



CITY OF SOUTH SAN FRANCISCO PUBLIC ART AGREEMENT
FOR XXXXX
WITH XXXXX

THIS AGREEMENT is made this ____ day of, 2025, by and between the City of South San Francisco, California, hereinafter called “City,” and XXXXX, hereinafter called “Artist” (hereinafter collectively called “Parties”).

WHEREAS, the City of South San Francisco solicited proposals for a Work of public art (hereinafter called “Work”) to be located at XXXX in South San Francisco (hereinafter called “Site”); and

WHEREAS, the Artist submitted a proposal for the Work pursuant to the City’s request for proposals; and

WHEREAS, the Artist was selected by the City to design, execute, fabricate and install the Work at the Site; and

WHEREAS, the City and the Artist desire to set forth the terms upon which the Artist will produce and install the Work for the City.

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

ARTICLE I. SCOPE OF SERVICES

General

The Artist shall design, execute, fabricate, install and document the Work as described in Exhibit A attached hereto and incorporated herein by reference. The specifications of the Work are as follows:

Title: XXXXXX

Dimensions: XXXXX

Medium: XXXXX

The permanent location for the Work at the Site shall be as described on the map attached hereto as Exhibit B and incorporated herein by reference. The Artist shall design and construct the sculpture so that as installed it will be structurally safe and sound in compliance with all current State of California Building and Seismic Standards in accordance with the Uniform Building Code.

Subject to review and acceptance by the City, the Artist shall determine the artistic expression, scope, design, color, size, context and texture of the Work.

The Artist shall pay for actual, reasonable and necessary costs for transportation, meals and lodging for the Artist representative while traveling to and from the Site.

EXECUTION OF THE WORK

The Artist shall complete the installation and fabrication of the Work in conformity with the specifications set forth in Article I, Section A, subsection 1 of this agreement and Exhibit A herein.



Prior to implementation of any changes in the Work, the Artist shall present to the City in writing, a detailed description of such proposed changes. The City shall have the right in its sole absolute discretion to approve or disapprove of any changes suggested by the Artist. The Artist may implement changes only with the prior written approval of the City.

The City shall have the right to review the progress of the Work at reasonable times, and with advance notice, during the fabrication thereof. The Artist shall submit such reports regarding the progress of the Work as the City may request.

In the design, execution, fabrication, installation and documentation of the Work, the Artist shall comply with all applicable federal, state and local laws, rules and regulations, including those pertaining to Worker's Compensation insurance and employee liability insurance.

The Artist shall complete the fabrication and installation of the Work by within seven months of the date of the deposit hereinafter described (hereinafter called 'Installation Date').

CITY OBLIGATIONS

The City shall perform all obligations in strict compliance with all terms and conditions in this Agreement.

The City shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is reasonably required by the Artist in order to design, fabricate, and install the Work.

The City shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations.

The City shall make timely efforts to prepare the Site for installation of the Work. The City shall take all reasonable measures to provide notice to the Artist of delays. In the event that the City fails to prepare the Site in accordance with this Agreement, or Artist is refused access to the Site as reasonably required, the Artist shall be excused from any delay consequences, and the City shall be responsible for paying for reasonable storage costs.

The City shall be responsible for any landscaping, as necessary and agreed to by the City, to integrate the Artwork into the Site before and after its installation, in accordance with the specifications detailed in the approved design concept in Section I(A) of this Agreement.

DELIVERY AND INSTALLATION

The Artist shall notify the City in writing when fabrication of the Work is completed, and the Artist is ready to deliver the Work and install it at the Site.

The Artist shall work with the City in the development of the plan for the site.

The Artist shall prepare the foundation design and engineering for review and approval by the City at no additional cost to the City. The City shall be responsible for all expenses, materials, labor and equipment to prepare the Site foundation footing for the timely installation of the Work. The City shall waive all permit fees, license fees, and sales taxes. The Artist shall deliver and supervise the installation of the completed Work at the Site. Cost of installation shall be paid for by the City which shall include the use of a boom truck and related equipment. Cost of delivery shall be paid for by the Artist.



The Artist shall coordinate with the City to prepare the Site for installation. The City shall use its best efforts to arrange to temporarily modify and/or barricade the Site so as to effectively secure the Site and protect the public during installation of the Work.

POST-INSTALLATION

The Artist shall furnish the City with a full written narrative description of the Work.

The Artist shall provide to the City, written instructions for appropriate maintenance and preservation of the Work, including moving and reinstallation of the Work.

The City shall provide and install an identification plaque, which shall include the following information:

Title:
Artist:
Material:
Date:
Copyright ©

FINAL ACCEPTANCE

The Artist shall notify the City in writing when all services required by the Artist under the Agreement (including those described in Article I, Section D) have been completed. The Artist shall, prior to final acceptance, provide the City with such lien and/or claim releases with respect to the Work as the City may require. The Artist releases claim to the Work upon final acceptance.

The City shall notify the Artist in writing of its final acceptance of the Work.

Final acceptance shall be determined by the City in its sole and absolute discretion. Such acceptance shall constitute the City's acknowledgement that the Work has been completed and installed according to the terms of this Agreement.

Title of ownership of the Work shall pass to the City upon final acceptance.

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 and the materials relating hereto from loss or damage and to insure the Work and the materials relating thereto until final acceptance.

The Artist shall maintain appropriate insurance on the Work, insuring against potential risk of loss, including but not limited to design, fabrication, transportation and installation, in an amount acceptable and approved by the City's Risk Manager. The City shall be shown as an additional insured for general liability.

ARTICLE II. COMPENSATION

PAYMENT SCHEDULE

The City shall pay the Artist a fixed fee of \$XXXX which shall constitute full compensation for all services and



materials to be performed and furnished by the Artist under this Agreement.

The \$XXXX fee shall be paid in the following phases with each installment except the Phase I installment to represent full and final payment for all services and materials provided for that phase:

Phase I – Design (Materials, Design Fee, Licencing and Permits, Professional Fees, Design, Insurance, Subcontractors, 1/3 Artist Fee) \$XXXXX

Phase 2 – Fabrication (Fabrication, 1/3 Artist Fee) \$XXXXX

Phase 3 – Installation (Transportation, Overhead Expenses, 1/3 Artist's Fee) \$XXXXX

For all other expenses for which the City is obligated, payment shall be made 30 days after receipt of written statement.

FEE STATEMENTS

In order to receive the payments described in clauses b. and c. above, the Artist shall submit an invoice to the City.

ARTICLE III. TIME OF PERFORMANCE

CITY DELAY

If the Artist is delayed from installing the Work by the Installation Date as a result of action taken by the City, the City shall reimburse the Artist for actual transportation and storage costs incurred for the period between the Installation date and date on which the Site is available to permit installation of the work, if and only if, the transportation and storage cost are incurred as a direct result of the delay by the City. The City shall not be responsible for any transportation and storage costs that the Artist would have been required to pay in the absence of delay caused by the City.

FORCE MAJEURE

Except for the City's obligations to make payments following the Payment Schedule neither party shall be considered in default in the performance of its obligations hereunder if such performance is prevented or delayed because of war, hostilities, revolution, civil commotion, strike, lock-out, epidemic, pandemic, accident, fire, wind, catastrophic event or flood or because of any law, order, proclamation, regulation or ordinance of any government or of any subdivision thereof or because of any act of God or any other cause beyond the reasonable control of the party affected ("Force Majeure Event"); provided that the affected party shall have used its best efforts to avoid such condition and, provided further, that notice of such Force Majeure Event is given by the affected party to the other within five (5) days of said Force Majeure Event. Should one or both of the parties be prevented from fulfilling their contractual obligations because of a Force Majeure Event lasting continuously for a period of at least six (6) months, the parties shall consult with each other regarding the future implementation of this Agreement. The parties agree to use their best efforts to minimize any delays and/or losses, if any, resulting from such Force Majeure Event.

ASSIGNMENT

In the event of the serious illness or death of the Artist during the construction and/or the installation of the Work, his heirs, family and estate will in no way be responsible for the completion of the unfinished Work nor shall they be entitled to the compensation for uncompleted work due under this Agreement.



ARTICLE IV. WARRANTIES

WARRANTIES OF TITLE

The Artist represents and warrants that:

the Work is solely the result of the artistic and creative efforts of the Artist;
except as otherwise disclosed in writing to the City, the Work is unique and original and does not infringe upon any Copyright; and
the Work is free and clear of all liens from any source whatsoever.

The warranties described in this Section A shall survive for so long as the City or any successor of City owns the Work.

WARRANTIES OF QUALITY AND CONDITION

The Artist represents and warrants that:

The Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects of "inherent vice" or qualities which may cause or accelerate deterioration of the Work; and
Reasonable maintenance of the Work will not require procedures in excess of those described in Article I, Section D, subsection 2.

The warranties described in this Section 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 of these warranties with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranties, which is curable and which cure is consistent with professional conservation standard (including, for example, cure by means of repair or re-fabrication of the Work).

The Artist shall not be responsible for any damage inflicted on the Work by third parties or outside forces, whether man-made or from natural causes, which exceed those that the design of the Work should reasonably tolerate.

After final acceptance of the Work by the City, the City shall hold the Artist harmless from any and all liability or personal injury to the public, except to the extent covered by the warranties of Article IV, Section B, subsection 1.

ARTICLE V. OWNERSHIP OF WORK AND COPYRIGHT

GENERAL

The Artist retains Copyright in and to the work under the Copyright Act of 1976, 17 U.S.C., Section 101, et seq. The Artist reserves the right to produce similar Works at any size. If the City should desire to place the Work in a location that is not shown on Exhibit B, the City shall first notify the Artist consistent with Section D herein as to the new location. If the Artist objects to the new location, the only remedy available to the Artist is to request in writing that the City remove the identification plaque referred to in Article I, Section D, subsection 3 herein, and that the City not promote the Work as that of the Artist. Provided however, this provision in no way prohibits the City from truthfully responding to inquiries, oral and written, as to the name of the Artist. The Artist shall not unreasonably object to a change of location or alteration of the site. In the event of such a move, the City will preserve the Work as delivered by the Artist, allowing changes to the base as required by the new site, but no changes to the Work itself. The City agrees to consult with Artist in the event of such a move.



IDENTITY OF ARTIST

The Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, and catalogues or other publications, provided that these rights are exercised in a tasteful and professional manner.

All two-dimensional reproductions of the Work by the City shall contain a credit to the Artist substantially in the following form:

XXXXX

NOTICES

All notices required herein shall be in writing and served upon the parties as follows:

Artist

XXXXX

XXXXX

XXXXX, XX XXXXX

City

City Clerk

South San Francisco 400 Grand Avenue

South San Francisco, CA 94080

All notices required herein shall be deemed served when mailed by First Class Mail, Certified Mail, postage prepaid, to each party's last known mailing address. It is the responsibility of each party to inform the other of a change in address. If notice cannot be served due to a change in address, which has not been served upon the other party, such party's failure to notify shall be deemed a waiver of notice.

ARTICLE VI. SUBSEQUENT EVENTS

MAINTENANCE

The City and the Artist recognize that maintenance of the Work on a regular basis is essential to the integrity of the Work. Therefore, the City shall assure regular maintenance according to the instructions supplied by the Artist as set forth herein under Article I, Section D, subsection 2, and may take action reasonably designed to protect the Work against vandalism.

REPAIRS AND RESTORATION

After final acceptance of the Work, the Artist may inspect the Work at his own expense and shall notify the City in writing as to the necessity of any repairs. The City may in its discretion consult with the Artist and make the noted repairs. All such consultations shall be without additional cost to the City. Beyond reasonable consultation to determine a course of corrective action, any action taken by the Artist at the request of the City will be subject to a cost to be decided in a new agreement between the parties.

ALTERATION OF THE WORK



The City will not consent to the intentional alteration, modifications or change to the Work. The City shall retain the right to sell or donate the Work to a third party.

ALTERATION OF THE SITE

The City shall notify the Artist of any proposed significant alterations of the Site. The Artist may at his sole expense request copies of plans detailing proposed alterations to the Site. If such alterations cannot be undertaken to the reasonable satisfaction of the Artist, he may request the public notice referred to in Article I, Section D, subsection 3, be removed and otherwise proceed in accordance with Article V, Section A.

WAIVER OF RIGHTS

With respect to the Work, Artist waives any and all claims, arising at any time against the City, its elected and appointed officials, officers, employees, agents, representatives, and Caltrans, that may be grounded in any federal law, including, without limitation, the Visual Artists Rights Act (17 U.S.C. §106A *et seq.*), California law, including, without limitation, the California Art Preservation Act (Cal. Civil Code §987 *et seq.*), or local law that may relate to the moral rights of the Artist or protection of the integrity of the Artwork.

ARTICLE VII. INDEPENDENT CONTRACTOR

The Artist performs this Agreement as an independent contractor and not as an agent of an employee of the City. The Artist shall maintain control; furnish all supervision, labor, materials, equipment, supplies, other incidentals, as well as transportation, shipping and installation of the Work.

ARTICLE VIII. ASSIGNMENT

The work and services required of the Artist under this Agreement are personal and shall not be assigned, sublet or transferred. However, the Artist shall be allowed to employ qualified personnel who shall work under the Artist's supervision.

ARTICLE IX. INDEMNIFICATION

The Artist shall defend, release, indemnify and save and hold harmless the City against any and all damages to property or injuries to or death of any person or persons, and shall defend, release, indemnify and hold harmless the City from any and all claims, demands, suits, liabilities, actions, causes of actions, or legal or equitable proceedings of any kind or nature, including reasonable attorney's fees incurred by legal counsel of the City's choice, or by anyone whomsoever, in any way resulting from or arising out of the Artist's activities in connection with this Agreement, including acts of omissions of the Artist or persons acting under the Artist's control.

The City shall defend, release, indemnify and save and hold harmless the Artist against any and all damages to property or injuries to or death of any person or persons, and shall defend, release, indemnify and hold harmless the Artist from any and all claims, demands, suits, liabilities, actions, causes of actions, or legal or equitable proceedings of any kind or nature, including reasonable attorney's fees incurred by legal counsel of the Artist's choice, or by anyone whomsoever, in any way resulting from or arising out of the City's activities in connection with this Agreement, including acts or omissions of the City or persons acting under the City's control.

ARTICLE X. INSURANCE



Prior to beginning the Work and continuing throughout the term of this Agreement, Artist (and any subcontractors) shall, at Artist's (or subcontractor's) sole cost and expense, furnish the City with certificates of insurance evidencing that Artist has obtained and maintains insurance in the following amounts:

Workers' Compensation that satisfies the minimum statutory limits.

Commercial General Liability and Property Damage Insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, TWO MILLION DOLLARS (\$2,000,000) annual aggregate, for bodily injury, property damage, products, completed operations and contractual liability coverage. The policy shall also include coverage for liability arising out of the use and operation of any City- owned or City- furnished equipment used or operated by the Consultant, its personnel, agents or subcontractors.

Comprehensive automobile insurance in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence for bodily injury and property damage including coverage for owned and non-owned vehicles.

All insurance policies shall be written on an occurrence basis and shall name the City Indemnitees as additional insureds with any City insurance shall be secondary and in excess to Artist's insurance. If the Artist's insurance policy includes a self-insured retention that must be paid by a named insured as a precondition of the insurer's liability, or which has the effect of providing that payments of the self-insured retention by others, including additional insureds or insurers do not serve to satisfy the self-insured retention, such provisions must be modified by special endorsement so as to not apply to the additional insured coverage required by this agreement so as to not prevent any of the parties to this agreement from satisfying or paying the self-insured retention required to be paid as a precondition to the insurer's liability. Additionally, the certificates of insurance must note whether the policy does or does not include any self-insured retention and also must disclose the deductible. The certificates shall contain a statement of obligation on the part of the carrier to notify City of any material change, cancellation, termination or non-renewal of the coverage at least thirty (30) days in advance of the effective date of any such material change, cancellation, termination or non-renewal. The City's Risk Manager may waive or modify any of the insurance requirements of this section.

ARTICLE XI. TERMINATION & MEDIATION

TERMINATION

If either the Artist or the City shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, 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 and specifying the grounds for termination. The defaulting party shall have thirty days (30) after receipt of the notice to cure the default. If the default is not cured within such time period, this Agreement shall terminate.

In the event of a default by the City, the City shall promptly compensate the Artist pursuant to Article II for all services performed by the Artist prior to termination, and all finished and unfinished drawings, sketches, photographs and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Work shall pass to the City.

In the event of a default by the Artist, the Artist shall forfeit the right to any and all remaining payments due under this Agreement for which Work has not been completed as well as any and all copyrights reserved herein and any and all limited edition rights as defined herein.



MEDIATION

If, during the creation of the Work, its installation and subsequent existence, any disputes should arise between the Artist and the City, the parties hereto will mediate their disagreements and make every effort to affect a mutually satisfactory resolution of the disagreements including the appointment of an independent mediator reasonably acceptable to both parties. If unable to agree, a mediator shall be appointed by the court. Costs will be equally divided.

ARTICLE XII. MODIFICATION

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by the parties hereto.

ARTICLE XIII. CONFLICT OF LAW

Any provision of this Agreement, which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States or the State of California shall be considered null and void. The valid provisions of this Agreement shall be severed from the invalid provisions and remain in effect to the extent possible.

ARTICLE XIV. GENERAL PROVISIONS

GOVERNING LAW; VENUE

California law shall govern this Agreement. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in the County of San Mateo, California. The jurisdiction for any litigation arising from this Agreement shall be in the state of California, and shall be venued in the County of San Mateo.

ENTIRE AGREEMENT

This Agreement constitutes the entire understanding and agreement of the Parties relating to the Work and the rights and obligations of the Parties arising under this Agreement, and supersedes any prior written or oral communication between the Parties relating to the Work. This Agreement may be executed by the Parties in counterparts, which together shall be considered one document, and may be executed with electronic signatures.

ARTICLE XV. EFFECTIVE DATE

The effective date of this Agreement shall be the date of approval by all parties hereto.

ARTICLE XVI. COUNTERPARTS FOR SIGNATURE



This contract may be executed in duplicate counterparts, each of which shall be deemed an original.

CITY OF SOUTH SAN FRANCISCO
A Municipal Corporation

ARTIST

By: _____
City Manager

By: _____
[Name], Authorized Rep

ATTESTED:

City Clerk

Approved as to Form:

City Attorney

3791030.1