terms and conditions contained or incorporated herein. (Note: other than Public Works contracts, the City will agree to Special Conditions only in unusual circumstances.)
9. Insurance Provisions. This Contract is subject to the Insurance Provisions (Exhibit F) which are attached hereto and are incorporated herein by reference.
10. Signatures. These signatures attest the parties' Contract hereto:

CITY OF RICHMOND  
a municipal corporation

CONTRACTOR:

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

\_\_\_\_\_  
(\* The Corporation Chairperson of the Board, President or Vice President should sign below)

Title:

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

I hereby certify that this Contract has been approved by City Council.

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

Date Signed: \_\_\_\_\_

By: \_\_\_\_\_  
City Clerk

\_\_\_\_\_  
(\* The Corporation Chief Financial Officer, Secretary or Assistant Secretary should sign below)

Approved as to form:

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

By: \_\_\_\_\_  
City Attorney

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

Date Signed: \_\_\_\_\_

(NOTE: Pursuant to California Corporations Code Section 313, if Contractor is a corporation or nonprofit organization, this Contract (1) must be signed by (a) the Chairperson of the Board, President or Vice-President and (b) the Secretary any Assistant Secretary, the Chief Financial Officer or any Assistant Treasurer.

LIST OF ATTACHMENTS:

Service Plan  
Payment Provisions  
Authorized Representatives and Notices  
General Conditions  
Special Conditions  
Insurance Provisions  
Standard Contract/EJ/TE 9-26-07

Exhibit A  
Exhibit B  
Exhibit C  
Exhibit D  
Exhibit E  
Exhibit F

For the Contract between the City of  
Richmond and

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**EXHIBIT A  
SERVICE PLAN**

Contractor shall, to the satisfaction of the \_\_\_\_\_, perform the following services and be compensated as outlined below:

**EXHIBIT B  
PAYMENT PROVISIONS**

***{PLEASE NOTE THAT THE CITY OF RICHMOND SHALL NOT PAY FOR SERVICES THAT EXCEED THE CONTRACT PAYMENT LIMIT UNLESS A CONTRACT AMENDMENT HAS BEEN APPROVED BY THE CITY COUNCIL OR THE CITY MANAGER}***

1. Provided Contractor is not in default under this Contract, Contractor shall be compensated as provided below.
2. Any and all payments made pursuant to this Contract shall be subject to the Contract Payment Limit. The Payment Limit includes expenses (phones, photo copying, meals and travel etc). Invoices, shall be adequately detailed, based on accurate records, and be in a form reasonably satisfactory to the City. Contractor may be required to provide back-up material upon request.
3. Contractor shall submit timely invoices to the following address:  
  
Attention: City of Richmond, Finance Department - Accounts Payable  
Project Manager: \_\_\_\_\_ Department: \_\_\_\_\_  
PO Box 4046  
Richmond, CA 94804-0046
4. All invoices that are submitted by Contractor shall be subject to the approval of the City's Project Manager, \_\_\_\_\_ before payments shall be authorized.
5. The City will pay invoice(s) within 45 days after completion of services to the City's satisfaction. The City shall not pay late fees or interest.
6. A Richmond business license shall be obtained before any payment under this Contract shall be authorized and the business license must be kept current during the term of this Contract for payments to continue to be authorized.
7. All insurance coverage required by this Contract shall be provided by the Contractor before this Contract shall be executed by the City. The insurance coverage must be kept current during the term of this Contract for payments to continue to be authorized.

**EXHIBIT C**  
**AUTHORIZED REPRESENTATIVES AND NOTICES**

1. Notices. All notices, demands, statements, or communications provided for by this Contract shall be in writing and may be delivered by deposit in the United States mail, postage prepaid. Notices to the City shall be addressed to the Department Head and (as delineated below in section 1.1) to the project manager responsible for the administration of or the supervision of the scope of work under this Contract. Notices to the Contractor shall be addressed to the party designated by Contractor (as delineated below in section 1.2). Notice shall be deemed delivered (a) upon personal delivery; (b) as of the fifth business day after mailing by United States certified mail, postage prepaid, addressed to the proper party; or (c) as of 12:00 p.m. on the second business day immediately after the day it is deposited with and accepted by Federal Express, or a similar overnight courier service, addressed to the proper party and marked for next business day morning delivery. For the purposes of this Contract, a "business day" means any day Monday through Friday that is not a holiday recognized by the federal government or the State of California.

1. 1 CITY hereby designates as its Authorized Representative the Project Manager whose name and address are as follows:

\_\_\_\_\_  
City of Richmond  
\_\_\_\_\_

\_\_\_\_\_  
Richmond, CA 94804-0046  
\_\_\_\_\_

1. 2 CONTRACTOR hereby designates as its Authorized Representative the Project Manager whose name and address are as follows:

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

## EXHIBIT D GENERAL CONDITIONS

1. Independent Contractor. Contractor acknowledges, represents and warrants that Contractor is not a regular or temporary employee, joint venturer or partner of the City, but rather an independent Contractor. This Contract shall not be construed to create an agency, servant, employee, partnership, or joint venture relationship. As an independent Contractor, Contractor shall have no authority to bind City to any obligation or to act as City's agent except as expressly provided herein. Due to the independent Contractor relationship created by this Contract, City shall not withhold state or federal income taxes, the reporting of which shall be Contractor's sole responsibility.
2. Brokers. Contractor acknowledges, represents and warrants that Contractor has not hired, retained or agreed to pay any entity or person any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award or making of this Contract.
3. City Property. The rights to applicable plans, drawings, reports, calculations, data, specifications, videos, graphics or other materials prepared for or obtained pursuant to this Contract, which, upon request, are to be delivered to City within a reasonable time, shall be deemed assigned to City. If applicable, Contractor shall prepare check prints upon request. Notwithstanding the foregoing, Contractor shall not be obligated to provide to City proprietary software or data which Contractor has developed or had developed for Contractor's own use; provided, however, that Contractor shall, pursuant to Section 15 below, indemnify, defend and hold harmless City from and against any discovery or Public Records Act request seeking the disclosure of such proprietary software or data.
4. Patents, Trademarks, Copyrights and Rights in Data. Contractor shall not publish or transfer any materials, discoveries, developments, concepts, designs, ideas, know how, improvements, inventions and/or original works of authorship resulting from activities supported by this Contract without the express prior written consent of the City Manager. If anything resulting from activities supported by this Contract is patentable, trademarkable, copyrightable or otherwise legally protectable, City reserves the exclusive right to seek such intellectual property rights. Notwithstanding the foregoing, Contractor may, after receiving City's prior written consent, seek patent, trademark, copyright or other intellectual property rights on anything resulting from activities supported by this Contract. However, City reserves, and Contractor irrevocably grants, a nonexclusive, fully paid-up, royalty-free, assumable, perpetual, worldwide license, with the right to transfer, sublicense, practice and exploit said license and the right to make, have made, copy, modify, make derivative works of, use, sell,

import, and otherwise distribute under all applicable intellectual properties without restriction of any kind said license.

Contractor further agrees to assist City, at City's expense, in every proper way to secure the City's rights in any patents, trademarks, copyrights or other intellectual property rights relating thereto, including the disclosure to City of all pertinent information and data with respect thereto. Contractor shall also assist City in the execution of all applications, specifications, oaths, assignments, recordations, and all other instruments which City shall deem necessary in order to apply for, obtain, maintain and transfer such rights, or if not transferable, to waive such rights. Contractor shall further assist City in the execution of all applications, specifications, oaths, assignments, recordations and all other instruments which City shall deem necessary in order to assign and convey to City, and any assigns and nominees the sole and exclusive right, title and interest in and to any patents, trademarks, copyrights or other intellectual property rights relating thereto. Contractor further agrees that its obligation to execute or cause to be executed, when it is in Contractor's power to do so, any such instruments or papers shall continue during and at all times after the end of Contractor's services and until the expiration of the last such intellectual property right. Contractor hereby irrevocably designates and appoints City, and its duly authorized officers, agents and servants, as its agent and attorney-in-fact, to act for and in its behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters of patents, copyright and other registrations. This power of attorney is coupled with an interest and shall not be affected by Contractor's subsequent incapacity.

5. Inspection. Contractor's performance, place of business and records pertaining to this Contract are subject to monitoring, inspection, review and audit by authorized representatives of the CITY, the State of California, and the United States Government.

If the project or services set forth in Exhibit A shall be performed on City or other public property, City shall have the right to inspect such work without notice. If such project or services shall not be performed on City or other public property, City shall have the right to inspect such work upon reasonable notice.

6. Services. The project or services set forth in Exhibit A shall be performed to the full satisfaction and approval of City. In the event that the project or services set forth in Exhibit A are also itemized by price, City, in its sole discretion, may, upon notice to Contractor, delete certain items or services set forth in Exhibit A, in which case there shall be a corresponding reduction in the amount of compensation paid to Contractor.

Contractor shall, at its own cost and expense, furnish all facilities and equipment necessary for Contractor to complete the project or perform the services required herein, unless otherwise provided in Exhibit A.

7. Records. Contractor shall keep and make available for inspection and copying by authorized representatives of the City, the State of California, and the United States Government, the Contractor's regular business records and such additional records pertaining to this Contract as may be required by the City.

Contractor shall retain all documents pertaining to this Contract for a period of five (5) years after this Contract's termination (or for any further period that is required by law) and until all Federal or State audits are complete and exceptions resolved for this contract's funding period. Upon request, CONTRACTOR shall make these records available to authorized representatives of the CITY, the State of California, and the United States Government.

Contractor shall keep full and detailed accounts, maintain records, and exercise such controls as may be necessary for proper financial management under this Contract. The Contractor's accounting and control systems shall be satisfactory to City. Contractor's accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under this Contract, including properly executed payrolls, time records, utility bills, invoices and vouchers. The City shall be afforded prompt access to Contractor's records, books, and Contractor shall preserve such project records for a period of at least five (5) years after the termination of this Contract, or for such longer period as may be required by law.

Contractor shall permit City and its authorized representatives and accountants to inspect, examine and copy Contractor's books, records, accounts, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the project or services set forth in Exhibit A, and any and all data relevant to this Contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Contractor pursuant to this Contract and shall provide such assistance as may be reasonably required in the course of such inspection. Contractor shall also allow City access to the record keeping and accounting personnel of Contractor. City further reserves the right to examine and re-examine said books, records, accounts, and data during the five (5) year period following the termination of this Contract; and Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for five (5) years after the termination of this Contract.



Pursuant to California Government Code § 10527, the parties to this Contract shall be subject to the examination and audit of representatives of the Auditor General of the State of California for a period of three (3) years after final payment under this Contract. The examination and audit shall be confined to those matters connected with the performance of this Contract including, but not limited to, the cost of administering this Contract.

8. Changes and Extra Work. All changes and/or extra work under this Contract shall be performed and paid for in accordance with the following:

Only the City Council or the City Manager may authorize extra and/or changed work. Contractor expressly recognizes that other City personnel are without authorization to either order extra and/or changed work or waive contract requirements. Failure of Contractor to secure the authorization for such extra and/or changed work shall constitute a waiver of any and all right to adjustment in contract price due to such unauthorized work and Contractor thereafter shall be entitled to no compensation whatsoever for performance of such extra and/or changed work.

If Contractor is of the opinion that any work which Contractor has been directed to perform is beyond the scope of this Contract and constitutes extra work, Contractor shall promptly notify City of the fact. The City shall make a determination as to whether or not such work is, in fact, beyond the scope of this Contract and constitutes extra work. In the event that City determines that such work does constitute extra work, City shall provide extra compensation to Contractor on a fair and equitable basis. A change order or Contract Amendment providing for such compensation for extra work shall be negotiated between City and Contractor and executed by Contractor and the appropriate City official.

In the event City determines that such work does not constitute extra work, Contractor shall not be paid extra compensation above that provided herein and if such determination is made by City staff, said determination may be appealed to the City Council; provided, however, a written appeal must be submitted to the City Manager within five (5) days after the staff's determination is sent to Contractor. Said written appeal shall include a description of each and every ground upon which Contractor challenges the staff's determination.

9. Additional Assistance. If this Contract requires Contractor to prepare plans and specifications, Contractor shall provide assistance as necessary to resolve any questions regarding such plans and specifications that may arise during the period of advertising for bids, and Contractor shall issue

any necessary addenda to the plans and specifications as requested. In the event Contractor is of the opinion that City's requests for addenda and assistance is outside the scope of normal services, the parties shall proceed in accordance with the changes and extra work provisions of Section 8 of these General Conditions.

10. Professional Ability. Contractor acknowledges, represents and warrants that Contractor and its employees are skilled and able to competently provide the services hereunder, and possess all professional licenses, certifications, and approvals necessary to engage in their occupations. City has relied upon the professional ability and training of Contractor as a material inducement to enter into this Contract. Contractor shall perform in accordance with generally accepted professional practices and standards of Contractor's profession. In the event that City, in its sole discretion, desires the removal of any person employed or retained by Contractor to perform services hereunder, such person shall be removed immediately upon receiving notice from City.
11. Business License. Contractor shall obtain a Richmond Business License before performing any services required under this Contract. The failure to so obtain such license shall be a material breach of this Contract and grounds for immediate termination by City; provided, however, that City may waive the business license requirement in writing under unusual or extraordinary circumstances without necessitating any modification of this Contract to reflect such waiver.
12. Termination Without Default. Notwithstanding any provision herein to the contrary, City may, in its sole and absolute discretion and without cause, terminate this Contract at any time prior to completion by Contractor of the project or services hereunder, immediately upon written notice to Contractor. Contractor may terminate this Contract at any time in its sole and absolute discretion and without cause upon 30 days' written notice to City. In the event of termination by either party, Contractor shall be compensated for: (1) all authorized work satisfactorily performed prior to the effective date of termination; (2) necessary materials or services of others ordered by Contractor for this Contract, prior to receipt of notice of termination, irrespective of whether such materials or services of others have actually been delivered, provided that Contractor is not able to cancel such orders. Compensation for Contractor in such event shall be determined by City in accordance with the percentage of the project or services completed by Contractor; and all of Contractor's finished or unfinished work product through the time of the City's last payment shall be transferred and assigned to City. Additionally, in the event of such termination, the City may proceed with the work in any reasonable manner it chooses.

13. Termination in the Event of Default. Should Contractor 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 Contract, City may immediately terminate this Contract by giving written notice of such termination, stating the reasons for such termination. Contractor shall be compensated as provided in Section 12 of these General Conditions; provided, however, there shall be deducted from such amount the amount of damage, including attorney's fees, expert witness fees and costs, if any, sustained by City by virtue of Contractor's breach of this Contract. Additionally, in the event of such termination, the City may proceed with the work in any reasonable manner it chooses.

14. Conflict of Interest. Contractor acknowledges, represents and warrants that Contractor shall avoid all conflicts of interest (as defined under any federal, state or local statute, rule or regulation, or at common law) with respect to this Contract. Contractor further acknowledges, represents and warrants that no City official or employee has any economic interest, as defined in Title 2, California Code of Regulations §§ 18703.1 through 18703.5, with Contractor that would invalidate this Contract. Contractor acknowledges that in the event that Contractor shall be found by any judicial or administrative body to have any conflict of interest (as defined above) with respect to this Contract, all consideration received under this Contract shall be forfeited and returned to City forthwith. This provision shall survive the termination of this Contract for one (1) year.

15. Indemnification.

(a) If this Contract is a contract for design professional services subject to California Civil Code Section 2782.8(a) and Contractor is a design professional, as defined in California Civil Code Section 2782.8(b)(2), Contractor shall hold harmless, defend and indemnify the City, its officers, agents, employees, and volunteers from and against any and all claims, damages, losses, and expenses including attorneys' fees arising out of, or pertaining to, or relating to the negligence, recklessness, or willful misconduct of the Contractor, except where caused by the active negligence, sole negligence, or willful misconduct of the City. To the fullest extent permitted by law, Contractor shall immediately defend and indemnify the City and its officers, agents, employees, and volunteers from and against any and all liabilities, regardless of nature or type, that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the Contractor, or its employees, agents, or subcontractors. Liabilities subject to the duties to defend and indemnify include, without limitation, any and all claims, losses, damages, penalties, fines, and judgments; associated investigation and administrative expenses; defense costs, including but not limited to reasonable attorneys' fees; court costs; and costs of alternative dispute resolution. Contractor's obligation to

indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an indemnified party.

- (b) If this Contract is not a contract for design professional services subject to California Civil Code Section 2782.8(a) or Contractor is not a design professional as defined in California Civil Code Section 2782.8(b)(2), Contractor shall indemnify, defend, and hold harmless the City, its officers, agents, employees and volunteers from any and all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by Contractor or any person directly or indirectly employed by, or acting as, the agent for Contractor in the performance of this Contract, including the concurrent or successive passive negligence of the City, its officers, agents, employees or volunteers.
- (c) It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Contractor shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, with counsel approved by the City, the City and its officers, agents, employees, and volunteers, immediately upon tender to Contractor of the claim in any form or at any stage of an action or proceeding, whether or not liability is established. An allegation or determination that persons other than Contractor are responsible for the claim does not relieve Contractor from its separate and distinct obligation to defend under this Section 15. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent counsel if Contractor asserts that liability is caused in whole, or in part, by the negligence or willful misconduct of an indemnified party.
- (d) The review, acceptance or approval of the Contractor's work or work product by any indemnified party shall not affect, relieve or reduce the Contractor's indemnification or defense obligations. This Section 15 survives completion of the services or the termination of this Contract. The provisions of this Section 15 are not limited by, and do not affect, the provisions of this Contract relating to insurance.
- (e) Acceptance of insurance certificates and endorsements required under this Contract does not relieve Contractor from liability under this Section 15. This Section 15 shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

16. Safety. Contractor acknowledges that the City is committed to the highest standards of workplace safety. Contractor shall perform all work hereunder in full compliance with applicable local, state and federal safety requirements including but not limited to Occupational Safety and Health Administration requirements, and shall assume sole and complete

responsibility for the safety of Contractor's employees and any subContractor's employees. If a death, serious personal injury or substantial property damage occurs in connection with the performance of this Contract, Contractor shall immediately notify the City by telephone.

17. Insurance. Insurance requirements are set forth in Exhibit F to this Contract. Contractor shall abide by the insurance requirements set forth in said Exhibit F.
18. Non-Liability of Officials and Employees of the City. No official or employee of the City shall be personally liable for any default or liability under this Contract.
19. Compliance with Laws. Contractor shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, with respect to this Contract, including without limitation environmental laws, employment discrimination laws and prevailing wage laws. Compliance under this provision includes compliance with all provisions of the Richmond Municipal Code ("Municipal Code"), including Chapters 2.50, 2.52, 2.56, and 2.60, if applicable.

Contractor acknowledges that under § 2.60.070 of the Municipal Code ("Living Wage Ordinance"), Contractor shall promptly provide to City documents and information verifying its compliance with the Living Wage Ordinance. Also as prescribed in § 2.60.070, Contractor shall notify each of its affected employees with regards to the wages that are required to be paid pursuant to the Living Wage Ordinance.

Contractor shall comply with § 2.28.030 of the Municipal Code, obligating every Contractor or subcontractor under a contract or subcontract with the City for public work or for goods or for services to refrain from discriminatory employment or subcontracting practices on the basis of race, color, sex, sexual orientation, religious creed, national origin or ancestry of any employee, any applicant for employment or any potential subcontractor.

Contractor acknowledges that the City's Drug Free Workplace Policy, Violence in the Workplace Policy and the Policy Against Workplace Harassment, are available on the City's website at <http://www.ci.richmond.ca.us/workplacepolicies> . Contractor agrees to abide by the terms and conditions of said policies.

20. Limitations upon Subcontracting and Assignment. This Contract binds the heirs, successors, assigns and representatives of Contractor. The Contractor shall not enter into subcontracts for any work contemplated

under this Contract and shall not assign this Contract, nor any portion hereof or monies due or to become due, without the prior written consent of the City Council or its designee.

Contractor acknowledges that the services which Contractor shall provide under this Contract are unique, personal services which, except as otherwise provided herein, Contractor shall not assign or sublet to any other party without the prior written approval of City, which approval may be withheld in City's sole and absolute discretion. In the event that City, in writing, approves any assignment or subletting of this Contract or the retention of subcontractors by Contractor, Contractor shall provide to City upon request copies of each and every subcontract contract prior to the execution thereof by Contractor and subcontractor. Any assignment by Contractor of any or all of its rights under this Contract without first obtaining City's prior written consent shall be a default under this Contract.

The sale, assignment, transfer or other disposition of any of the issued and outstanding capital stock of Contractor (if applicable), or of the interest of any general partner or joint venturer or syndicate member if Contractor is a partnership or joint-venture or syndicate, which shall result in a change of control of Contractor, shall be deemed an assignment. For this purpose, control shall mean fifty percent or more of the voting power or twenty-five percent or more of the assets of the corporation, partnership or joint-venture.

21. Integration. This Contract constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes any previous oral or written agreement; provided, however, that correspondence or documents exchanged between Contractor and City may be used to assist in the interpretation of the Exhibits to this Contract.
22. Modifications and Amendments. This Contract may be modified or amended only by a change order or Contract Amendment executed by both parties and approved as to form by the City Attorney.
23. Conflicting Provisions. In the event of a conflict between these General Conditions and those of any Exhibit or attachment hereto, these General Conditions shall prevail; provided, however, that any Special Conditions as set forth in Exhibit E shall prevail over these General Conditions. In the event of a conflict between the terms and conditions of any two or more Exhibits or attachments hereto, those prepared by City shall prevail over those prepared by the Contractor, and the terms and conditions preferred by the City shall prevail over those preferred by the Contractor.
24. Non-exclusivity. Notwithstanding any provision herein to the contrary, the services provided by Contractor hereunder shall be non-exclusive, and

City reserves the right to employ other Contractors in connection with the project.

25. Exhibits. All Exhibits hereto are made a part hereof and incorporated herein by reference; provided, however, that any language in Exhibit A which does not pertain to the project description, proposal, scope of services, or method of compensation (as applicable) , or any corresponding responsibilities of City, shall be deemed extraneous to, and not a part of, this Contract.

26. Force Majeure. Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of such an obligation is prevented or delayed by reason of acts of God, strikes, boycotts, lock-outs, inability to procure materials not related to the price thereof, failure of power, restrictive governmental laws and regulations enacted after the date of this Contract, riots, civil unrest, acts of terrorism, insurrection, war, declaration of a state or national emergency or other reasons of a like nature not within the reasonable control of such party.

27. Time of the Essence. Time is of the essence of this Contract. Contractor and City agree that any time period set forth in Exhibit A represents their best estimates with respect to completion dates and both Contractor and City acknowledge that departures from the schedule may occur. Therefore, both Contractor and City will use reasonable efforts to notify one another of changes to the schedule. Contractor shall not be responsible for performance delays caused by others, or delays beyond Contractor's control, and such delays shall extend the times for performance of Contractor's work.

28. Confidentiality. Contractor agrees to comply with, and to require its employees, agents and partners to comply with, all applicable State or Federal statutes or regulations respecting confidentiality, including but not limited to, the identity of persons served under this Contract, their records, or services provided them, and assures that:

All applications and records concerning any individual made or kept by Contractor or any public officer or agency in connection with the administration of or relating to services provided under this Contract will be confidential, and will not be open to examination for any purposes not directly connected with the administration of such service.

No person will publish or disclose or permit or cause to be published or disclosed, any list of persons receiving services, except as may be required in the administration of such service.

29. Third Parties. Nothing herein shall be interpreted as creating any rights or benefits in any third parties. For purposes hereof, transferees or assignees as permitted under this Contract shall not be considered "third parties."
30. Governing Law. This Contract shall be construed in accordance with the law of the State of California without regard to principles of conflicts of law. This Contract is made in Contra Costa County, California, and any action relating to this Contract shall be instituted and prosecuted in the courts of Contra Costa County, California.
31. Nonrenewal. Contractor understands and agrees that there is no representation, implication, or understanding that the services provided by Contractor under this Contract will be purchased or renewed by the City under a new contract following expiration or termination of this Contract, and waives all rights or claims to notice or hearing respecting any failure by City to continue the purchase of all or any failure to continue purchase of all or any such services from Contractor.
32. Claims. Any claim by Contractor against City hereunder shall be subject to Government Code §§ 800 et seq. The claims presentation provisions of said Act are hereby modified such that the presentation of all claims hereunder to the City shall be waived if not made within six months after accrual of the cause of action.
33. Interpretation. This Contract shall be interpreted as if drafted by both parties.
34. Warranty. In the event that any product shall be provided to the City as part of this Contract, Contractor warrants as follows: Contractor possesses good title to the product and the right to transfer the product to City; the product shall be delivered to the City free from any security interest or other lien; the product meets any specifications contained herein; the product shall be free from material defects in materials and workmanship under normal use for a period of one (1) year from the date of delivery; and the product shall be fit for its intended purpose(s). Notwithstanding the foregoing, consumable and maintenance items (such as light bulbs and batteries) shall be warranted for a period of one hundred and eighty (180) days from the date of delivery. All repairs during the warranty period shall be promptly performed by Contractor, at Contractor's expense, including shipping.
35. Severability. In the event that any of the provisions or portions or applications thereof of this Contract are held to be unenforceable or invalid by any court of competent jurisdiction, City and Contractor shall negotiate an equitable adjustment in the provisions of the Contract with a view



toward effecting the purpose of this Contract, and the validity and enforceability of the remaining provisions or portions or applications thereof, shall not be affected thereby.

36. Authority. City warrants and represents that the signatory hereto (the Mayor of the City of Richmond or the City Manager) is duly authorized to enter into and execute this Contract on behalf of City. The party signing on behalf of Contractor warrants and represents that he or she is duly authorized to enter into and execute this Contract on behalf of Contractor, and shall be personally liable to City if he or she is not duly authorized to enter into and execute this Contract on behalf of Contractor.
37. Waiver. The waiver by City of any breach of any term or provision of this Contract shall not be construed as a waiver of any subsequent breach. Inspections or approvals, or statements by any officer, agent or employee of the City relating to the Contractor's performance, or payments therefore, or any combination of these acts, shall not relieve the Contractor's obligation to fulfill this Contract as prescribed; nor shall the City be thereby stopped from bringing any action for damages or enforcement arising from any failure to comply with any of the terms and conditions of this Contract.
38. Possessory Interest. If this Contract results in the Contractor having possession of, claim to or right to the possession of land or improvements, but does not vest ownership of the land or improvements in the same person, or if this Contract results in the placement of taxable improvements on tax exempt land (Revenue and Taxation Code 107), such interest or improvements may represent a possessory interest subject to property tax, and Contractor may be subject to the payment of property taxes levied on such interest.
39. Performance and Final Acceptance.

Contractor represents that it is experienced, qualified, registered, licensed, equipped, organized and financed to perform the services under this Contract.

Contractor shall perform the services under this Contract with that degree of skill and judgment normally exercised by professional firms performing services of a similar nature in the State of California, and shall be responsible for the professional quality, technical accuracy and coordination of the services it performs under this Contract. In addition to the other rights and remedies which City may have, Contractor shall, at its own expense, correct any services which fail to meet the above standard.

City shall provide Contractor an opportunity to cure errors and omission which may be disclosed during the review of submittals, with no increase in the authorized Contract Payment Limit. Should Contractor fail to make necessary corrections in a timely manner, such corrections shall be made by the City and the cost thereof shall be charged to Contractor.

If warranted, City shall determine, and Contractor may request such determination, that Contractor has satisfactorily completed performance of this Contract. Upon such determination, City shall issue to Contractor a written Notice of Final Acceptance, after which Contractor shall not incur further costs under this Contract. Contractor shall respond to such Notice of Final Acceptance by executing and submitting to City a Release and Certificate of Final Payment.

40. Survival. The rights and obligations of the parties which by their nature survive termination or completion of the services covered by this Contract shall remain in full force and effect after termination or completion.

For the Contract between the City of  
Richmond and

---

**EXHIBIT E**  
**SPECIAL CONDITIONS**

The General Conditions are hereby amended to include the following modifications and/or provisions (if applicable):

For the Contract between the City of  
Richmond and

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**EXHIBIT F**  
**INSURANCE PROVISIONS**

During the entire term of this Contract and any extension or modification thereof, the CONTRACTOR shall keep in effect insurance policies meeting the insurance requirements specified in the insurance provisions which are attached hereto and incorporated herein by this reference.

## City of Richmond - Insurance Requirements – Type 1: Consultants and Contractors

In all instances where a CONTRACTOR or its representatives will be conducting business and/or providing services, the City requires the following MINIMUM insurance requirements and limits.

CONTRACTOR shall procure and maintain for the duration of the contract, agreement, or other order for work, services or supplies, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors. **Maintenance of proper insurance coverage is a material element of the contract. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.**

CONTRACTOR agrees that in the event of loss due to any of the perils for which it has agreed to provide Commercial General Liability insurance, CONTRACTOR shall look solely to its insurance for recovery. CONTRACTOR hereby grants to CITY, on behalf of any insurer providing Commercial General Liability insurance to either CONTRACTOR or CITY with respect to the services of CONSULTANT herein, a waiver of any right to subrogation which any such insurer of said CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance.

Original, signed certificates and original, separate policy endorsements, naming the City as an additional insured for general liability, as well as a waiver of subrogation for Workers' Compensation insurance, shall be received and approved by the City **before any work may begin**. However, failure to do so shall not operate as a waiver of these insurance requirements.

City reserves the right to modify or require additional coverages for specific risk exposures depending on scope of CONTRACTORS work.

Minimum coverage is detailed below. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated herein shall not serve to reduce the policy limits of coverage of CONTRACTOR.

**Minimum Scope of Insurance** – the following forms shall be provided and coverage shall be at least as broad as the following:

1. Insurance Services Office Commercial General Liability coverage (ISO Occurrence Form CG 0001) including coverage for bodily and personal injury, property damage, and products and completed operations.
2. Insurance Services Office Automobile Liability coverage (ISO Form CA 0001, Code 1, Any Auto)
3. Original and Separate Additional Insured Endorsements for General Liability (ISO Form CG 20 10 11/85 or its equivalent) with primary and non-contributory language.
4. Workers' Compensation Insurance as required by the State of California including Employer's Liability coverage.
5. Original and Separate Waiver of Subrogation for Workers' Compensation and Builder's Risk/ Course of Construction Insurance.
6. Builder's Risk/Course of Construction insurance covering all risks of loss less policy exclusions when the City of Richmond has a financial interest in the property. – *(Only required for Construction Contracts involving property)*
7. Contractor's Pollution Liability *(if applicable for Construction Contractors)*

Required Coverage	Minimum Limits
Workers' Compensation and Employers' Liability	Statutory limits as required by the State of California including \$1 million Employers' Liability per accident, per employee for bodily injury or disease. If CONTRACTOR is self-insured, provide a certificate of Permission to Self-Insure, signed by the California Department of Industrial Relations and Self-Insurance. If contractor is a sole proprietor (has no employees) than contractor must sign "Contractor Release of Liability" found at: <a href="http://www.ci.richmond.ca.us/index.aspx?nid=61" style="color: blue; text-decoration: underline;">http://www.ci.richmond.ca.us/index.aspx?nid=61</a> .

**City of Richmond - Insurance Requirements – Type 1:  
Consultants and Contractors**

	PROJECT COST	REQUIRED LIMIT
General Liability <i>(primary and excess limits combined)</i>	\$0 - \$5 million	\$2 million p/o
	\$5 million - \$10 million	\$5 million p/o
	Over \$10 million	\$10 million p/o
	<b>Fireworks</b>	<b>\$5 million p/o</b>
	<p>Includes coverage for bodily injury, personal injury, property damage and products and completed operations. The policy shall not exclude coverage for XCU perils (explosion, collapse, or damage to underground property).</p> <p>If the policy includes a general aggregate, either the general aggregate shall apply separately to this project, service or location or the <b>minimum required aggregate limit shall be twice the per occurrence limit (\$4 million aggregate limit)</b>.</p> <p>Policy shall be endorsed to name the City of Richmond as an additional insured per the conditions detailed below.</p>	
Automobile Liability	<b>\$1,000,000</b> per occurrence for bodily injury and property damage.	
<p>Builders' Risk/Course of Construction – Covers property under construction, repair or renovation as well as equipment and materials to be installed.</p> <p><b><i>(Only required for Construction Projects involving property and equipment installation.)</i></b></p>	<p>Coverage shall include all risks of direct physical loss, excluding earthquake, for an amount equal to the full completed value of the covered structure or replacement value of alterations or additions, including soft costs and business interruption.</p> <p>If the project does not involve new or major reconstruction, an Installation Floater may be acceptable. For such projects, a property installation floater shall be obtained that provides for the improvement, remodel, modification, alteration, conversion or adjustment to existing buildings, structures, processes, machinery and equipment. The Property Installation Floater shall provide property damage coverage for any building, structure, machinery or equipment damaged, impaired, broken or destroyed during the performance of the Work, including during transit, installation and testing at the City of Richmond's site.</p> <p>The City of Richmond shall be named as loss payee as its interest may appear. The insurer shall waive all rights of subrogation against City.</p>	
<p>Contractor's Pollution Liability <i>(if applicable)</i></p> <p>Protects against: <i>unexpected/unintended release of pollution resulting from contractors covered operations such as:</i></p> <p>HVAC, paving, carpentry, pipeline &amp; tank installation, drillers, remediation contractors, maintenance, mechanical, demolition, excavation, grading, street/road construction, residential &amp; commercial builders.</p>	Same limits as General Liability.	
<b>Required Policy Conditions</b>		
A. M. Best Rating	A:VII or Better. If the A.M. Best Rating falls below the required rating, CONTRACTOR must replace coverage immediately and provide notice to City.	
Additional Insured Endorsement	<p>Applicable to General Liability Coverage.</p> <p>The City of Richmond, its officers, officials, employees, agents and volunteers are to be named as additional insureds for all liability arising out of the operations by or on behalf of the named insured, including but not limited to bodily injury, deaths and property damage or destruction arising in any respect directly or indirectly in the performance of this contract.</p> <p><b>ISO form CG 20 10 (11/85) or its equivalent is required. The endorsement <u>must not</u> exclude products and completed operations coverage. If it does, then CG 20 37 (10/01) is also required.</b></p>	

**City of Richmond - Insurance Requirements – Type 1:  
Consultants and Contractors**

Additional Insured Endorsement (continued)	<i>SAMPLE Endorsements can be found at</i> <a href="http://www.ci.richmond.ca.us/index.aspx?nid=61">http://www.ci.richmond.ca.us/index.aspx?nid=61</a>
Primary and Noncontributory	The contractor’s insurance coverage must be primary coverage as it pertains to the City, its officers, officials, employees, agents and volunteers. Any insurance or self insurance maintained by the City is wholly separate from the insurance of the contractor and in no way relieves the contractor from its responsibility to provide insurance.
Waiver of Subrogation Endorsement Form	Contractor’s insurer will provide a Waiver of Subrogation in favor of the City for Workers Compensation and Builder’s Risk/ Course of Construction coverage during the life of this contract.  <i>SAMPLE Endorsements can be found at</i> <a href="http://www.ci.richmond.ca.us/index.aspx?nid=61">http://www.ci.richmond.ca.us/index.aspx?nid=61</a>
Deductibles and Self-Insured Retentions	Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City or the CONTRACTOR shall procure a financial guarantee in an amount equal to the deductible or self-insured retention guaranteeing payment of losses and related investigations, claims administration and defense expenses.  Contractor is responsible for satisfaction of the deductible and/or self-insured retention for each loss.
Loss Payable Endorsement ( <b>only required when Builder’s Risk and/or Course of Construction Insurance is required.</b> )	Applicable to Builder’s Risk/Course of Construction naming the City of Richmond as Loss Payee.
<b>SURETY BONDS</b> <b>(If a Public Works/Engineering Project)</b>	The Contractor shall provide:  <ol style="list-style-type: none"> <li>1. A Bid bond</li> <li>2. A Performance Bond</li> <li>3. A Payment Bond</li> </ol>

**Umbrella/Excess Liability Policies**

If an Umbrella or Excess Liability Policy is used to meet the liability limits, coverage shall be as broad as specified for underlying coverages and cover those insured in the underlying policies.

**Claims-Made Policies**

If any insurance policy is written on a claims-made form: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work. 2) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work. 3) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase an extended period coverage for a minimum of five (5) years after completion of contract work.

**Subcontractors**

CONTRACTOR shall include all subcontractors as insured under its policies or shall furnish to the City for review and approval, separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

CONTRACTOR agrees to defend and indemnify the City of Richmond for any damage resulting to it from failure of either CONTRACTOR or any subcontractor to take out or maintain the required insurance policies. The fact that insurance is obtained by CONTRACTOR, and/or CONTRACTOR’s subcontractors, will not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by CITY from CONTRACTOR or any third party will not be limited by the amount of the required insurance coverage.

<p style="text-align: center;"><b>City of Richmond - Insurance Requirements – Type 1: Consultants and Contractors</b></p>
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**Verification of Coverage**

All original certificates and endorsements shall be received and approved by the City ***before work may begin***. The City of Richmond reserves the right to require complete, certified copies of all required insurance policies including endorsements affecting the coverage at any time.

**Original insurance certificates and required policy endorsements shall be mailed, or delivered to the Designated Project Manager for the City of Richmond.**

Insurance certificates and endorsements may be faxed to the Designated Project Manager. However, Contractor must mail the original certificates and endorsements to Designated Project Manager once faxed.

**Continuous Coverage**

CONTRACTOR shall maintain the required insurance for the life of the contract. Should the CONTRACTOR cease to have insurance as required during this time, all work by the CONTRACTOR pursuant to this agreement shall cease until insurance acceptable to the City is provided. In the event that CONTRACTOR fails to comply with the City's insurance requirements, the City may take such action as it deems necessary to protect the City's interests. Such action may include but is not limited to termination of the contract, withholding of payments, or other actions as the City deems appropriate.

If services or the scope of work extend beyond the expiration dates of the required insurance policies initially approved by the City, CONTRACTOR must provide updated certificates and endorsements indicating that the required coverage, terms and conditions are still in place. **Renewal certificates and updated endorsements shall be mailed to the Designated Project Manager.**

**Cancellation**

CONTRACTOR shall ensure that coverage shall not be cancelled, reduced or otherwise materially changed except after thirty (30) days' prior written notice has been given to the City.

**Reporting Requirements**

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

**Consistent with Public Policy**

The insuring provisions, insofar as they may be judged to be against public policy shall be void and unenforceable only to the minimum extent necessary so that the remaining terms and provisions herein may be consistent with public policy and thus enforceable.



**CITY OF RICHMOND**  
**Sanctuary City Compliance Statement**

The undersigned, an authorized agent of \_\_\_\_\_ (hereafter "Contractor"), has had an opportunity to review the requirements of City of Richmond Ordinance 12-18 (hereafter "Sanctuary City Contracting Ordinance" or "SCCO"). Contractor understands and agrees that the City may choose with whom it will maintain business relations and may refrain from contracting with any person or entity that provides Data Broker or Extreme Vetting services to the U.S. Immigration and Customs Enforcement Division of the United States Department of Homeland Security ("ICE"). Contractor understands the meaning of the following terms used in the SCCO:

- a. "Data Broker" means either of the following:
  - i. The collection of information, including personal information about consumers, from a wide variety of sources for the purposes of reselling such information to their customers, which include both private-sector business and government agencies;
  - ii. The aggregation of data that was collected for another purpose from that for which it is ultimately used.
- b. "Extreme Vetting" means data mining, threat modeling, predictive risk analysis, or other similar services."

Contractor understands that it is not eligible to receive or retain a City contract if at the time the Contract is executed, or at any time during the term of the Contract, it provides Data Broker or Extreme Vetting services to ICE.

Contractor further understands and agrees that Contractor 's failure to comply with the SCCO shall constitute a material default of the Contract and the City Manager may terminate the Contract and bar Contractor from bidding on future contracts with the City for five (5) years from the effective date of the contract termination.

By executing this Statement, Contractor certifies that it complies with the requirements of the SCCO and that if at any time during the term of the Contract it ceases to comply, Contractor will promptly notify the City Manager in writing. Any person or entity who knowingly or willingly supplies false information in violation of the SCCO shall be guilty of a misdemeanor and subject to a \$1,000 fine.

Based on the foregoing, the undersigned declares under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, at \_\_\_\_\_, California.

**Printed Name:** \_\_\_\_\_ **Title:** \_\_\_\_\_

**Signed:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Business Entity:** \_\_\_\_\_



Revised (08-15-2023)

TRANSPORTATION ART / COMMUNITY IDENTIFICATION PROPOSAL

**INSTRUCTIONS - Preliminary Request**

- **Complete the Transportation Art Proposal Cover Sheet and submit along with other documents required for the Preliminary Request to the District Transportation Art Coordinator.**  
*Enter information in gray text fields, picture content boxes and check boxes as instructed.*
- *Applicants must be a local public agency. The local public agency may be a city, county, incorporated town, tribal government, or non-federally recognized tribe representing the area in which the transportation art or community identification will be installed. The proposal must be completed in its entirety and signed by an official who is authorized by the local public agency to commit the required resources for the funding, installation, and maintenance of the proposed project.*
- *Describe the specific location for the proposed transportation art or community identification. Provide electronic copies of location map or an aerial photograph, as well as photographs that depict existing site conditions of the location.*
- *Provide a brief description of the proposed transportation art or community identification. Include drawings, sketches, and photographic simulations of a sufficient size and resolution to adequately demonstrate overall composition of the proposed transportation art or community identification in context with the proposed location. Additional information may be requested by the District Transportation Art Coordinator (DTAC) to adequately evaluate the suitability for installation on or within the State right-of-way.*
- *All transportation art or community identification with an art component will require a Copyright License and Moral Rights Waiver in the Artwork Agreement (CLAW). A link to the blank template of the CLAW can be found under the "**Copyright License and Waiver of Moral Rights in the Artwork Agreement**" section, elsewhere in this proposal.*
- *All Transportation Art/Community Identification proposals will require a fully executed Local Agency/Artist Agreement (LAA). Provide a copy of the draft Local Agency/Artist Agreement (LAA) with the requisite terms prior to its execution.*
- *Place letter title and description of attachment at the top left corner of the first page (i.e. - "Attachment A - Location Map")*



Revised (08-15-2023)

TRANSPORTATION ART / COMMUNITY IDENTIFICATION PROPOSAL

**CHECKLIST - Preliminary Request**

*Include the following information with the Conceptual Transportation Art/Community Identification Request:*

- Cover Sheet
- Checklist - Preliminary Request
- Preliminary Request and Attachments:
  - Attachment- Location/Aerial Map
  - Attachment- Preliminary Transportation Art/Community Identification Description
  - Attachment- Draft Local Agency/Artist Agreement with the required terms *(if available)*
  
- = *Required Documents*



Revised (08-15-2023)

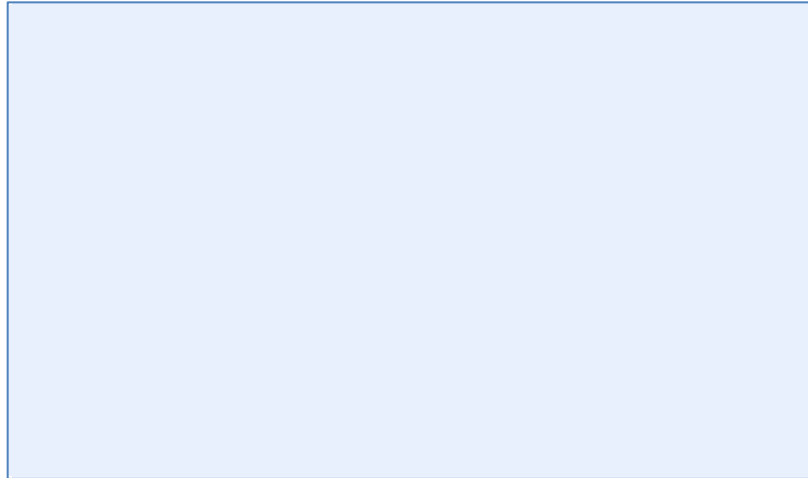
TRANSPORTATION ART / COMMUNITY IDENTIFICATION PROPOSAL

**PRELIMINARY REQUEST**

*(Add text and images or enter "SEE ATTACHMENT - xx" or "N/A" if "Not applicable")*

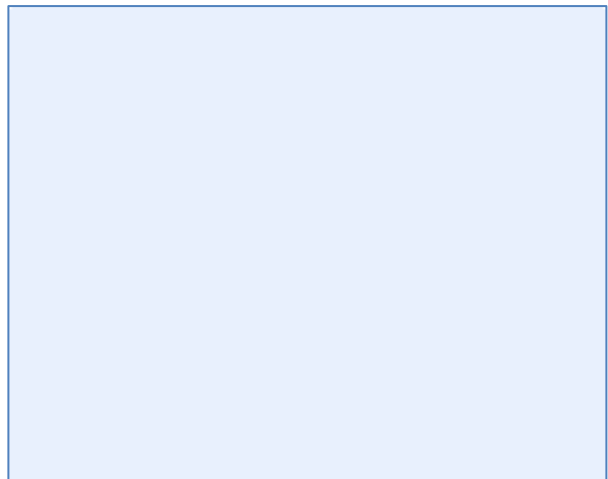
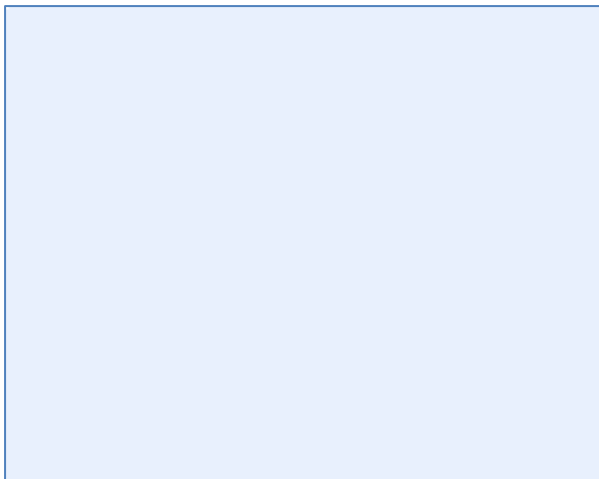
- **LOCATION MAP:**

*Provide a map or satellite map (i.e., Google Earth image) and indicate proposed Transportation Art/Community Identification location.*



- **Transportation Art/Community Identification Description:**

*Provide a brief written description of the proposal, including a description of existing site conditions, and proposed imagery of the final Transportation Art/Community Identification. If proposal is Community Identification, provide the proposed text to be included.*





Revised (08-15-2023)



*NOTE: Transportation Art/Community Identification located on existing State-owned concrete structures will be allowed for non-load bearing members first, such as wingwalls abutments, sound walls, etc. Load bearing structures such as columns, piers, bridge soffits, girders, etc., may be proposed but will require approval from the Caltrans Office of Structure Maintenance and Investigation (SMI).*

*Transportation Art or Community Identification proposed on steel structures is prohibited, unless approved by SMI.*

- **Draft Local Agency/Artist Agreement or Contract:**

*If available, provide a copy of the draft agreement(s) between the public agency and the artist(s) pertaining to but not limited to the design, installation, operation, maintenance, and/or removal of the Transportation Art/Community Identification. The Local Agency/Artist agreement (LAA) must include, without conflicting terms, language regarding ownership of the artwork by Caltrans and that Caltrans shall have license to make certain noncommercial uses of the [Artwork]. See the section "**Copyright License and Waiver of Moral Rights in the Artwork**" elsewhere in this TAP for the requisite terms to be included.*

*If the Local Agency/Artist agreement (LAA) has already been executed with the Artist, provide the executed Local Agency agreement **and** either a proposed or executed amendment to the Local Agency agreement that includes the above provision and removes any conflicting terms.*



Revised (08-15-2023)

TRANSPORTATION ART / COMMUNITY IDENTIFICATION PROPOSAL

## INSTRUCTIONS - Proposal

- **When conditional approval of the Preliminary Request is provided by the District Transportation Art Coordinator (DTAC), continue with the remaining Transportation Art Proposal (TAP) requirements following these instructions.** Enter information in gray text fields, picture content boxes and check boxes as instructed.
- Complete guidance for Transportation Art/Community Identification Program and requirements for preparing the TAP can be found at [Transportation Art Guidelines](#).
- Submit a copy of the preliminary TAP for review to the DTAC. The TAP must include resolution, support documents, drawings, sketches, and photographic simulations of sufficient size and resolution to demonstrate the overall composition of the proposed Transportation Art/Community Identification in context with the proposed location. Keep maximum size of all submitted files under 20MB, or they may not be received. Additional information may be requested by the DTAC to adequately evaluate the suitability for installation on or within the State right-of-way.
- Place letter title and/or description of all attachments at the top left corner of the first page (i.e. - "Attachment A - Resolution and Community Support" or "Location Map")
- Include a completed draft of Copyright License and Moral Rights Waiver in the Arts Agreement (CLAW), along with the required exhibits, including a copy of the Local Agency/Artist Agreement (LAA) with the requisite terms, for review. **DO NOT SIGN** - The DTAC will use this information to complete the CLAW and will send it to the Local Agency and artist for final review and signature.
- Include a completed draft of the Transportation Art Maintenance Agreement (TAMA) along with the required exhibits for review. Contact the DTAC to coordinate with the District Maintenance Agreements Office if there are any proposed changes to the TAMA. **DO NOT SIGN** - The DMAC will use this information to complete the TAMA and will send it to the Local Agency final review and signature
- Address all comments from the Transportation Art/Community Identification Proposal submittal, the CLAW and the TAMA. Once the final TAP and agreements are all completed, the DTAC and DMAC will prepare the final documents as Adobe PDF files for e-Signature by the Local Agency and artist.
- **DO NOT SIGN the TAP Applicant Certification until the DTAC verifies all information in the TAP is complete and for e-Signature.**
- When the complete TAP and TAMA are finalized and approved, submit a copy of each and the Caltrans Encroachment Permit Application to the Caltrans District Encroachment Permit Office (CDEPO) for processing. Provide any additional information and clearances requested by the Permits Office before approval of the encroachment permit. Please see Encroachment Permit submittal requirements at - [Caltrans - Encroachment Permits](#).

**An encroachment permit will not be issued until the final TAP, CLAW and TAMA are signed and approved.**



Revised (08-15-2023)

TRANSPORTATION ART / COMMUNITY IDENTIFICATION PROPOSAL

**COVER SHEET**

**LOCAL PUBLIC AGENCY SPONSOR**

- STAND ALONE PROJECT  
 ASSOCIATED WITH A PROJECT (PROJECT No.:      )  
*(Check applicable box)*

**OFFICIAL PROJECT NAME (ARTWORK NAME):**

LOCATION (CITY):

(COUNTY):

ROUTE No.:

POST MILE:

BRIDGE No.:

CROSS STREET:

*(Contact Caltrans District Art Coordinator to provide post mile and Bridge No. information)*

**PUBLIC AGENCY RESPONSIBLE CONTACT**

NAME:

TITLE:

ADDRESS:

TELEPHONE:

EMAIL:

**NATURE OF ARTWORK**

- MURAL (PAINTING)  
 STATUE OR SCULPTURE  
 MOSAIC  
 LIGHTING  
 OTHER (Explain) \_\_\_\_\_

*(Check applicable box)*

**PROPOSED INSTALLATION DATE: \_\_\_\_\_**

- PERMANENT INSTALLATION  
*(Maximum life span before renewal or restoration work is needed - \_\_\_\_\_ )*  
 TEMPORARY INSTALLATION  
*(Removal Date): \_\_\_\_\_*

*(Caltrans Office Use)*

**PERMIT ENGINEERING EVALUATION REPORT (PEER) REQUIRED:**     YES             NO

*(If "Yes," see Attachment K)*



Revised (08-15-2023)

*TRANSPORTATION ART / COMMUNITY IDENTIFICATION PROPOSAL*

**APPLICANT CERTIFICATION**

*(Insert local public agency sponsor name in gray fields where required)*

I certify that the \_\_\_\_\_ approves of the proposed transportation art or community identification project and is the responsible public agency representing the community where the transportation art or community identification will be installed. The \_\_\_\_\_ will adhere to and remain in compliance with Caltrans' Project Development Procedures Manual guidelines and all other related rules and restrictions Caltrans may apply to the Transportation Art or Community Identification project, including:

- All costs associated with the design, engineering, testing, construction, and installation of the proposed Transportation Art/Community Identification, including labor, materials, supplies, and traffic control, maintenance, and removal shall be borne by the applicant.
- Obtaining and documenting local community support and acceptance for the Transportation Art/Community Identification project.
- Executing Transportation Art Maintenance Agreement (TAMA) with Caltrans detailing the regular maintenance and repair tasks of the Transportation Art/Community Identification, including potential removal at the end of its projected lifespan, or when requested by Caltrans, and returning the site to a condition as good as or better than at the start of the project.
- Providing a Local Agency Agreement (LAA) containing indemnification language acceptable to Caltrans, between the \_\_\_\_\_ and the artist(s).
- Providing the name(s) and current contact information of each responsible person who will be working within the State right-of-way to install, maintain, rehabilitate, or remove the Transportation Art/Community Identification.

By signing below, I confirm that I have the authority to act as the binding signatory for the and that the statements above are true to the best of my knowledge.

SIGNATURE:

DATE:

PRINT NAME:

TITLE:

***TRANSPORTATION ART PROPOSAL APPROVAL***

SIGNATURE:

PRINT NAME:

Title:

DATE:





Revised (08-15-2023)

TRANSPORTATION ART / COMMUNITY IDENTIFICATION PROPOSAL

**PROPOSAL CHECKLIST**

Please prepare the Transportation Art / Community Identification Proposal as follows:

- Cover Sheet
- Applicant Certification
- Checklist - Proposal
- Proposal and Attachments:
  - Attachment A - Public Agency Resolution and Documentation of Community Support
  - Attachment B - Images of Existing Location and Proposed Artwork
  - Attachment C - Artists' Resume'
  - Attachment D - Cost Estimate & Breakdown
  - Attachment E - Construction Schedule
  - Attachment F - Materials Data and Safety Sheets
  - Attachment G - Traffic Management/ Control Plan
  - Attachment H - Water Pollution Control Plan
  - Attachment I - Environmental Document
  - Attachment J - Railroad Clearance (*when required*)
  - Attachment K - Project Engineer Evaluation Report (PEER) (*when required*)

(Add attachments L and N as needed, e.g., "Engineering Calculations." Include description of attachment)

  - Attachment L -
  - Attachment M -
  - Attachment N -
- Copyright License and Moral Rights Waiver in the Arts (CLAW), including:
  - Exhibit A - Description of Artwork
  - Exhibit B - Executed Local Agency Agreement (LAA) with required terms
- Transportation Art Maintenance Agreement (TAMA), including:
  - Location Map
  - Proof of Insurance
  - Operations and Maintenance Manual (*for artwork that is engineered or includes lighting, or when requested by the district transportation art coordinator*)
- = Required Documents



Revised (08-15-2023)

TRANSPORTATION ART / COMMUNITY IDENTIFICATION PROPOSAL

**PROPOSAL**

- **Transportation Art Proposal:**

*A Transportation Art Proposal (TAP) is submitted by the public agency that has jurisdiction over the area where the Transportation ART/Community Identification will be installed. Public agencies should contact the Caltrans District Transportation Art Coordinator (DTAC) to develop the final qualified TAP for submittal to the District Director for approval. Transportation Art/Community Identification included as part of a capital improvement project will be reviewed and approved through the Caltrans project development process, and as directed by these guidelines*

*Transportation Art/ Community Identification proposals must consist of plans, specifications, artist renderings, and other required documents that are prepared by the artist, designer, licensed landscape architect, architect, or professional engineer and include the following:*

*(Attached required documents. Enter "SEE ATTACHED" or "N/A" if "Not applicable", where indicated to enter text)*

- *ARTWORK: (Description of the proposed Transportation Art/Community Identification, including a model or scaled plans, elevations, sections, details, and other information necessary to convey location, view from all sides, materials, and construction or installation methods.)*

Community Name (If Community Identification Proposal):

A large, empty rectangular box with a light blue background and a thin blue border, intended for entering the community name.A second large, empty rectangular box, identical to the first, with a light blue background and a thin blue border.



Revised (08-15-2023)

Describe the proposed artwork and color scheme, paint, and protective materials, etc.

*(If proposed Transportation Art/Community Identification involves lighting, provide written description of proposed lighting, including any plans, details or specifications stamped by a licensed electrical engineer.)*



Revised (08-15-2023)

• **Attachments:**

*Furnish the following attachments as need for the transportation art proposal. Check all that apply.*

- ATTACHMENT A - RESOLUTION and PUBLIC ENGAGEMENT (*Documentation of local community support for the art proposal. Describe decision process and method for providing fair opportunity to express opposition or support to reach consensus*)  
(*Provide a copy of local public agency Adopted Resolution or another official document*)
- ATTACHMENT B - IMAGES (EXISTING CONDITIONS & PROPOSED ARTWORK): (*Show images of aerial and ground view of existing site location before and after artwork is installed.*)
- ATTACHMENT C - ARTIST'S RESUME: (*Description and documentation of the artist's work and background*)
- ATTACHMENT D - COST ESTIMATE: (*Proposed cost estimate and cost breakdown.*)
- ATTACHMENT E - CONSTRUCTION / INSTALLATION SCHEDULE: (*Include tentative start and end date, and construction duration.*)
- ATTACHMENT F - MATERIAL DATA AND SAFETY SHEETS (*Provide data sheets for all material to be used in the construction of the Transportation Art/Community Identification.*)
- ATTACHMENT G - TRAFFIC MANAGEMENT/CONTROL PLANS: (*Briefly describe the plan/method for closing streets and sidewalks if necessary. Include detour plans, specifications, lane closure charts and tables indicating closure times for each day of the week, stamped by a licensed engineer. Include cost estimate for this work in Attachment C.*)
- ATTACHMENT H - WATER POLLUTION CONTROL PLAN: (*Include drawings and specifications stamped by a licensed engineer. Include cost estimate for this work in Attachment C.*)
- ATTACHMENT I - ENVIRONMENTAL DOCUMENT (*Provide Environmental clearance document.*)
- ATTACHMENT J - RAILROAD CLEARANCE: (*Provide railroad clearance documents if proposed Transportation Art/Community Identification is within 25 feet of railroad right of way.*)
- ATTACHMENT K - PERMIT ENGINEER EVALUATION REPORT (PEER): (*When required by the Caltrans District Transportation Art Coordinator, provide PEER describing and justifying nonstandard design or construction. The PEER must be stamped by a licensed engineer.*)

*(Add attachments L through N as needed. Include description of attachment)*

- ATTACHMENT L -
- ATTACHMENT M -
- ATTACHMENT N -



Revised (08-15-2023)

TRANSPORTATION ART / COMMUNITY IDENTIFICATION PROPOSAL

**COPYRIGHT LICENSE AND WAIVER OF MORAL RIGHTS IN THE ARTWORK**

*(Provide a copy of executed CLAW as a separate attachment, along with Exhibits A & B)*

• **Copyright License and Waiver of Moral Rights in the Artwork Agreement (CLAW):**

*Transportation art or community identification located within State highway right of way is a benefit to the people of California and will become property of the State. Prior to installation of the approved Transportation Art/Community Identification, the artist(s) and the local public agency must provide an executed Copyright License and Waiver of Moral Rights in the Artwork agreement (CLAW), containing terms and conditions approved by Caltrans.*

*The agreement will allow the artist(s) to maintain the copyright of the artwork, while Caltrans shall own the title of the artwork as well as license to make certain, noncommercial uses of the artwork.*

*The final executed Copyright License and Waiver of Moral Rights in the Artwork (CLAW) agreement must include the following:*

**EXHIBIT A - ARTWORK:**

*Final artwork name:* The \_\_\_\_\_ described in the Copyright License and Moral Rights Waiver in the Artwork (CLAW), is incorporated by reference, and includes the following items:

- *Written description of artwork, inspiration, location, and materials used*
- *All preliminary drawings, concept sketches, illustrations, photographs, renderings, photo simulations and any other visual media created in the development of the final proposed artwork*
- *Engineering plans, drawings, details, specifications, studies, and calculations used in the development of the final proposed artwork (when required)*

*Estimated Completion Date:* \_\_\_\_\_

**EXHIBIT B - LOCAL AGREEMENTS:**

*Provide a copy of all agreements between the public agency and the artist(s) pertaining to but not limited to the design, installation, operation, maintenance, and/or removal of the transportation art. The signed and executed Local Agency Agreement, including all the exhibits to the Local Agency Agreement. The Local Agency/Artist Agreement (LAA) must include, without conflicting terms, the following language:*

*[Artist] hereby agrees that title to [the Artwork] shall be owned by Caltrans and Caltrans shall have a license to make certain noncommercial uses of [the Artwork]. [Artist] acknowledges that by signing and executing the Caltrans Copyright License and Waiver of Moral Rights in Artwork agreement, which is hereby incorporated by reference and made part of this Agreement as Exhibit [\_\_], Artist has conveyed or will convey title in [the Artwork] to Caltrans, has waived or will waive any and all moral rights to [the Artwork], and has granted or will grant Caltrans a nonexclusive, perpetual, irrevocable, royalty-free, world-wide, sublicensable license to [the Artwork].*



Revised (08-15-2023)

TRANSPORTATION ART / COMMUNITY IDENTIFICATION PROPOSAL

**TRANSPORTATION ART MAINTENANCE AGREEMENT**

*(Caltrans will provide a draft Transportation Art Maintenance Agreement template for this section during preliminary review. Separately attach the final signed Transportation Art Maintenance Agreement before submitting the Encroachment Permit application)*

• **Transportation Art Maintenance Agreement (TAMA):**

*Prior to the issuance of the **Transportation Art Maintenance Agreement (TAMA)**, provide a brief description of the long-term maintenance plan and schedule. Discuss regular cleaning, graffiti removal, damage repair, removal of art (if necessary), and other work as required.*

*(This information will be used in preparation of the final TAMA by Caltrans and provided to you for signature)*

*Note - For art proposal with painted murals on concrete surfaces, the typical expected lifespan is approximately 25 to 32 years, depending on local materials use, application method, and environmental factors. Please include as part of the maintenance plan, a description for either restoring or removing the artwork after this period. If the proposal includes lighting, describe method of removal if the lighting can no longer be maintained.*

- 1. Provide an aerial map/satellite view of proposal location as **ATTACHMENT A** to the TAMA.*
- 2. Provide a copy of the Certificate of Insurance as **ATTACHMENT B** to the TAMA.*
- 3. Attach a copy of the draft Maintenance Plan or Operations and Maintenance Manual (OMM) as **ATTACHMENT C** to the TAMA for the completed Transportation Art /Community Identification. Describe method and materials for cleaning, graffiti removal, anti-graffiti coating application, damage repair and restoration, and any additional operation instructions or special needs for features such as lighting or other engineered feature. The OMM should also provide instruction for removal of the Transportation Art /Community Identification, for if/when removal becomes necessary.*

## SECTION 9 Transportation Art

### ARTICLE 1 General Procedure

Caltrans recognizes the effects of transportation facilities on local communities and encourages integrating these facilities with their surroundings to enhance and reflect the aesthetic, environmental, scenic, and cultural values of the affected community.

Caltrans supports enriching the cultural and visual environment by facilitating placement of transportation art within the State highway right-of-way.

Transportation art includes graphic or sculptural artwork, either freestanding or placed upon a required engineered transportation feature (such as a noise barrier, retaining wall, bridge, bridge abutment, bridge rail, or slope paving) that expresses unique attributes of a community’s history, resources, or character.

Transportation art is proposed, provided, installed, maintained, and removed or restored by the public agency representing the area in which the art will be installed. The public agency may be a city, county, incorporated town, tribal government or non-federally recognized tribe.

Transportation art, community identification, and gateway monuments compare and contrast as follows:

**Figure 29-4 Transportation Art, Community Identification, and Gateway Monuments**

	<b>May Include Text</b>	<b>May Include Graphic Images</b>	<b>Freestanding Structure or Sign</b>	<b>Integrated With or Placed Upon a Required Engineered Transportation Feature</b>
<b>Transportation Art</b>	No	Yes	Freestanding or Integrated	Freestanding or Integrated
<b>Community Identification</b>	Yes	Yes	No	Yes
<b>Gateway Monuments</b>	Yes	Yes	Yes	No

### **Statutory Authority**

Authority for Caltrans to control encroachments within the State highway right-of-way and thus transportation art, is contained in the *California Streets and Highways Code*, Chapter 3.

### **Intellectual Property Rights - Copyright Ownership of Transportation Art**

Transportation art located within Caltrans' right-of-way is a benefit to the people of California and will become property of the State. Prior to the installation or placement of the approved transportation art, the artist(s) and public agency must provide Caltrans with an executed and notarized copyright assignment and transfer agreement containing terms and conditions approved by Caltrans. The copyright assignment and transfer agreement assigns, transfers, and conveys the artist's entire rights, title and interest in and to the approved transportation art to Caltrans, including but not limited to, the artist's common law and federal law copyright ownership rights to the approved transportation art.

### **Artist Disclaimer Statement**

The artist must place a disclaimer statement in a conspicuous manner on or in close proximity to the artwork and will not be considered to be "text." The disclaimer statement must state that the contents of the artwork solely reflect the views of the artist and do not reflect the official views or policies of Caltrans or the Federal Highway Administration.

### **Sponsor Recognition**

Transportation art may include sponsor recognition such as the name, identifying logo, or symbol of the artist, public agency, and/or financial sponsor(s). The sponsor recognition should be unobtrusive, discreet, and not appear to be an integral part of the artwork. The sponsor recognition may be placed on or adjacent to the transportation art and will not be considered to be "text." Caltrans retains sole discretion for determining the appropriate size, content, colors, and other elements of this recognition. Sponsor recognition must be provided and maintained by the public agency.



## **Sponsor Recognition Disclaimer Statement**

The sponsor recognition must include a disclaimer statement that Caltrans does not endorse the sponsor's products and/or services and that the sponsor's name only appear as a reference as the source of sponsorship. This disclaimer must be placed in a conspicuous manner adjacent to the sponsor's name and will not be considered to be "text."

## **Placement**

Transportation art may be either freestanding, or placed upon/integrated with a required engineered transportation feature such as a noise barrier, retaining wall, bridge, bridge abutment, bridge railing, or paved slope.

Freestanding transportation art within the State right-of-way must be placed as far as practical from the traveled way or edge of roadway, while still remaining visible. The proposed location for all transportation art must be reviewed by Caltrans for safety and environmental considerations prior to approval.

Transportation art that is freestanding is considered to be a discretionary fixed object. See [Highway Design Manual](#) Topic 309 – Clearances, for the minimum required horizontal clearances for transportation art.

## **Transportation Art Requirements**

Proposed transportation art must:

- include graphics or sculptural artwork that expresses unique attributes of an area's history, resources, or character.
- be a freestanding structure or sign, or integrated with or placed upon a required engineered transportation feature.
- not make use of or simulate colors or combinations of colors usually reserved for official traffic control devices described in the [California Manual on Uniform Traffic Control Devices](#).
- not create a distraction to transportation system users. For example, it should be large enough to interpret at highway speed, but not be so large that it demands attention from the motorist.
- not include illumination (such as blinking or intermittent lights) that impairs the vision of or distracts transportation system users. Other lighting may be permitted. Lighting may be allowed on existing structures only when approved by Headquarters Division of Maintenance-Structure Maintenance and Investigations.

- be located where required maintenance can be safely performed as specified in the encroachment permit, the maintenance agreement, and in conformance with Caltrans’ procedures.
- be appropriate to its proposed setting.
- be in proper scale with its surroundings.
- be composed of materials that are durable for the projected lifespan.
- be fully funded for design, installation, maintenance, restoration, and removal by others for its projected lifespan.
- conform to provisions of the [\*California Outdoor Advertising Act\*](#).
- not imitate, obscure, or interfere with traffic control devices.
- not interfere with airspace above the roadway.
- not be placed within State highway right-of-way upon trees, rocks or other natural features.
- not adversely affect existing structures, drainage patterns or stormwater runoff quality, landscaping, natural vegetation.
- not include reflective or glaring surface finishes.
- not include moving elements (kinetic art) or simulate movement.
- not restrict sight distance.
- not display symbols or icons such as flags, logos, or commercial symbols, except as allowed in Sub-article “Sponsor Recognition.”
- not display text.
- be designed to minimize ongoing maintenance needs. Caltrans-approved protective graffiti coatings may be required if appropriate.
- be consistent with Headquarters Division of Maintenance-Structure Maintenance and Investigations inspection requirements, including the following:
  - Paint used on structures should not fill or obscure cracks. Latex or other flexible type paints may be used on concrete structures only with written permission from the Headquarters Division of Maintenance-Structure Maintenance and Investigations.
  - Painting of steel structures will only be permitted with written permission from the Headquarters Division of Maintenance-Structure Maintenance and Investigations.
  - Painted art on concrete structures should avoid load-carrying, stress-bearing structural members, including, but not limited to bridge girders, soffits, columns, and piers. Wing walls and abutments are preferred locations for painted art.
  - Artwork must not impair the necessary inspection of bridges, retaining walls, and other structures.
  - To facilitate Caltrans’ inspection access to structures, mural art may be placed on removable panels.

- Chipping, blasting, or in any way modifying existing concrete surfaces is prohibited, unless required for inspection by Headquarters Division of Maintenance-Structure Maintenance and Investigations.

Additional guidance for placing transportation art on highway bridge structures is available from Headquarters Division of Engineering Services-Structure Design, Office of Transportation Architecture.

## **ARTICLE 2      Responsibilities**

### **Administrative Responsibilities**

#### Headquarters

The Headquarters Division of Design-Landscape Architecture Program Deputy Division Chief:

- appoints a Headquarters Transportation Art Coordinator.
- maintains and disseminates policy and procedures for the Transportation Art Program.
- monitors district performance and provides quality assurance of program guidelines.
- reviews proposals for conformance with policy and for statewide consistency.

The Division of Traffic Operations, Office of Encroachment Permits & Engineering Support Chief:

- develops forms and special provisions for the Transportation Art Program.
- maintains and clarifies encroachment permit policies and procedures.

The Division of Engineering Services-Structure Design, Office of Transportation Architecture and Division of Maintenance-Structure Maintenance and Investigations:

- maintain guidelines for structural and architectural design and structure maintenance to facilitate the placement of transportation art on highway bridge structures.
- approve any exceptions to the guidelines for structural and architectural design and structure maintenance.

## District

The District Director:

- administers the transportation art program in accordance with these guidelines.
- designates a district transportation art coordinator.
- approves qualified final transportation art proposals.

The district transportation art coordinator:

- acts as the single focal point to qualify, process, and evaluate transportation art submittals by public agencies.
- facilitates and coordinates the placement of authorized transportation art within the transportation right-of-way.
- notifies the Headquarters Transportation Art Coordinator of permit approval and construction completion.
- prepares annual summary reports and submits them to the Headquarters Division of Design-Landscape Architecture Program Deputy Division Chief.
- reviews transportation art proposals for:
  - documented public acceptance.
  - compliance with State and federal regulations and Caltrans' guidance.
  - adequately planned and resourced maintenance of the transportation art by the public agency.
  - safety and liability issues for Caltrans, the public agency, and the public.
- submits final transportation art proposals to the Headquarters Division of Design-Landscape Architecture Program Deputy Division Chief.

The district permit engineer:

- forwards the qualified final submittal to the Headquarters Division of Design, Office of Project Support, to obtain written approval from FHWA if the proposal is on an Interstate highway.
- ensures a maintenance agreement has been executed prior to issuance of the encroachment permit.
- ensures a copyright assignment and transfer agreement is executed prior to issuance of the encroachment permit.
- issues the encroachment permit to the public agency.
- monitors and enforces permit and maintenance agreement requirements for the maintenance, restoration, or removal of transportation art.
- inspects the transportation art construction.
- notifies the district transportation art coordinator of permit approval and construction completion.

## **Financial Responsibilities**

Transportation art is solely funded by the public agency. All costs for proposed transportation art design, construction, access for maintenance, maintenance, and removal, if required, shall be the responsibility of the public agency and stipulated in detail in the preliminary and final transportation art submittals.

Caltrans assumes the administrative costs associated with reviewing transportation art proposals, and developing, issuing, and monitoring the encroachment permit and maintenance agreement for approved transportation art projects. All other costs, including labor, materials, supplies, and traffic control (if required) for design, engineering, testing, construction, installation, maintenance, restoration, and removal of the transportation art shall be the responsibility of the public agency.

Caltrans may require the public agency to provide bonds or other means to ensure maintenance, restoration, and removal of the transportation art.

## **Maintenance Responsibilities**

Transportation art must be kept clean, free of graffiti, and in good repair. The public agency must provide regularly scheduled maintenance as described in the maintenance agreement for its projected lifespan, including graffiti removal and restoration work necessary to maintain the integrity of the transportation art. Graffiti removal shall conform to Caltrans' policies and guidelines, which require prompt removal of offensive messages and timely removal of all other graffiti. Caltrans graffiti removal policy is described in *Deputy Directive DD-39-R1 – Graffiti Prevention and Removal* and Volume 1, Chapter D1 of the [Maintenance Manual](#).

A maintenance agreement for the care and upkeep of the transportation art by the public agency must be executed between the public agency and Caltrans. Maintenance shall be performed by the public agency as stipulated in the agreement. Worker access to perform maintenance required by transportation art should be from outside the highway right-of-way whenever possible.

Caltrans will not provide maintenance of transportation art, but may perform maintenance activities in the area, such as litter pickup and other activities associated with normal transportation facility maintenance. Any maintenance activities required adjacent to the transportation art that are over and above what Caltrans would normally provide must be described in the encroachment permit, maintenance

agreement, or cooperative agreement and identified as a responsibility of the public agency.

If the public agency fails to maintain the transportation art as provided in the maintenance agreement, Caltrans may perform the maintenance at the public agency's expense, or direct the public agency to remove the transportation art at the public agency's expense.

When notified by Caltrans, the public agency shall remove any transportation art that creates a maintenance or operational concern. If the public agency does not remove the transportation art in a timely manner, Caltrans may remove the transportation art and bill the public agency for the costs involved.

Caltrans reserves the right to immediately remove or alter transportation art due to emergency, construction, restoration, or other necessary activities affecting the transportation facility.

## **ARTICLE 3      Project Development Process**

### **Processing Transportation Art Proposals**

A transportation art proposal is developed by the public agency, as described in Article 1 "General Procedure," that has jurisdiction over the area where the transportation art will be placed. Public agencies should contact the Caltrans district transportation art coordinator to develop a qualified final proposal for submittal to the District Director for approval, and then processed as an encroachment permit.

Transportation art included as part of a capital improvement project, will be reviewed and approved through Caltrans project development process, and as directed within these guidelines.

### **Preliminary Proposal Review**

Public agencies seeking approval of transportation art must first submit a preliminary proposal to the Caltrans district transportation art coordinator. The coordinator reviews the preliminary proposal for safety, aesthetics, maintenance accessibility, message, and proper fit within the context of the transportation corridor. The preliminary proposal will be returned to the public agency for revision if Caltrans recommends changes at any time before final approval.

Preliminary proposals must consist of plans, specifications, artist renderings, and other necessary documents prepared by a licensed landscape architect, architect, professional engineer, or artist, as appropriate and include:

- A written evaluation of alternate locations outside the highway right-of-way for proposed freestanding transportation art
- A resumé of the artist’s work and background
- A full description of the proposed transportation art, including a model or scaled plans, elevations, sections and details necessary to convey location, view from all sides, materials, and construction or installation methods. Caltrans may furnish site data as required
- Plans and details stamped by a licensed engineer if the proposal includes freestanding art, new structures, or modification of existing Caltrans’ structures
- Proposed location, showing existing topography, and dimensions and offsets to right-of-way lines, edge of pavement, centerline, and the clear recovery zone
- Proposed color scheme, paint or stain materials, or protective coatings
- Required environmental documentation
- Material safety data sheet for proposed materials
- Proposed lighting
- Specifications
- Proposed traffic control plans and specifications
- Proposed cost estimate
- Proposed construction schedule
- Projected lifespan
- Proposed maintenance access plan
- Preliminary maintenance agreement, including maintenance schedule

After receiving the preliminary proposal, the district transportation art coordinator reviews the submittal for compliance with safety requirements (clear recovery zone setback, visibility, maintenance access, and highway operations), and compatibility with transportation corridor character and aesthetics. The district transportation art coordinator may advise the public agency of constraints or other concerns, solicit additional documentation or exhibits, or may request changes to the scope of work. The public agency must address all comments, make appropriate revisions, and resubmit the proposal to the district transportation art coordinator for review as a qualified preliminary proposal.

Upon acceptance of a qualified preliminary proposal, the district transportation art coordinator circulates the proposal for evaluation of potential conflicts with gateway monuments and community identification. District design, traffic operations, environmental, maintenance, right-of-way, and other appropriate functional units also evaluate the preliminary proposal and identify concerns or provide suggestions for compliance with Caltrans' policies. Proposals that involve freestanding art, new structures, or modification of existing Caltrans' structures must also be circulated to Headquarters Division of Maintenance-Structure Maintenance and Investigations, and/or Headquarters Division of Engineering Services-Structure Design, Office of Transportation Architecture.

The district transportation art coordinator also determines whether preparation of a permit engineering evaluation report (PEER) will be required, taking into consideration highway operation, maintenance, and tort liability.

Upon completion of district circulation, the district transportation art coordinator provides review comments to the public agency and asks them to make the required revisions. After completion of revisions, the package is resubmitted by the public agency to the district transportation art coordinator as a qualified final proposal. The qualified final proposal should then be processed by the public agency for public review.

### **Public Review and Public Agency Resolution**

Prior to final proposal review by Caltrans, the public agency must document local support for the proposal. Working with the district transportation art coordinator, the public agency will determine an appropriate method of public review, ranging from a signed petition to conducting noticed public meetings. The public agency will secure and document public acceptance, ensuring that those most affected have been provided the opportunity to express either support or opposition to the final proposal. After securing public acceptance, the public agency shall issue an adopted resolution or other official document recommending approval of the proposed design of the transportation art and requesting installation within the highway right-of-way. This resolution or document must describe the public agency's:

- jurisdiction over the area of the project site.
- approval of the transportation art.
- funding responsibility.



- commitment to regular scheduled maintenance of the transportation art throughout its projected lifespan, including timely graffiti removal, restoration, and removal of the transportation art as required.
- proposed schedule for commencing and completing project installation.

### **Final Proposal Review**

The district transportation art coordinator will review the qualified final proposal, including the maintenance agreement, and documentation of local support to verify that all previous comments have been addressed and will forward the proposal to the District Director for approval.

### **District Director Review**

The District Director will review the qualified final proposal for public acceptance, compliance with State and federal regulations, and Caltrans' guidance, adequacy of maintenance resources, and safety and liability issues for Caltrans, the public agency, and the public.

District Director approval of a transportation art proposal is made with due consideration to safety (location, potential for motorist distraction, and accessibility for maintenance), aesthetics, public support, and maintainability. Once approved, no changes shall be made without prior written approval of the District Director.

After District Director approval, the district transportation art coordinator advises the public agency to submit the proposal to the district permit engineer for processing as an encroachment permit.

### **Encroachment Permit Process**

Approved transportation art proposals are processed as an encroachment permit as per the [Encroachment Permits Manual](#), Section 500.2 and Appendix B.

### **After Construction**

After construction is complete, the district transportation art coordinator sends a copy of the transportation art proposal, approval documents, permit, and as-built information to the Headquarters Transportation Art Coordinator.

**TRANSPORTATION ART MAINTENANCE AGREEMENT  
WITH  
CITY/COUNTY OF \_\_\_\_\_**

This Transportation Art Maintenance Agreement ("AGREEMENT") executed on and effective from \_\_\_\_\_, is made by and between the State of California, acting by and through the California Department of Transportation ("STATE"), and the City/County of \_\_\_\_\_ ("LOCAL AGENCY"); each may be referred to individually as a "PARTY," and jointly as "PARTIES."

RECITALS

1. The PARTIES desire to work together to allocate their respective obligations to the Transportation Art Project \_\_\_\_\_ (description and title) installed or painted within STATE Right of Way by Encroachment Permit No. \_\_\_\_\_. PARTIES acknowledge the Encroachment Permit Number will be added after this AGREEMENT is executed.
2. This AGREEMENT will set forth the LOCAL AGENCY's maintenance responsibilities for the Transportation Art Project ("ARTWORK") that is installed or painted within the STATE Right of Way at/on \_\_\_\_\_, as shown in Exhibit A, attached hereto.
3. Prior to execution of this AGREEMENT, the author(s) of ARTWORK executed a written agreement conveying to STATE a) a waiver of any and all rights in the ARTWORK under 17 U.S.C. section 106A and related laws, b) physical ownership of and right to possess the ARTWORK, and c) a nonexclusive license to reproduce and use the ARTWORK for non-commercial purposes. This written agreement between STATE and the author(s) of ARTWORK was executed on \_\_\_\_\_ [DATE].

TERMS

1. Definitions.
  - A. "AGREEMENT" means this AGREEMENT between STATE and LOCAL AGENCY along with exhibits and attachments attached during the execution of this AGREEMENT or in the future by mutual consent of the PARTIES.
  - B. "ARTWORK" means the entire Transportation Art Project installed or painted within the STATE Right of Way depicted or described in Exhibit A attached to this AGREEMENT."

2. Agreements with Creators of ARTWORK. LOCAL AGENCY agrees, represents, and warrants that the author or authors of ARTWORK executed a written agreement, in a form approved by STATE, conveying to STATE a) a waiver of any and all rights in the ARTWORK under 17 U.S.C. section 106A and related laws, b) physical ownership of and right to possess the ARTWORK, and c) a nonexclusive license to reproduce and use the ARTWORK for non-commercial purposes. LOCAL AGENCY shall be solely responsible for any damages (including exemplary and punitive damages) arising from its breach of and/or failure to fully comply with this provision of the AGREEMENT.
3. Maintenance Obligation and Standards. LOCAL AGENCY shall have the obligation to maintain the ARTWORK in accordance with this AGREEMENT so long as the ARTWORK exists in any form and in any condition. LOCAL AGENCY shall perform all maintenance of the ARTWORK in compliance with terms of the AGREEMENT, the standards set forth in California Streets and Highways Code section 27, and in accordance with all other applicable California laws, regulations, and standards, including the STATE's Project Development Procedures Manual (PDPM), Chapter 29, Transportation Art, STATE's Maintenance Manual, policies, procedures, and specifications in effect as of the execution of this AGREEMENT and as subsequently amended. The obligation to maintain the ARTWORK shall include routine inspections of the ARTWORK and the maintenance, repair, and cleaning of the ARTWORK, as well as the restoration of damaged ARTWORK, graffiti removal (in accordance with the terms of this AGREEMENT), and the removal of dirt, debris, vegetation growth, and weeds surrounding or obscuring the ARTWORK (hereafter collectively referred to as "MAINTAIN/MAINTENANCE"). LOCAL AGENCY's obligation to MAINTAIN the ARTWORK is until the ARTWORK is removed consistent with terms of this AGREEMENT.
4. Encroachment Permits. Before LOCAL AGENCY, or any of its agents, may enter STATE right of way to perform MAINTENANCE of the ARTWORK, or any MAINTENANCE within STATE's right of way in which the ARTWORK is located, LOCAL AGENCY shall have applied for and obtained, from the applicable STATE District, an Encroachment Permit in accordance with the STATE Encroachment Permit process. For the term of this AGREEMENT, LOCAL AGENCY shall obtain any encroachment permits required by law to perform the obligations under this AGREEMENT. STATE shall issue any and all encroachment permits at no cost to LOCAL AGENCY. LOCAL AGENCY's contractors and subcontractors, including the artist who creates the ARTWORK, shall apply for, and be issued encroachment permits to perform work within STATE's right of way, to the extent required by law. If the encroachment permit and this AGREEMENT conflict, the requirements of this AGREEMENT will prevail.

5. Graffiti Removal. LOCAL AGENCY, at LOCAL AGENCY's sole cost and expense, shall remove all graffiti from the ARTWORK. LOCAL AGENCY is solely responsible for ensuring that any graffiti that in any way resembles a mural, artwork, paintings, or other similar elements shall not be removed without the written authorization of STATE. Graffiti removal must protect air and water quality as required by law. LOCAL AGENCY shall conform to the terms stated in STATE's Maintenance Manual, Volume 1, Family D Chapter, D1.06.
6. Restoration of ARTWORK. LOCAL AGENCY, at LOCAL AGENCY's expense, shall restore damaged ARTWORK to its original condition as set forth in Exhibit A either within thirty (30) calendar days of discovery of such damage or within thirty (30) calendar days of being notified in writing by STATE, whichever is sooner. If LOCAL AGENCY is unable to or otherwise fails to restore the damaged ARTWORK by this time, STATE may provide a plan to LOCAL AGENCY which is reasonable and in good faith to perform the required operation.
7. Routine MAINTENANCE. LOCAL AGENCY shall ensure the ARTWORK is provided with adequate routine MAINTENANCE necessary to maintain a neat and attractive appearance in accordance with a schedule mutually agreed to by PARTIES. LOCAL AGENCY shall coordinate said MAINTENANCE with STATE prior to the start of any work.
8. Failure to Perform MAINTENANCE. If during the term of this AGREEMENT, LOCAL AGENCY ceases to perform the MAINTENANCE of the ARTWORK to the satisfaction of STATE as provided by this AGREEMENT, STATE will provide written notice to LOCAL AGENCY to cure the default and LOCAL AGENCY will have thirty (30) calendar days within which to effect that cure. If LOCAL AGENCY does not MAINTAIN the ARTWORK or establish a plan and schedule to do so that is acceptable to STATE, STATE may either perform the MAINTENANCE on behalf of LOCAL AGENCY at LOCAL AGENCY's expense, remove the ARTWORK at LOCAL AGENCY's sole cost and expense and restore STATE's right of way to its prior condition, or direct the LOCAL AGENCY to do so at LOCAL AGENCY's expense. LOCAL AGENCY hereby agrees to pay said STATE costs and expenses, within thirty (30) calendar days of receipt of billing by STATE.
9. Duties Upon Termination. In the event this AGREEMENT is terminated, LOCAL AGENCY shall remove the ARTWORK if STATE provides written consent for such removal, and restore STATE's right of way to a safe and attractive condition compliant with all applicable laws and regulations and acceptable to STATE.
10. Additional LOCAL AGENCY Duties. During any MAINTENANCE work under this AGREEMENT, LOCAL AGENCY shall be responsible for MAINTAINING traffic operations and traffic control, including traffic lane closures as needed, to perform the MAINTENANCE in a safe and lawful manner. LOCAL AGENCY shall

be responsible for obtaining any encroachment permits required by STATE or under this AGREEMENT. LOCAL AGENCY shall be responsible for complying with any and all state laws and regulations in the performance of its MAINTENANCE duties. LOCAL AGENCY shall provide STATE's District\_\_\_\_\_ Area Maintenance Superintendent, (name)\_\_\_\_\_, at least twenty-four (24) hours prior telephone or email notice before performing any maintenance services under this AGREEMENT. MAINTENANCE services shall be performed between the hours of 9:00 AM and 3:00 PM or a time otherwise authorized by STATE and may be performed on weekends and holidays if necessary.

11. Location Impacts. Except as expressly authorized in writing by STATE, LOCAL AGENCY, in performing its obligations under this AGREEMENT, shall not alter any existing freeway or highway structure or facility, nor shall it remove any landscaping within the STATE's right of way to MAINTAIN or alter the ARTWORK.
12. Costs and Expenses Borne by LOCAL AGENCY. The cost and expense of all work by or on behalf of LOCAL AGENCY shall be borne solely by LOCAL AGENCY, and no cost or expense shall be borne by STATE. STATE will not be responsible for the cost or expense of any MAINTENANCE, or any other maintenance, graffiti removal, repair, or restoration of the ARTWORK. STATE will not be responsible for any damages caused by any vandalism or accidents on the roadway. STATE shall only be responsible for its own direct actions.
13. Obligation to Remove ARTWORK. LOCAL AGENCY shall remove the ARTWORK whenever, in the opinion of STATE, it creates a maintenance, safety, or operational concern. In the event LOCAL AGENCY fails to remove the ARTWORK in a timely manner, STATE may remove the ARTWORK thirty (30) calendar days following written notification to LOCAL AGENCY, and STATE will bill LOCAL AGENCY for, and LOCAL AGENCY shall pay, all costs and expenses arising from its removal and for the restoration of STATE's right of way to their original condition. STATE reserves the right to remove the ARTWORK or alter parts thereof due to any emergency, such as, but not limited to, an immediate safety hazard to the public as determined by STATE. Removal activities may include any construction, rehabilitation, or other necessary activities affecting transportation facilities without any obligation, compensation to, or approval of LOCAL AGENCY.
14. Unsatisfactory Conditions. STATE may provide LOCAL AGENCY with timely written notice of unsatisfactory conditions that require correction by the LOCAL AGENCY. However, the non-receipt of notice does not excuse LOCAL AGENCY from performing maintenance responsibilities assumed under this AGREEMENT. STATE shall notify LOCAL AGENCY at least thirty (30) calendar days in advance of any planned work that may impact the ARTWORK. If the work required is due to a safety hazard, this notification period does not apply, and STATE will notify LOCAL AGENCY as soon as practicable of the planned or performed work.

15. Acknowledgement of Title. LOCAL AGENCY, and its agents, recognize that STATE owns the exclusive title to the ARTWORK, including but not limited to, the right physically to possess, transfer, sell, dispose of, or destroy the ARTWORK.
16. Effect on Prior Maintenance Agreements. This AGREEMENT does not supersede or replace any prior maintenance agreements between LOCAL AGENCY and STATE concerning the highways, freeways, or other STATE facilities within the STATE right of way in which the ARTWORK is placed, except to the extent those agreements concern or effect the ARTWORK or the purposes of this AGREEMENT.
17. Encampments. If encampments belonging to Persons Experiencing Homelessness (PEH) are encountered by LOCAL AGENCY during MAINTENANCE of the ARTWORK, the LOCAL AGENCY will inform the STATE and comply with any existing agreements between STATE and LOCAL AGENCY regarding the removal of the PEH and any structures, personal property, debris, and/or other items related to the encampment that covers the location(s) shown in Exhibit A, subject to applicable State and Federal law. In the absence of any such agreements, STATE will determine how to proceed with the PEH and encampment(s) and communicate with LOCAL AGENCY on how to proceed with MAINTENANCE under this AGREEMENT.
18. No Third-Party Beneficiaries. This AGREEMENT is not intended to create duties, obligations, or rights of third parties beyond the PARTIES to this AGREEMENT. Nor does this AGREEMENT affect a PARTY's legal liability by imposing any standard of care for the operation and maintenance of STATE highways and LOCAL AGENCY facilities different from the standard of care imposed by law.
19. Indemnification.
  - A. Neither LOCAL AGENCY nor any of its officers or employees is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE in connection with any work, authority or jurisdiction conferred upon STATE pursuant to this AGREEMENT. To the extent permitted by law, STATE shall fully defend, indemnify, and save harmless LOCAL AGENCY and its officers and employees from all claims, suits or actions of every kind occurring by reason of anything done or omitted to be done by STATE, its contractors, sub-contractors, and/or its agents pursuant to this AGREEMENT.
  - B. Neither STATE nor any of its officers or employees is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by LOCAL AGENCY in connection with any work, authority or jurisdiction conferred upon LOCAL AGENCY pursuant to this AGREEMENT. To the extent permitted by law, LOCAL AGENCY shall fully defend, indemnify, and save harmless STATE and its officers and employees from all claims, suits or actions of every kind occurring by reason of anything done or omitted to be done by

LOCAL AGENCY, its contractors, sub-contractors, and/or its agents pursuant to this AGREEMENT.

20. Prevailing Wages and Labor Code Compliance. LOCAL AGENCY shall comply with any and all applicable labor and prevailing wage requirements in Labor Code Sections 1720 through 1815 and implementing regulations for any public works or maintenance contracts and subcontracts executed for the LOCAL AGENCY's work under this AGREEMENT.
21. Insurance<sup>1</sup>. LOCAL AGENCY and its contractors and subcontractors shall maintain in force during the term of this AGREEMENT a policy of general liability insurance, including coverage of bodily injury and property damage liability, naming the STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. LOCAL AGENCY will provide a certificate of insurance evidencing this insurance in a form satisfactory to STATE

Self-Insured<sup>2</sup> LOCAL AGENCY is self-insured. LOCAL AGENCY shall deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury and property damage liability, in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess by delivering a Letter Certifying Self-Insurance. The Letter of Self-Insurance must identify the AGREEMENT number, and location as depicted in Exhibit A. LOCAL AGENCY shall provide the original Letter Certifying Self-Insurance as a condition to STATE's execution of this AGREEMENT. A copy of the original letter shall be attached to this AGREEMENT as Exhibit B.

Self-Insured using Contractor<sup>3</sup>. If the MAINTENANCE performed under this AGREEMENT is done by LOCAL AGENCY's contractor(s), LOCAL AGENCY shall require its contractor(s) to maintain in force, during the term of this AGREEMENT, a policy of general liability insurance, including coverage of bodily injury and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. LOCAL AGENCY shall provide a certificate of insurance evidencing this insurance in a form satisfactory to STATE.

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<sup>1</sup> Delete if self-insured.

<sup>2</sup> Delete if not self-insured

<sup>3</sup> Delete if not self-insured; include 2 and 3 if self-insured and LA is subcontracting the work. Need both a self-insurance certification letter and insurance certificate naming STATE as additional, covered insured.

- 22. Termination. This AGREEMENT may be terminated by the mutual written consent of each PARTY. STATE may terminate this AGREEMENT at any time with or without cause.
- 23. Successors. This AGREEMENT shall be binding upon and inure to the benefit of each of the PARTIES and their respective successors-in-interest including, any subsequently incorporated city or other municipality established within the LOCAL AGENCY's jurisdictional limits. If the successor city or municipality fails to accept the obligations of the LOCAL AGENCY by entering into a new agreement with STATE, LOCAL AGENCY shall continue to be contractually bound by the terms of this AGREEMENT.
- 24. Authority. Each individual executing this AGREEMENT on behalf of each PARTY represents and warrants that the individual is duly authorized to execute this AGREEMENT. LOCAL AGENCY represents and certifies that it has, through its regular political process, authorized the execution of this AGREEMENT by appropriate resolution, delegation, or plenary authority, as required. Further, on \_\_\_\_\_[DATE], the Council of the \_\_\_\_\_[LOCAL AGENCY] through Resolution No. \_\_\_\_ approved a recommendation to accept MAINTENANCE responsibilities for the ARTWORK.
- 25. Amendment to Agreement. The terms of this AGREEMENT can be changed only by a formal written amendment executed by all PARTIES.
- 26. Counterparts. This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.
- 27. Electronic Signatures. Electronic signatures of the PARTIES, whether digital or encrypted, are intended to authenticate this written AGREEMENT, and shall have the same force and effect as manual signatures for this AGREEMENT.

THE CITY/COUNTY OF \_\_\_\_\_

Dated: \_\_\_\_\_  
Mayor/Chairman

INITIATED AND APPROVED:  
Dated: \_\_\_\_\_  
City/County  
Manager

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

Dated: \_\_\_\_\_  
Deputy District Director  
Maintenance District



Dated: \_\_\_\_\_

HQ Review Required

Draft date \_\_\_\_\_  
Rev. \_\_\_\_\_  
MA # \_\_\_\_\_  
PM \_\_\_\_\_

## EXHIBIT A

[Include (1) detailed design plans and rendering of what the final Artwork will look like once installed, and (2) plan map identifying the applicable location of the Transportation Art and shows what Artwork will look like once installed.]

HQ Review Required

## EXHIBIT B

### LETTER CERTIFYING CITY'S/COUNTY'S SELF-INSURED STATUS (TEMPLATE)

#### On Local Agency letterhead

Insert (CT District) addressee information \_\_\_\_\_, 20\_\_

ATTN: (name of CT representative)

Re: Statement of Self-Insurance for CITY/COUNTY of \_\_\_\_\_ for  
Transportation Art Maintenance Agreement No. \_\_\_\_\_ with California  
Department of Transportation for the \_\_\_\_\_ along  
SR \_\_\_\_\_ at \_\_\_\_\_

Dear \_\_\_\_\_:

This letter certifies that the CITY/COUNTY of \_\_\_\_\_ is self-insured and self-funded covering third-party claims arising out of its general operations (i.e.; commercial general liability and automobile liability insurance). Further, the CITY/COUNTY is self-insured covering workers' compensation claims and has received the consent of the State Department of Industrial Relations to do so.

Each fiscal year, as a part of its budgetary process, the CITY/COUNTY appropriates funds specifically to satisfy valid third-party claims and workers' compensation claims, which may be brought against the CITY/COUNTY.

The CITY/COUNTY certifies its self-insured, general liability coverage for bodily injury and property damage liability, and meets the required coverage amounts in section 21 (Insurance) of the Transportation Art Maintenance Agreement, specifically general liability insurance, coverage of bodily injury and property damage liability in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess.

If you need any additional information regarding this letter, please direct those inquiries through my office.

Sincerely,

Draft date \_\_\_\_\_  
Rev. \_\_\_\_\_  
MA # \_\_\_\_\_  
PM \_\_\_\_\_

Finance Manager/Risk Manager/Authorized Representative's Title

HQ Review Required

## COPYRIGHT LICENSE AND WAIVER OF MORAL RIGHTS IN ARTWORK

This Copyright License and Waiver of Moral Rights In Artwork (the "Agreement") is entered on the [DATE] day of [MONTH], 20[YR] (the "Effective Date"), by and between Artist, [INSERT NAME OF ARTIST HERE], with Artist's principal address at [INSERT ADDRESS OF ARTIST HERE], ("Artist") and the California Department of Transportation ("Caltrans") (collectively, known as the "Parties"), with respect to the original work of visual art described below as the [INSERT NAME OF ARTWORK HERE] ("Artwork").

### RECITALS

1. The Parties acknowledge the social and professional benefits Artists may receive from creating works of art such as the Artwork.
2. It is the Parties' intent that Artist shall maintain the Copyright in the Artwork, while Caltrans shall own the title to the Artwork, shall have a license to make certain noncommercial uses of the Artwork to explain and promote its art programs, and shall maintain physical title to and control of the Artwork, including the right to remove or alter the Artwork if in Caltrans' sole discretion removal or alteration is necessary to maintain public highways and roads for the public benefit and for public safety.

### TERMS

Now, therefore, in consideration for the mutual promises and covenants contained in this agreement, and other good and valuable consideration, including but not limited to the payment received by Artist from the Local Agency, the Parties agree as follows:

1. Definitions. The Parties agree to the following definitions as used herein and throughout this Agreement:
  - A. "Artwork" means the original visual work of art created by Artist pursuant to the Local Agency Agreement, described as [INSERT NAME OF ARTWORK] and to be located at [INSERT LOCATION OF ARTWORK], and as further described and depicted more fully in Exhibit A to this Agreement.
  - B. "Copyright" means the rights granted in the Artwork as defined and set forth in the U.S. Copyright Act of 1976, 17 U.S.C. §101 et seq., as amended, to authors of original works of authorship fixed in a tangible medium of expression, including but not limited to "visual works of art" as defined in section 17 U.S.C. §101.
  - C. "Local Agency Agreement" means the agreement entered into between Artist, [INSERT NAME OF ARTIST HERE] and the [INSERT THE NAME OF SPONSORING LOCAL AGENCY HERE] (hereinafter, "Local Agency") pertaining to but not limited to the design, installation, operation, maintenance, and/or removal of the transportation art. The signed and

executed Local Agency Agreement, including all the exhibits to the Local Agency Agreement, is incorporated by reference and made part of this Agreement and attached as Exhibit B to this Agreement.

- D. "VARA" means the Visual Artists Rights Act of 1990, 17 U.S.C. §106A and 113(d), as amended, which confers upon authors of works of visual art several types of attribution and integrity rights, including but not limited to the right to prevent any intentional distortion, mutilation, or other modifications to his/her/their visual artwork, and to prevent the destruction of a visual artwork of recognized stature.
  - E. "CAPA" means the California Art Preservation Act of 1979, Cal. Civil Code §987 et seq., as amended, which confers certain rights to artists of works of fine art (original paintings, sculptures, drawings or original works of art in glass, of recognized artistic quality), including but not limited to the right to prohibit the intentional physical defacement, mutilation, alteration, or destruction of a work of fine art by any person or entity who possesses or owns the fine art.
  - F. "Moral Rights" means any rights of Artist in the Artwork that include the rights under VARA or CAPA or any similar rights under any body of state, federal, or international law relating to Artist's rights in the integrity of the Artwork or right of attribution relating to the Artwork.
  - G. "Artist(s)" means any artist or group of artists who contribute to the authorship of the Artwork within the meaning of the Copyright Act, including any person, entity, adult, or minor.
2. Title. Upon completion and installation of the Artwork, or any portion of it, by Artist, Caltrans shall own the title to the Artwork, or any portion of it completed and installed.
  3. Copyright. Artist shall own the Copyright in the Artwork and shall have all rights in the Artwork provided by the Copyright Act of 1976, 17 U.S.C. §101 et seq., as amended, except as otherwise provided in this Agreement. Artist shall have the responsibility for registering the Copyright in the Artwork with the United States Copyright Office.
  4. Copyright License. Caltrans shall have and is hereby granted a nonexclusive, perpetual, irrevocable, royalty-free, world-wide, sublicensable license to make, publish and display two-dimensional images, videos, film, audiovisual works, and similar reproductions of the Artwork for non-commercial purposes or any state governmental purpose, including but not limited to reproductions used in brochures, media publicity, public outreach campaigns (including television and social media campaigns), and exhibition catalogues or other similar publications. Caltrans' license shall include the right to create related derivative works and to publish, display, and distribute such works for its own non-commercial purposes. Caltrans' license shall include the right to permit third parties to film, record, or photograph the Artwork for non-commercial purposes.
  5. Waiver of Statutory Moral Rights. Artist irrevocably waives any and all Moral Rights in the Artwork, including but not limited to any rights of Artist under VARA or CAPA, which

waiver shall include but not be limited to:

- a. The right to claim authorship of the Artwork and to prevent the use of Artist's name as the author of any work of visual art which Artist did not create;
  - b. The right to prevent the use of Artist's name as the author of the Artwork in the event of a distortion, mutilation, or other modification of the Artwork which would be prejudicial to Artist's honor or reputation; and
  - c. The right to prevent any distortion, mutilation, removal, or other modification of any kind of the Artwork, for any purpose or use of any kind, including but not limited to uses by Caltrans as set forth in this Agreement, and whether or not the distortion, mutilation, removal, or modification is intentional or prejudicial to the Artist's honor or reputation, and whether or not the Artwork is one of recognized stature.
  - d. This waiver shall include but not be limited to a waiver of any claim that the destruction, modification, or removal of the Artwork constitutes a "taking" (inverse condemnation) of property under state or federal law.
6. Artist's Covenant to Cooperate. Artist agrees to promptly execute any document deemed by Caltrans, in its sole discretion, to be necessary to effectuate the purpose of this Agreement, including but not limited to documents to identify and/or describe the completed Artwork and any documents related to the Artwork filed with the United States Copyright Office, and acknowledgments of such documents. Artist shall provide a copy of the copyright registration certificate to Caltrans promptly upon receipt of registration. If more than one Artist contributes to the authorship of the Artwork, Artist is responsible for ensuring that all Artists execute this Agreement. Artist agrees to cooperate with Caltrans in protecting Artwork against unauthorized uses that disparage Caltrans and/or the Artist.
  7. Relationship of the Parties. The Parties agree that Caltrans is a third-party beneficiary of the Local Agency Agreement, and that Caltrans is not a party to nor is legally obligated or bound by the terms and conditions contained in the Local Agency Agreement. The Parties agree that Artist is an independent contractor commissioned to create, develop, and install the Artwork by the Local Agency and that no agency, partnership, joint venture, employee-employer relationship is intended or created by this Agreement. All rights, interests, and title granted to Caltrans are contractual in nature and expressly defined by this Agreement.
  8. Accreditation of Final Work. Caltrans shall make reasonable efforts to credit Artist as the original creator of the Artwork in connection with any uses of the Artwork by Caltrans, but this obligation shall not be a condition of any rights Caltrans has, or any duties Artist has, under this Agreement.
  9. Effective Date. This Agreement shall be effective as of the day, month, and year stated above upon execution of this Agreement by both Parties.

10. Term. The term of this Agreement shall be irrevocable, and it shall be for the full term of the Copyright in the Artwork, including any renewal term. The terms, covenants, and provisions of this Agreement shall inure to the benefit of Caltrans, its officers, successors, assigns, and/or other legal representatives, and they shall be binding upon Artist.
11. Warranty. Artist warrants and represents that the Artwork is an original visual work of authorship of Artist; that Artist as creative originator is the sole owner of the Artwork, or, if Artist is one of multiple authors of the Artwork, that the rights of such authors do not in any way limit, conflict with, or encumber Artist's right to enter this Agreement or to grant to Caltrans the rights granted in this Agreement; that the Final Artwork infringes no existing Copyrights; that Artist has not entered into any assignments, transfers, licenses, contracts, or mutual understandings in conflict with the terms and conditions of this Agreement; that the Artwork is free of any liens or encumbrances; that Artist has full power to enter into and to perform this Agreement; and that there are no claims currently pending or threatened, nor does Artist have any reason to believe that any claims will be brought or threatened in the future, against Artist's rights, ownership, title, or interests in the Artwork.
12. Indemnification. Artist agrees to indemnify and hold harmless Caltrans against any and all claims, lawsuits, or legal actions made in connection with the Artwork, including but not limited to any copyright infringement claims, moral rights violation claims, loss claims, personal, and/or real property claims, injury claims, breach of contract claims, inverse condemnation claims, conversion claims, taking of property claims, and/or damage claims (including any related legal costs, attorney fees, or expenses properly incurred by Caltrans).
13. Delivery. Artist must provide Caltrans with this Agreement, properly executed, signed, and dated and attach the required Exhibit A (Artwork) and Exhibit B (Local Agency Agreement), necessary to give effect to this Agreement.
14. Choice of Law. This Agreement shall be construed and enforced in accordance with the laws of the State of California, not including its choice of law rules.
15. Forum for Disputes. The Parties submit to the jurisdiction of the State of California, and the courts of the State of California shall be the exclusive forum for the resolution of any disputes that arise under the terms of or relate to the subject matter of this Agreement. The Parties agree that the County in which the Artwork is, or is to be, installed shall be the proper venue for any related claims. In the event the state courts of California lack jurisdiction over the subject matter of the dispute, any litigation shall take place exclusively in a federal court located in the State of California.
16. Amendments. This Agreement may not be varied, modified, renewed, or revoked, unless agreed to by both Parties, made in writing and signed by both Parties, by a person in authority to contractually bind and sign on behalf of such party.



17. Severability. If any provision of this Agreement is held by a court to be unlawful, unconscionable, invalid, unenforceable, or in conflict with any rule or law, statute, ordinance, or regulation, it is to be severed so the validity and enforceability of the remaining provisions are not affected.

18. Entire Agreement. This instrument contains the entire and only agreement between the Parties and supersedes all pre-existing agreements between them respecting its subject matter. Any representation, promise, or condition in connection with the subject matter not incorporated in this Agreement shall not be binding upon either party.

The Parties have caused this Agreement to be executed the day, month and year first written above by the signatures of each party below:

ARTIST NAME:

ARTIST ADDRESS:

\_\_\_\_\_

\_\_\_\_\_

ARTIST SIGNATURE:

DATE:

\_\_\_\_\_

\_\_\_\_\_

CALTRANS REPRESENTATIVE NAME AND TITLE:

\_\_\_\_\_

CALTRANS REPRESENTATIVE ADDRESS:

\_\_\_\_\_

CALTRANS REPRESENTATIVE SIGNATURE:

DATE:

\_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO LEGAL FORM BY:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CALTRANS ATTORNEY NAME AND TITLE

CALTRANS ATTORNEY SIGNATURE

DATE