DATE

INSERT ADDRESS

INSERT ADDRESS

INSERT ADDRESS

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

This letter shall serve as an agreement entered into this \_\_\_\_\_ day of \_\_\_\_\_\_, 20\_\_ by and between the City of Santa Monica (“City”), located at 1685 Main Street, Room 310, Santa Monica, CA 90401, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Artist”), located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ for services to be provided as set forth herein:

Project: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Maximum Amount Payable: The maximum amount payable under the terms of this agreement shall not exceed (insert commission amount here)

Term: The term of this agreement shall begin on the date that this agreement is signed by both parties and run to \_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_\_\_.

Insurance: If Artist will utilize a motor vehicle to perform any portion of the Scope of Work (Attachment A) evidence of Automobile Insurance which meets or exceeds the California State minimum standards must be received by the City prior to the signing of this agreement.

It is understood by both parties that this agreement is for the design of a temporary public art project at (insert specific location) in the 3rd Street Promenade, Santa Monica, CA. The artwork should be a low cost, high impact, temporary art intervention that sparks imagination, interaction and engagement that is intended for all audiences. As a temporary artwork, the lifespan of this project is 3 to 6 months.

Upon final acceptance of Design and successful completion of this agreement, the Artist and the City intend to enter into a follow-on agreement in the amount of (insert commission amount here) for the fabrication and installation and de-installation of the Artwork. The City reserves the right to forgo a follow-on agreement should the project be cancelled or placed on hold or if for any reason the Artist’s Design is not approved.

The fee for this agreement includes all expenses associated with completing the design, including time, materials, transportation, travel, and structural engineering (if required or necessary), and all other related expenses.

It is further agreed that:

1. All information supplied to Artist will be kept in confidence, to the extent allowed by the California Public Records Act (Government Code Section 6250, et. seg.).

2. The Cultural Affairs Manager or the assigned Cultural Affairs Supervisor will serve as primary contact for the City and the Artist will coordinate directly with the hired Consultant for this project on the deliverable scope and schedule.

3. Artist will invoice in conjunction with the following deliverables as detailed in Attachment A, Scope of Work:

* Insert bulleted list of deliverables and payment schedule here

Invoices should be directed to ATTN: (insert contact here). The City shall not pay any interest or finance charges on any outstanding balance.

4. The Artist agrees to be bound by the terms and conditions of this Agreement.

5. The parties agree that Attachment A (Scope of Work), Attachment B (Standard Terms and Conditions), Attachment C (Addition to Standard Terms and Conditions), and Attachment D (Schedule) are attached to and are a part of this agreement.

6. In the event of any conflict or inconsistency between this letter and the attachments, or between the attachments, such conflict or inconsistency shall be resolved by giving precedence first to this letter and then to the attachments in the following order: Attachment A, Attachment B, Attachment C, Attachment D.

This agreement may be terminated at any time for any reason, or for no stated reason, by either the City or the Artist upon thirty (30) calendar day’s written notice sent to the other party, care of the address listed above. In the event of termination, the Artist shall be paid for all work performed as of the effective date of termination.

CITY OF SANTA MONICA

ATTEST: a municipal corporation

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

DENISE ANDERSON-WARREN RICK COLE

City Clerk City Manager

APPROVED AS TO FORM:

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

LANE DILG

City Attorney

ARTIST

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

Insert Name

Title

**ATTACHMENT A**

**SCOPE OF WORK**

**General Requirements**

1. Artist is responsible for developing a design for an original and innovative temporary Artwork that will fulfill the goals of the Project as articulated by the Cultural Affairs Supervisor and other stakeholders.

2. Artist is responsible for developing a design for a temporary Artwork that can be constructed within the allotted budget of (insert $$$ here) and indicated timeline.

3. Artist agrees to design a temporary Artwork that will not require minimal maintenance during its lifespan of 2 to 3 months. Upon de-installation of the project, the site must be returned to a condition equal to or better than its pre-installation condition to the satisfaction of the City.

4. Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies and in Artist’s work that result from one design review, and other reasonable requests changes related to the design, form and content of artwork by the Cultural Affairs Supervisor and other stakeholders.

5. Artist agrees to understand and adhere to safety requirements of the City in the design of the Artwork. The Cultural Affairs Supervisor will inform the artist about safety issues and expectations via Consultant.

6. Artist will adhere to the schedule provided by the Cultural Affairs Supervisor. Schedules are subject to change. The Cultural Affairs Supervisor will notify the Artist of schedule changes. Payment amount to the Artist shall not increase if schedule changes.

7. Artist acknowledges that an essential element of the Artist’s services is coordination with the Cultural Affairs Supervisor and other stakeholders as assigned.

8. All communication by the Artist with City departmental representatives, community members, and elected officials and their staffs must be coordinated through Laura Becker, Cultural Affairs Supervisor, 310-458-8350 or laura.becker@smgov.net.

**Phase 1: Submittal of Revised Proposal, Project Budget and Timeline**

**Tasks:**

1. Artist is responsible for developing a design for an original and innovative temporary Artwork that will fulfill the goals of the Project as articulated by the Consultant and/or Cultural Affairs Supervisor and other stakeholders. A successful artwork will be innovative in its use of materials, be highly visible and scale-appropriate to the site, challenge the viewer to navigate the site in new and interesting ways and will require minimal maintenance during a 2- 3 month installation period.

**Meetings:**

1. Studio visit with Cultural Affairs Supervisor and DTSM Staff Representative when the artwork is at 50-75% completion in-studio and present installation logistics plan to Consultant and/or Cultural Affairs Supervisor

**Deliverables:**

**Due by \_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_**

Submit artwork design files electronically to the Consultant and Cultural Affairs Supervisor. These materials are and will remain the property of the City. They will be kept in the Cultural Affairs Division Office for use by City and/or DTSM Staff.

Submission will include:

a. A one-page narrative which addresses:

i. Project narrative

ii. Why the design is sensitive to the immediate and surrounding environment

iii. Location, materials, and approximate size of all Artwork elements;

iv. Fabrication and installation schedule;

v. Intended duration of display.

b. A final project budget that includes artist fees, fabrication and installation, general liability insurance, transportation, 10% contingency and estimates of any other costs associated with completing the project.

c. At least two colored drawings illustrating what the Artwork will look like (with approximate dimensions) at the desired location in the park, in context and to scale.

d. The Artist is strongly urged to include illustrative photos, or video to help convey the idea, background, tone, or scale of the proposed artwork.

Artist may submit their invoice upon written notification of approval for this scope of work.

**ATTACHMENT B**

**ARTIST PROPOSAL**

**ATTACHMENT C**

**STANDARD TERMS AND CONDITIONS**

**CITY OF SANTA MONICA**

**CONSULTANT SERVICES AGREEMENT**

**ATTACHMENT D**

**ADDITION TO STANDARD TERMS AND CONDITIONS**

**APPROVAL AND OWNERSHIP OF DELIVERABLES**

All tasks, work product, deliverables, services, or other work performed by ARTIST are subject to approval by the City of Santa Monica (“City”). Approval of deliverable(s) will not be unreasonably withheld by City. Rejection of deliverable(s) shall be on clearly stated grounds with reference to objective criteria and the established Scope of Work. ARTIST understands and acknowledges that the City shall own all work product and deliverables and shall have the right to use and exhibit such work product and deliverables for public display and for educational or other non-commercial purposes.

**INTELLECTUAL PROPERTY RIGHTS**

1. ARTIST shall retain all rights to the Design and to the subsequent Artwork pursuant to the Copyright Act of 1976 (“Copyright Act”) (17 U.S.C. sections 101, et seq.), except, however, that ARTIST hereby waives any rights under the Copyright Act which are expressly waived and/or granted to the City in this agreement.

2. The ARTIST may, at ARTIST’s sole expense, register with the United States Register of Copyrights a copyright of the Design in the ARTIST’s name. If the ARTIST opts to copyright the Design, ARTIST shall provide City with a copy of the application for registration, the registration number and the effective date of the registration, and agrees to enforce and defend any attempt(s) to infringe upon ARTIST’s copyright. ARTIST expressly assigns to City ARTIST’s right to enforce and defend the copyright in the event he or she does not act within a reasonable time after written notice from City to do so. ARTIST further hereby grants to City the right to reproduce and retain copies of the Design plans and drawings produced and used by ARTIST for the purposes of (1) fulfilling City’s responsibilities as owner of the Design; and (2) public exhibition related to the display of the Design.

3. Upon completion of the Artwork as contemplated in the Design, ARTIST shall, at ARTIST’s sole expense, register with the United States Register of Copyrights a copyright of the Artwork in ARTIST’s name, and shall provide City with a copy of the application for registration, the registration number and the effective date of the registration. ARTIST agrees to enforce and defend any attempt(s) to infringe upon ARTIST’s copyright of the Artwork. ARTIST expressly assigns to City ARTIST’s right to enforce and defend the copyright of the Artwork in the event he or she does not act within a reasonable time after written notice from City to do so.

4. ARTIST hereby grants to City an irrevocable and exclusive worldwide license to reproduce, distribute, and/or display two- or three-dimensional reproductions of the Design and/or Artwork for any non-commercial purpose, including, without limitation, advertising, brochures, posting on a City web page, media publicity, and catalogues or similar publications. All such reproductions shall bear a copyright notice in ARTIST’s name. If City wishes to make reproductions of the Design or Artwork for commercial purposes, including, but not limited to T-shirts, postcards or posters, the City and ARTIST shall execute a separate agreement to address the terms of the license granted by the ARTIST and the royalty the ARTIST shall receive.

5. The Design and/or Artwork will be unique and ARTIST therefore waives the right to make or to authorize others to make two- or three-dimensional reproductions of the Design or Artwork, or to make or authorize the making of derivative works based on the Design or Artwork, except with prior written permission by City. ARTIST agrees that in any public showing under ARTIST’s control of reproductions and/or derivative works of the Design and Artwork, the ARTIST shall provide public written acknowledgement that the City of Santa Monica Cultural Affairs Division.

Commission commissioned the Design and Artwork.

6. City agrees that, unless ARTIST requests otherwise in writing, City shall give ARTIST public written authorship credit for the Design and Artwork, and any authorized reproductions thereof.

**MORAL RIGHTS**

1. With respect to the City, its agents and contractors, ARTIST waives any rights that may be waived under the Visual Artists’ Rights Act (“VARA”) (17 U.S.C. sections 106, 106A, 113), as amended, and any successor statutes, and the California Artwork Preservation Act (“CAPA”) (California Civil Code sections 980 through 989, inclusive), as amended, and any successor statutes, in favor of the express contractual provisions set forth herein and as further set forth in any follow-on fabrication agreement between City and ARTIST. While City and ARTIST recognize the importance of ARTIST’s moral rights of attribution and integrity, as identified in VARA and CAPA, ARTIST and City hereby agree to advance those statutory goals by private contract.

2. ARTIST shall have the following moral rights (“Moral Rights”): (a) the right to claim authorship of the Artwork; (b) the right to prevent the use of his or her name as the author of the Artwork in the event of any physical defacement, mutilation, alteration, or destruction of the Artwork; and (c) the right, subject to the conditions and procedures set forth herein, to prevent any intentional defacement, mutilation, alteration or destruction of the Artwork.

3. Procedure for Protecting Moral Rights.

a. City and its agents shall not intentionally commit, or authorize the intentional commission of, any physical defacement, mutilation, alteration, or destruction of the Artwork, except as expressly authorized herein. Nevertheless, ARTIST hereby acknowledges that the Artwork may be installed in or made part of a building or structure and that the installation of the Artwork may subject the Artwork to destruction, distortion, mutilation, or other modification, by reason of its removal.

b. City shall provide ARTIST (or, if ARTIST is deceased, his or her heir, beneficiary, devisee, or personal representative) not less than ninety (90) days advance notice of any intended action by the City that will result in: (i) the physical defacement, mutilation, alteration, or destruction of the Artwork; (ii) the removal of the Artwork if the Artwork has been permanently affixed to or installed upon a building or other structure; and/or (iii) if the Artwork has been permanently affixed to or installed upon a building or other structure, the sale, lease, or other disposition of the building or structure to any person who does not agree to the terms of this Attachment.

c. Upon receipt of notice from the City pursuant to subsection (b) above, ARTIST (or, if ARTIST is deceased, his or her heir, beneficiary, devisee, or personal representative) shall have the right, at his or her sole expense, to remove the Artwork within the 90-day notice period provided by City. The City may, but is not obligated to, provide an additional reasonable period of time in addition to the 90-day notice period to allow the removal of the Artwork. If the Artwork is removed by the ARTIST at his or her sole expense, or, if ARTIST is deceased, by his or her heir, beneficiary, devisee, or personal representative, at such person’s sole expense, title to the Artwork shall pass to the ARTIST or his or her heir, beneficiary, devisee, or personal representative who paid for the removal of the Artwork.

d. If ARTIST (or, if ARTIST is deceased, his or her heir, beneficiary, devisee, or personal representative), declines, fails or refuses to remove the Artwork at his or her sole expense within the 90-day notice period provided by City, City may, without liability of any kind to ARTIST (or, if ARTIST is deceased, his or her heir, beneficiary, devisee, or personal representative), proceed with the proposed action that may affect the Artwork.

e. In the event City determines that the Artwork presents an imminent hazard to the public, City may remove the Artwork without prior notice or consultation with ARTIST (or, if ARTIST is deceased, his or her heir, beneficiary, devisee, or personal representative). City shall make a reasonable and good faith effort to prevent the destruction and/or minimize the mutilation, defacement, or alteration of the Artwork. City shall make a reasonable and good faith effort to notify ARTIST (or, if ARTIST is deceased, his or her heir, beneficiary, devisee, or personal representative) within thirty (30) days of the City’s removal of the Artwork pursuant to this subsection in order to discuss options for the final disposition, reinstallation, maintenance or deaccession of the Artwork.

f. If ARTIST is deceased and the City has not been provided notice of the name(s) and contact information for ARTIST’s heirs, beneficiaries, devisees, or personal representatives, if any, City shall provide any notice specified herein by registered mail at the ARTIST’s last known physical address.

g. For the purposes of this section, City will be presumed to have made a reasonable and good faith effort to notify ARTIST (or, if ARTIST is deceased, his or her heir, beneficiary, devisee, or personal representative) if such notice is made by registered mail to the last known address of the ARTIST (or, if ARTIST is deceased, his or her heir, beneficiary, devisee, or personal representative).

4. ARTIST’s sole remedy against City, its employees, contractors, and agents, with respect to ARTIST’s Moral Rights, shall be an action for injunctive relief. ARTIST shall not be entitled to recover damages or attorneys’ fees from City, its employees, contractors, and agents, in connection with any such action.

5. The rights and duties set forth herein with respect to the Moral Rights shall expire upon the 50th anniversary of the death of ARTIST, and shall exist in addition to any other rights and duties which may now or in the future be applicable. Except as provided in this agreement, the Moral Rights may not be waived except by an instrument in writing expressly so providing which is signed by the ARTIST (or, if ARTIST is deceased, his or her heir, beneficiary, devisee, or personal representative).

**ATTACHMENT D**

**PRELIMINARY SCHEDULE**

This attachment establishes a preliminary schedule for contract implementation. A final project schedule shall be determined upon execution of the contract and will be mutually agreed upon by both Parties. Time is of the essence and Artist shall complete the services described in this Agreement in accordance with such schedule.

Phase 1: Due by \_\_\_\_\_\_, \_\_\_\_\_\_\_\_