Art in Public Places Policy & Guidelines Manual

1. INTENT & FORMAT

SEC. 5809-24-B DEFINITIONS

"Art in Public Places Policy and Guidelines Manual (or the Manual): A manual approved by resolution of the City Council that contains submittal requirements; guidelines for the selection of artists, artwork and locations for public artworks; and application procedures for the provision of Public Art"

SEC. 5809-24-H- CRITERIA FOR ARTIST SELECTION, ARTWORK SELECTION, AND GUIDELINES FOR PLACEMENT OF PUBLIC ART

"Criteria for the selection of an artist or artist design team, selection of the location for the public artwork and criteria for approval of artwork shall be established in the Manual approved by resolution of the City Council."

This is a manual approved by resolution of the City Council of the City of Pomona that is intended to clarify and implement the provisions contained in Section .5809-24 of the Pomona Zoning Ordinance, "Art in Public Places." Sections of the code have been excerpted in call-out boxes, and then clarified, for ease of reference. The City Council authorizes the City Manager to promulgate minor clarifications to existing policies or guidelines in this Manual as necessary to clarify conformance with Section .5809-24 of the Pomona Zoning Ordinance, in consultation with the Cultural Arts Commission. This includes establishing policies or guidelines as necessary for donations of public artwork or donations of funds for the purpose of providing public artwork.

2. DEFINITION & LOCATION

SEC. 5809-24-B DEFINITIONS

"Public Art: Any permanent display of a work of visual art that was specifically designed to be located on a site where it would be accessible to public view on private or public property within the City of Pomona. Public Art may include, but need not be limited to, sculpture, murals, mosaics, fountains, stained glass, and earthworks."

The following additional definitions clarify the definition of ***Public Art*** and are intended to provide guidance on work(s) of art and locations for such work(s).

Artist: An individual, collective, non-profit organization, educational institution, or other entity that is qualified to create Work(s) of Art. Youth artists are ages 5 to 25.

Work(s) of Visual Art: Any type of original art created primarily for visual perception, temporary or permanent in nature, excluding art as advertisement, mass-produced replicas, or architect-designed elements.

Permanent Display: A durable physical surface, or a physical location, to showcase Work(s) of Art that can be accessed by the general public without geographical, physical, legal, or fiscal constraints.

3. ELIGIBLE EXPENSES

SEC. 5809-24-F-1-A PLACEMENT OF AN APPROVED PUBLIC ART ON THE PROJECT SITE

"The Applicant may decide to place an approved Public Art on a private development site. The Public Art, and all eligible expenditures associated with installation of the Public Art (as described in the Manual), shall be in an amount equal to or in excess of the Public Art Allocation."

SEC. 5809-24-F-2-B- USE OF IN-LIEU CONTRIBUTIONS

"Use of In-lieu Contributions shall comply with the following: i. In-lieu Contributions shall be used for the acquisition and installation of Public Art on public or private property in the City, except that up to 1/3 of the In-lieu Contribution may be used for maintenance of the proposed Public Art or an existing Public Art that is listed on the City's registry of Public Art. ii. In-lieu Contributions may be aggregated with other funds contained in the Public Art Fund for the purpose of providing a single qualifying Public Art project." Procedures for use of In-lieu Contributions to provide Public Art shall be established in the Manual."

The following additional definitions clarify the phrase "the acquisition and installation of public art."

Acquisition: Facilitating the installation of public art by an individual, collective, non-profit organization, educational institution, or other entity.

Installation: The necessary steps required to execute and finalize public art.

The following line items may be expended by a private developer for Public Art to be placed on private property, or by the City for the acquisition and installation of Public Art from the Public Art Fund. Percentage thresholds can be applied on an individual basis and/or in establishing an annual Public Art Fund expenditure budget. If a proposed line item is not listed below, it is ineligible, unless otherwise approved by the Cultural Arts Commission.

A. Acquisition
    a. (up to 20%) Administration Fees, that may include, but are not limited to, individuals, collectives, non-profit organizations, or other qualified professionals working specifically on an individual project or program within the Public Art Fund.
    b. (up to 5%) Stipends for Artists asked to provide additional conceptual renderings or revisions of proposed artwork.
B. Installation
    a. The work of art itself.
    b. Transportation, installation, and exhibition.
    c. Lighting.
    d. Identification.
    e. Permits, insurance coverage.
    f. Other materials integral to the creation of the work of art.
C. Maintenance, up to 33%

4. ARTIST SELECTION

SEC. 5809-24-H- CRITERIA FOR ARTIST SELECTION, ARTWORK SELECTION, AND GUIDELINES FOR PLACEMENT OF PUBLIC ART

"Criteria for the selection of an artist or artist design team, selection of the location for the public artwork and criteria for approval of artwork shall be established in the Manual approved by resolution of the City Council."

A. Calls for Artists

Artists, including youth artists, will be selected for funding from the Public Art Fund through the Call for Artists process. Calls for Artists may be for the acquisition or installation of public art, or both. Calls for Artists will be open to any prospective Artist and will specify criteria specific to the project. The Cultural Arts Commission may establish a pre-qualified list of artists to expedite future funding, and may also invite specific artists to submit proposals, though in no event should a Call for Artists be limited to inviting only a single artist.

Artists are required to submit the following to the City of Pomona as part of a response to a Call for Artists (additional items may be requested as needed):

1. Current resume or organizational history.
2. Portfolio of past work(s) of art.
3. Narrative statement on their understanding of the spatial and cultural context of the proposed location, ability to meet deadlines and budget constraints, and any experience with displaying works of art for access by the general public.

B. Review of Submittals

The following criteria will be used by the Cultural Arts Commission and its Citizen's Advisory Committee in selecting a submittal by an Artist for the acquisition and/or installation of Public Art funded by the Public Art Fund (additional criteria may be added as needed):

1. The Artist's experience in the creation of works of art on display in public.
2. The Artist's willingness to engage in the spatial and cultural context of their surroundings in the creation of the work of art.
3. The Artist's ability to meet deadlines and budget constraints.

C. Award

Selected submittals will be awarded Public Art Fund dollars, either through a direct award, or through an award agreement (sample included as **Attachment A**), depending on the amount of the award, and at the discretion of the Development Services Director. Agreements shall include a disbursement schedule and reporting requirements. All awards shall be approved by Resolution. Artists requested to revise their submittals may be issued a stipend to cover expenses related to the preparation of such revisions.

5. ADVISORY COMMITTEE

The primary duties of the Advisory Committee shall include:

1. Review and approval of the Conceptual Design Plan application for the placement of public art on private property.
2. Making recommendations to the Cultural Arts Commission on use of public art projects for acquiring and locating public art on a property through the Call for Artists process.

Members of the Advisory Committee shall be appointed by the Cultural Arts Commission as follows:

Appointment and terms of office:

1. The Advisory Committee shall consist of the following seven voting members
   a. Three members of the Cultural Arts Commission;
   b. Four community members at least three of whom have a background as an artist or arts professional.
2. All members of the Advisory Committee shall reside in or own a business in the City, or be employed in the City, or be on the board or active member of a non-profit organization based in the City of Pomona.
3. The terms of office for members of the Advisory Committee shall be for a two-year period.
4. Any vacancy that occurs before expiration of a term shall be appointed by the Cultural Arts Commission for the unexpired portion of the term.
5. The Advisory Committee shall appoint a chairperson.

Other City staff, as may be appropriate, shall serve as resource persons to the Advisory Committee as deemed appropriate by the City Manager or her/his designee.

CITY OF POMONA
CULTURAL Arts
COMMISSION

CITY OF POMONA
AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK

This Agreement for Commission of Public Artwork is entered into this [DATE], by and between the City of Pomona, a charter city and municipal corporation (hereinafter the "City"), and [ARTIST] (hereinafter the "Artist"). City and Artist are sometimes hereinafter referred to collectively as the "Parties."

RECITALS

WHEREAS, on [DATE]. The Artist's Submittal was reviewed and approved by the City's Cultural Arts Commission in accordance with Pomona Zoning Ordinance Section .5809—24—Public Art for Private Development;

WHEREAS, on [DATE], the Cultural Arts Commission recommended execution of an agreement between the City of Pomona and the Artist; and

WHEREAS, the Artist is a qualified professional, and the City desires the Artist to [scope] ("the Work"), located at [location] ("the Site");

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

ARTICLE 1: SCOPE OF WORK

1-1 GENERAL

(a) The Artist shall perform all services and furnish all supplies, materials, artist and agent travel, and equipment as necessary for the design, execution, fabrication, transportation, and installation of the Work at the Site, and in accordance with the terms in this Agreement. The scope of work is as follows:

[Itemized Scope of Work from Exhibit A]

1-2 EXECUTION OF THE WORK

(a) Pursuant to Section 1-2 above, the Artist shall commence fabrication of the Work, in accordance with such schedules. Although the schedule may be amended by written agreement between the City and the Artist, it is agreed that the Artist shall perform all of the obligations under this contract within [TIMELINE] from the date of execution of this contract.

(b) The City shall have the right to review the Work at reasonable times during the fabrication. The Artist shall submit to the City progress reports in accordance with the schedule required by Section 1-2.

(c) The Artist shall complete the fabrication and installation of the Work in substantial conformity with the approved Proposal.

(d) The Artist shall present to the City, in writing, for further review, any "significant changes" in the scope, design, color, size, material, or texture of the Work not permitted by or not in substantial conformity with the Proposal. A "significant change" is:

i. Any material change in the scope, design, color, size, material, texture, or location of the Work on the Site;

ii. Any material change in the Work that affects installation, scheduling, site preparation, or maintenance for the Work; or

iii. Any change in the concept of the Work as represented in the accepted proposal.

(e) If changes reviewed by the City are not approved, the Artist will not resume the Work nor resume the payment schedule until changes to the Work are reviewed and approved by the City.

1-3 DELIVERY AND INSTALLATION

(a) Prior to commencement of work at the Site, the Artist shall notify the City of schedules for installation. The Artist shall be responsible for all expenses, labor, and permits;
(b) Prior to delivery of the Work, the Artist shall notify the City in writing when fabrication of the Work is completed and the Artist is ready for delivery of the Work to the Site.
(c) The Artist shall provide for completion of the Work in compliance with appropriate codes and the approved schedule.

1-4 POST INSTALLATION

(a) Within thirty (30) days after the installation of the Work, the Artist shall furnish the City with the following documentation of the Work as installed:

i. One set of digital photographs of the completed Work, one taken from each of three different viewpoints;
ii. The City shall have the right to duplicate and distribute for any noncommercial purpose the artwork documentation supplied by the Artist under this Agreement;

iii. The Artist shall be available at such time or times as may be agreed between City and Artist to attend any inauguration or dedication ceremonies relating to the transfer of The Work to the City. The City shall use its best efforts to arrange for publicity for the completed work in such art publications and otherwise as may be determined between the City and the Artist as soon as is practical following installation.

(b) Upon execution of the Agreement, the Artist shall provide the City with written instructions for appropriate maintenance and preservation of the Work.

1-5 FINAL ACCEPTANCE

(a) The Artist shall advise the City in writing when all services required under this Agreement have been completed in substantial conformity with this Agreement. This request shall be submitted using the City's ***Request for Final Acceptance of Public Art*** form.

(b) The City shall notify the Artist in writing of the final acceptance (or nonacceptance) of the Work. This notification shall be provided to the Artist using the City's ***Notification of Final Acceptance of Public Art*** form.

(c) Final acceptance shall be effective as of the earlier of the following dates:

i. The date of the City's notice of final acceptance; or

ii. The 30th day after the Artist has sent written notice to the City required under Section 1-6(a) unless the City, upon receipt of such 30-day notice and prior to the expiration of the 30-day period, gives the Artist written notice specifying and describing the services, which have not been completed.

1-6 RISK OF LOSS

The risk of loss or damage to the Work shall be borne by the Artist until final acceptance, and the Artist shall take such measures as are necessary to protect the Work from loss or damages until final acceptance.

1-7 INDEMNITY

Upon final acceptance of the Work, the Artist shall indemnify and hold the City and its elected or appointed officials, employees, and/or agents harmless from any and all claims or liabilities then existing or arising thereafter from the Artist's negligence or willful misconduct in connection with the Work.

1-8 TITLE, ASSIGNMENT OF ROYALTY RIGHTS, AND WAIVER

(a) Title to the Work shall pass to the City upon final acceptance. The Artist hereby assigns the right to collect any royalty payment provided by Civil Code section 986(a) to the City and to the City's assigns.

(b) Except as expressly provided below, the City shall not intentionally damage, alter, modify, or change the Work without the prior written consent of the Artist.

(c) The Artist acknowledges and agrees that the City may require the Site for purposes other than the display of the Work. For five (5) years after the execution of this Agreement, City agrees that it will notify the Artist of any proposed alteration of the Site that would require the removal or relocation of the Work or affect the intended character and appearance of the Work and will consult with the Artist in the planning and execution of any such removal, relocation, or alteration and will make a reasonable effort to maintain the integrity of the Work.

(d) The Artist acknowledges and agrees that the City retains the right to relocate or remove the Work from public display for any reason, in accordance with Part 3, Section V. "Removal or Relocation of Public Art" in the Art in Public Places Policy & Guidelines Manual. Reasons for removing the Work from public display shall include, but not be limited to: hazards to public health, safety or welfare; unsightly or deteriorated conditions of the Work; or the need to access, repair and maintain public facilities.

(e) Except as provided above, the Artist expressly waives, for himself and his successors in interest, to the greatest extent allowed by law, any rights he or she may have under California Civil Code sections 986, 987, 988 and 989.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2-1 AGREEMENT AMOUNT

(a) The City shall pay the Artist an amount not to exceed X DOLLARS ($X), which will constitute full compensation and payment for all services to be performed under this Agreement including execution, fabrication, artist and/or agent travel, transportation, and installation.

2-2 DISBURSEMENT

(a) Payment shall be made in accordance with the following Disbursement Schedule:

Disbursement	Amount	Action Required Prior to Disbursement
1	$X	Execution of Agreement
2	$X	***Request for Disbursement*** following completion of [MILESTONE], submitted by Artist and reviewed and approved by City. (See Section 2-2 (b))

3	$X	***Request for Disbursement*** following completion of [FINAL MILESTONE], submitted by Artist and reviewed and approved by City. (See Section 2-2 (b)) ***Request for Final Acceptance of Public Art*** submitted by Artist to City. ***Notification of Acceptance of Public Art*** provided to Artist by City. (See Section 1-5)
Total	**$X**	

(b) Prior to the issuance of any disbursement beyond the initial disbursement, the Artist shall submit a ***Request for Disbursement*** to the Planning Division, using the City's form. This request shall provide evidence of the Artist working towards completing the Scope of Work, and shall include a detailed invoice, original receipts, and other documentation as needed.

(c) Payment shall be issued within 30 days of approval of Request for Disbursement by Planning Division.

2-2 ARTIST'S EXPENSES

The Artist shall be the responsible party for all mailing or shipping charges on submissions to the City, and the costs of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

ARTICLE 3: WARRANTIES

3-1 WARRANTIES OF TITLE

The Artist represents and warrants that:

(a) The Work is solely the result of artistic effort of the Artist;

(b) Except as otherwise disclosed in writing to the City, the Work is unique and original and does not infringe upon any copyright;

(c) That the Work, or a duplicate thereof, has not been accepted for sale elsewhere; and

(d) The Work is free and clear of any liens or claims from any source whatsoever.

3-2 WARRANTIES OF QUALITY AND CONDITION

The Artist represents and warrants that:

(a) The execution and fabrication of the Work will be performed in a professional manner (expert, qualified, skilled);

(b) The Work, as fabricated and installed, will be free from defects in material (except such defects as are normally present and unavoidable in natural materials and outlined in Proposal) and workmanship, including any defects or qualities which cause or accelerate deterioration of the Work; and

(c) Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations by the Artist to the City;

(d) The warranties described in this Section 3-2 shall survive for a period of one (1) year after final acceptance of the Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the instruction of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional standards, including for example, cure by means of repair or refabrication of the Work as determined by the City.

3-3 WARRANTIES OF WORK

The Artist represents and warrants that:

(a) The Work will not substantially vary or deviate from the City approved Work without the prior written consent of the City.

(b) It is agreed that the Artist has not intended to include hidden, subliminal or camouflaged messages of any kind or nature. However if due to unforeseen circumstances the City requests changes in the Work for this reason, it will do so at no expense to the Artist. If changes are requested, the Artist can thereafter solely decide whether the Work should continue to be attributed to the Artist. The City will comply with the Artist's decision at no expense to the Artist.

ARTICLE 4: INSURANCE

4-1 GENERAL

The Artist shall at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

a. <u>For any work to be performed on City property:</u>

i. A policy or policies of ***Comprehensive General Liability Insurance***, with minimum limits of $1,000,000 per occurrence against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Artist. The general liability insurance shall contain an ***additional insured endorsement*** naming the City,

including its elected or appointed officials, officers, directors, employees, agents, and volunteers as additional insureds. The insurance documents shall be comprised of and submitted as a certificate of insurance that names the City as the certificate holder and a separate insured endorsement.

b. For any work to be performed within City public right-of-way:

i. A policy or policies of ***Comprehensive General Liability Insurance***, with minimum limits of $1,000,000 per occurrence against any personal injury, death, loss, or damage resulting from the wrongful or negligent acts by the Artist. The general liability insurance shall contain an ***additional insured endorsement*** naming the City, including its elected or appointed officials, officers, directors, employees, agents, and volunteers as additional insureds. The insurance documents shall be comprised of and submitted as a certificate of insurance that names the City as the certificate holder and a separate insured endorsement.

ii. The Artist shall also apply for an receive approval for an ***Encroachment Permit*** from the Public Works Department, which includes the execution of a ***Hold Harmless*** agreement for the duration of the work performed.

c. If Artist uses a vehicle for delivery and installation to City property or within City public right-of-way:

i. A policy or policies of ***Comprehensive Vehicle Liability Insurance*** covering personal injury and property damage, with minimum limits of $1,000,000 combined single limit covering any vehicle utilized by the Artist in performing the work required by this Agreement. The vehicle insurance shall contain an ***additional insured endorsement*** naming the City, including its elected or appointed officials, officers, directors, employees, agents, and volunteers as additional insureds. The insurance documents shall be comprised of and submitted as a certificate of insurance that names the City as the certificate holder and a separate insured endorsement.

d. If Artist has additional workers/subcontractors directly employed on City property or within City public right-of-way:

i. ***Workers' Compensation insurance*** as required by the State of California.

ii. Such workers/subcontractors shall provide Insurance coverage as applicable in paragraphs (a-c).

2. The City's Risk Manager may, in writing, amend and/or waive the insurance provisions set forth in Section 4-1 herein. In such case, the Artist shall comply with the insurance provisions required by the City's Risk Manager.

4. The policy or polices required by this Agreement shall be issued by an insurer admitted in the State of California and with a rating of at least A-;VII in the latest edition of Best's Insurance Guide.

6. At all times during the term of this Agreement, the Artist shall maintain on file with the Development Services Department a certificate or certificates of insurance on the form approved by the City's Risk Manager, showing that the aforesaid policies are in effect in the required amounts. The Artist shall, prior to commencement of work under this Agreement, file with the Development Services Department such certificate or certificates. All of the policies required under this Agreement shall contain an endorsement providing that the policies cannot be canceled or reduced except on thirty days' prior written notice to City, and specifically stating that the coverage contained in the policies affords insurance pursuant to the terms and conditions as set forth in this Agreement.

7. The insurance provided by the Artist shall be primary to and will not seek contribution from any insurance available to the additional insured. The policies of insurance required by this Agreement shall include provisions for waiver of subrogation.

8. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, the Artist shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or the Artist shall procure a bond guaranteeing payment of losses and expenses.

ARTICLE 5: COPYRIGHT

5-1 Copyright in the Work and related design, drawings, sketches, and models will be owned by the Artist until acceptance of the Artist's Work by the City pursuant to Section 1-6 hereof. Notwithstanding the foregoing, the Artist agrees not to make use of such copyright in the Work for any purpose other than the performance by the Artist of the Artist's obligations under this Artwork Agreement, without the written consent of the City. Upon acceptance of the Artist's Work pursuant to Section 1–6 hereof, copyright in the Work will be owned jointly by the City and the Artist and no further use of the copyright will be made by the Artist or the City without the written consent of the other, which consent will not be unreasonably withheld.

5-2 The Artist certifies that the Artwork is a unique work of art especially designed for the City, and shall not duplicate or reproduce the Work nor shall the Artist permit others to do so except with the written permission of the City.

5-3 The City has the right to reproduce and distribute in printed form and on commercial documents and or brochures or any other literature of the City describing or dealing with its real estate holdings, photographs, realistic renderings, videotapes,

or films of the Work. Such reproductions and use of the images of the Work for promotional purposes shall not constitute a breach of copyright and no royalty shall be due and payable by the City to the Artist for such use.

5-4 CREDIT TO THE ARTIST

All reproductions of the Work by the City shall contain a credit to the Artist.

5-5 CREDIT TO THE CITY

The Artist shall use his best effort to give a credit in any public showing under the Artist's control of illustrations of the Work as follows: "An original work owned and commissioned by the City of Pomona, California."

ARTICLE 6: ARTIST'S RIGHTS

6-1 MAINTENANCE

The City shall reasonably protect and maintain the Work against the ravages of time, vandalism, and the elements, in accord with the instructions of the Artist provided under Section 1-5(b).

6-2 ARTIST REPRODUCTION RIGHTS

Pursuant to Article 5, Section 5-1, the City agrees that the Artist shall have the right to reproduce and distribute in printed form and on non-commercial educational materials and brochures advertising or promoting the Artist and the Artist's career, two-dimensional images such as photos, slides or realistic renderings, video tapes, or films of the Work as installed and formally accepted by the City. Such reproductions and use of the images of the Work for promotional and educational purposes shall be deemed to not constitute a breach of copyright in any way and no royalty fee shall be due and payable to the Artist for such use. Such reproduction and images of the Work for publicity, promotion, and educational purposes shall, to the extent reasonably possible and appropriate, give reference to the City of Pomona.

ARTICLE 7: ARTIST AS INDEPENDENT CONTRACTOR

The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or employee of the City. The Artist shall not be supervised by any employee or official of the City nor shall the Artist exercise supervision over any employee or official of the City. The City alerts the Artist to the provisions of the Labor Code §1771, which may require the payment of prevailing wages.

ARTICLE 8: ASSIGNMENT, TRANSFER AND SUBCONTRACTING

Neither the City nor the Artist shall assign or transfer any interest in this Agreement without prior written consent of the other. The Artist may subcontract portions of the

services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design, appearance or visual quality of the Work and shall be carried out under the personal supervision of the Artist, and in accordance with all applicable laws.

ARTICLE 9: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill, in a timely or proper manner, or otherwise violate any of the covenants or agreements material to this Agreement, then the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate, specifying the grounds for termination. The defaulting party shall have ten (10) days after receipt of the notice to cure the default. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other products prepared and submitted as part of the Final Design Plan or paid for through disbursement under this Agreement shall, at the City's option, become City property. This, however, shall not relieve the Artist of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist. In addition to all other remedies, the City may reasonably withhold payments to the Artist until such time as the exact amount of damages due the City from the Artist is determined.

ARTICLE 10: CONTRACT ADMINISTRATOR

The Contract Administrator for this Agreement shall be Anita Gutierrez of the City of Pomona, or his or her designee.

ARTICLE 11: NONDISCRIMINATION

In carrying out the performance of the services designated, the Artist shall not discriminate as to race, religion, sex, age, sexual orientation, national origin, the presence of any physical, mental or sensory handicap, or any other basis prohibited by applicable law.

ARTICLE 12: COMPLIANCE

The Artist shall be required to comply with all federal and state laws and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement, including but not limited to, the Pomona Municipal Code.

ARTICLE 13: ENTIRE AGREEMENT

This writing embodies the entire agreement and understanding between the parties hereto, and there are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

ARTICLE 14: MODIFICATION

No alteration, change, amendment, or modification of the term of this Agreement shall be valid, unless made in writing and signed by both parties hereto and approved by appropriate action of the City.

ARTICLE 15: WAIVER

No waiver of performance by either party shall be construed as or operate as a waiver of any subsequent default of any terms, covenants, or conditions in this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right nor an acceptance of performance.

ARTICLE 16: GOVERNING LAW

This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of California.

ARTICLE 17: HEIRS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the City and of the Artist and of their respective heirs, personal representatives, successors, and permitted assigns.

ARTICLE 18: NOTICES

All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon delivery and receipt thereof, as the case may be, if delivered personally or sent by certified mail, return receipt requested, postage-prepaid as follows:
City:
c/o
Planning Division
City of Pomona
505 S. Garey Avenue
Pomona, CA 91766

Artist:
c/o
[Contact Information]

ARTICLE 19: ATTORNEY'S FEES

Should any action or proceeding be brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

In Witness Whereof, the parties hereto have caused this Agreement to be executed by his respective authorized officers or representatives as of the day and year set forth on page one of this Agreement.

CITY OF POMONA:

_____
James Makshanoff

City Manager

Date: _____

ARTIST:

_____
[Artist]

Date: _____

APPROVED AS TO FORM:

_____
City Attorney