



CALL FOR ARTISTS

Public Art—Evelyn Park

Applications will be accepted from:

12:00 noon (PST), Monday, August 21, 2023
through
12:00 noon (PST), Friday, September 8, 2023

Applications will not be accepted after 12:00 noon (PST), Friday, September 8, 2023, and only the first 100 applications will be accepted (whichever comes first).

Summary

The City of Mountain View's (City) Two Percent for Art Program requires that 2% of all major City capital improvement projects over \$1 million be spent on public art related to the project. The City of Mountain View Visual Arts Committee (VAC) seeks to commission an artist, or an artist team, to create the design and commission for public artwork for a new park. The proposed 0.68-acre park site located on Evelyn Avenue, near the border of Mountain View and Sunnyvale, was dedicated to the City for park use by the 525 East Evelyn Avenue development project. On May 9, 2023, the City Council approved a Conceptual Plan and selected the park name "Evelyn Park."

The VAC seeks to commission an artist, or team of artists, to design and execute an original work(s) of art for Evelyn Park.

Applications must be submitted online on www.callforentry.org (CaFÉ). Artists should only submit applications directly through the [callforentry.org](http://www.callforentry.org) website; no other form of application will be accepted.

City of Mountain View Overview

Mountain View is in the heart of Silicon Valley and at the center of the technology industry, covering 12 square miles, and is home to almost 83,800 residents, many nationally and internationally known corporations, and a thriving small business base. Located 10 miles north of San Jose and 35 miles south of San Francisco, the central location provides easy access to the entire San Francisco Bay Area and Northern California cities. Mountain View prides itself on

having attractive and well-built residential communities served by neighborhood parks and playgrounds, recreational facilities, quality education, and convenient shopping.

Over the years, the City has instituted a public art program and built a collection of public art using public/private partnership, community involvement, and some public funds. A major component of this program is a City policy known as the Two Percent for Art Program, which requires that 2% of all major City capital improvement projects over \$1 million be spent on public art related to the project. This program is administered by the VAC, a seven-person, City Council-appointed advisory committee that will recommend public art to the City Council, whose decision is final.

Site Location



Figure 1: Overview of Park and Housing Development

Public Art Project Budget

The total public art project budget is \$30,000. The VAC is open to selecting multiple art installations and/or multiple artists. For example, the VAC may select two art installations from one artist and one art installation from another artist.

The project budget is all-inclusive of project costs, including artist's fees and expenses, taxes, materials, permit fees, travel, shipping and crating, insurance fees, permitting, site preparation, and fabrication/installation or execution of the artwork. The VAC is open to multiple artists and/or locations. The total budget for all installations will not exceed \$30,000.

Estimated Schedule (dates subject to change)

Item	Due Date
Entry Deadline	September 8, 2023
VAC Review	September 22, 2023
VAC Selects Artist (October Meeting)	October 11, 2023
City Council Review and Approval	December 2023
Construction Bid in Spring 2024 and Open Fall 2024	Spring 2024
Park Grand Opening	Fall 2024

Artist Eligibility

The call is open to all professional artists/artist teams over the age of 18 residing in one of the following 11 San Francisco Bay Area counties: Alameda, Contra Costa, Marin, Napa, San Benito, San Francisco, San Mateo, Santa Clara, Santa Cruz, Solano, and Sonoma.

Entries not meeting eligibility requirements will be withdrawn from consideration. Artists must demonstrate that they have successfully completed similar works in the past when submitting their qualifications.

Conceptual Plan and Potential Artwork Locations

The Conceptual Plan includes the following:

- 1. Lawn
- 2. Pavers/Plaza
- 3. Specimen Oak Tree
- 4. Concrete Pathway
- 5. Log Piling Climbing Structure
- 6. Raised Hut Play Structure
- 7. Log Stepper
- 8. Picnic Tables and Benches
- 9. Ex. Pedestrian Walkway
- 10. Ex. 20' wide EVA Road



Figure 2: Approved Conceptual Plan



Figure 3: Potential Art Location

The identified eight locations for art provide for the potential to have art integrated into the play area, allows for art to be stand-alone within the lawn, and/or art incorporated into fencing. The Parks and Recreation Commission has expressed an interest in having interactive art be integrated into the park. Please state clearly in your proposal the intended art placement and form.

Selection Process

The VAC will review the submitted applications and select the semifinalists. The VAC will evaluate applications on the following criteria:

- Originality of artistic style (past work);
- Type of artwork proposed;
- Ability of the artwork to withstand outdoor conditions;
- Maintenance requirements;
- Artist's experience with public art commissions and working within the public process; and
- Artist's experience with art projects of a similar size and scope.

The final design proposals will be presented to the VAC for review. The VAC will rank the design proposals, and a recommendation will be made for consideration by the City Council for final selection of the public art design/artist.

The City Council may require additional drawings or information for their respective review. The VAC is willing to work with an artist or artists on the design proposal to ensure suitability and sustainability. The City and VAC reserve the right to reject any or all proposals.

All applications should include the following:

- **Artist resumé.**
- **Signed Application Checklist (see Request for Qualifications, Attachment 1).**
- **Five (5) to seven (7) images** of artworks completed within the past five years. All artwork images must be examples demonstrating the artist is capable of creating and commissioning durable artwork adequate for the outdoor elements (i.e., sun, rain) and a public setting. Images of current artwork must include annotated descriptions. Please include: art title, date the art was created, dimensions, type of media, and location of the installation (address, city, state). For team applications, please indicate the lead artist for each project.
- **Proposal:** Please include a final proposal. The proposal should include the artwork design, location, artwork medium type, and estimated time to commission the artwork.
- **Artwork Fee:** Provide the total fee for the artwork, including design, fabrication, transportation, loading and unloading costs, structural engineering design, calculations, and installation.
- **Building Permit Fee:** Depending on the artwork type, a building permit may be required. The artist is responsible for obtaining the building permit. The permit fee will be paid by the City.
- **Structural Engineering Design:** Depending on the artwork type, a structural engineer may be required to provide plans and calculations for the building permit. The artist is responsible for obtaining services of a licensed structural engineer. Cost for services of a structural engineer shall be borne by the artist and included in the cost of the proposed art.

All applicants should allow adequate time to submit their applications. To get additional assistance using CaFÉ, please contact WESTAF by calling 303-629-1166 or emailing cafe@westaf.org.

NOTE: If your application is not completed in its entirety, it will not be honored as an official submittal and will not be reviewed. Applications must be submitted online on www.callforentry.org. Artists should only submit applications directly through the callforentry.org website; no other form of application will be accepted. Late or incomplete applications cannot be considered. ALL SUBMITTALS WILL BECOME THE PROPERTY OF THE CITY

OF MOUNTAIN VIEW. The City of Mountain View is not responsible for loss of or damage to any materials.

Award of Contract

The City of Mountain View reserves the right to accept or reject any submittals and to alter or extend the selection process as needed. This Request for Qualifications and the selection process shall in no way be deemed as a binding contract or agreement of any kind between the City and the artist. Award of a contract is contingent upon approval of the VAC and City Council. Artists and artist teams selected and approved will contract with the City for the entire duration of the project.

The selected artist will be required to secure and maintain various types of insurance, including Automobile Liability, General Liability, and other insurance as needed. Finalist(s) will be contacted regarding next steps, including an agreement with the City of Mountain View (see Attachment 2—Sample Agreement). Finalist(s) will also be required to obtain a business license and insurance (requirements are noted in the Sample Agreement, Section 19). Selected artwork is to be installed in 2024.

The artwork commissioned for this project shall become the property of the City of Mountain View. The artwork will be maintained as part of the City's permanent art collection. The City shall have no obligation to display the artwork for any particular period or in perpetuity.

Artist Responsibilities

The selected artist or artistic team will be expected to work with City staff to develop the specific parameters of the public art component as well as implement all aspects of the project.

These specifics will include:

- Developing the final design proposal.
- Selecting appropriate artistic materials for the design.
- Developing a final project timeline.
- Attending meetings with City staff, as necessary.
- Obtaining all required permits.
- Complying with Federal, State, and local rules and regulations related to prevailing wage.
- Obtaining appropriate insurance for the artwork until the City has accepted the artwork.

- Fabrication/installation or execution of the artwork.
- Delivery of the artwork.
- Providing detailed instructions for the preservation of the artwork.
- Providing detailed documentation on the engineering, execution, or installation of the artwork.
- Abiding by all requirements of the artist's contract with the City.
- Depending on the artwork type, a building permit may be required. The artist is responsible for obtaining the building permit.
- Depending on the artwork type, a structural engineer may be required to provide plans and calculations for the building permit. The artist is responsible for obtaining services of a licensed structural engineer. Cost for services of a structural engineer shall be borne by the artist and included in the cost of the proposed art.

Contact Information

All questions or requests for additional information regarding this Request for Qualifications should be emailed to vac@mountainview.gov. Any questions regarding the CaFÉ website should be directed to WESTAF at 303-629-1166 or www.callforentry.org/.

Submission Requirements

All applications must be submitted online via CaFÉ at www.callforentry.org, an online application system for calls for entry. There is no charge for artists to apply or use CaFÉ. Applications that are mailed, faxed, or hand-delivered will not be considered, as this is an online system.

To get additional assistance using CaFÉ, please contact WESTAF by calling 303-629-1166 or emailing cafe@westaf.org.



**EVELYN PARK PROJECT CALL FOR ARTISTS
APPLICATION CHECKLIST**

Instructions: This Application Checklist must be initialed, signed, and submitted online as an attachment with the CaFÉ application.

	Include the following with your application:	Initial
1	Artist resumé	
2	Five (5) to seven (7) images of artworks completed within the past five years. All artwork images must be examples demonstrating the artist is capable of creating and commissioning durable artwork adequate for the outdoor elements (i.e., sun, rain) and a public setting. Images of artwork must include annotated descriptions. Please include: art title, date the art was created, dimensions, type of media, and location of the installation (address, city, state). For team applications, please indicate the lead artist for each project.	
3	Proposal: Please include a final proposal. The proposal should include the artwork design, location, artwork medium type, and estimated time to commission the artwork.	
4	CaFÉ Application: All applications must be submitted online via CaFÉ at www.callforentry.org , an online application system for calls for entry.	
5	I acknowledge that if selected as a finalist, I will be required to enter into a contract with the City of Mountain View. The City of Mountain View has provided me with a Sample Agreement.	
6	I acknowledge that if selected as a finalist, I will be required to obtain a business license and insurance. The City of Mountain View has provided me with a Sample Agreement. Requirements are noted in the Sample Agreement.	

	Include the following with your application:	Initial
7	I acknowledge that if selected as a finalist, I am familiar with the City's insurance requirements within the Sample Agreement (Section 19) and I may be required to secure additional insurance to meet the requirements.	
8	I acknowledge that depending on the artwork type, a building permit may be required, and I will be responsible for obtaining the building permit.	
9	I acknowledge that depending on the artwork type, a structural engineer may be required to provide plans and calculations for the building permit. I am responsible for obtaining services of a licensed structural engineer. Cost for services of a structural engineer shall be borne by me and included in the cost of the proposed art.	
11	Print Name: _____ Signature: _____ Date: _____	N/A

**AGREEMENT BETWEEN THE CITY OF MOUNTAIN VIEW
AND _____ REGARDING
PRODUCTION, PURCHASE, AND INSTALLATION OF ARTWORK**

This AGREEMENT is dated for identification this ____ day of _____ 20____, by and between the CITY OF MOUNTAIN VIEW, a California charter city and municipal corporation, whose address is 500 Castro Street, P.O. Box 7540, Mountain View, California, 94039-7540 (hereinafter "CITY"), and _____, whose address is _____ (hereinafter "ARTIST"), (CITY and ARTIST hereinafter collectively "Parties" or individually "Party").

RECITALS

A. WHEREAS, CITY desires to place artwork at the eight (8) designated locations as part of the Evelyn Park Project; and

B. WHEREAS, ARTIST was selected by the City Council of CITY after reviewing a proposal for the commission of a _____ created by ARTIST; and

C. WHEREAS, ARTIST desires to transfer ownership of the artwork as well as the intellectual property rights in the artwork to CITY, and CITY desires to accept said artwork and interests.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals and mutual promises, and subject to the terms and conditions set forth herein, the Parties agree as follows:

1. **Description of Artwork.** The artwork to be designed for CITY is to be as described in the proposal dated _____, which is attached hereto and incorporated herein as Exhibit A, presented to the City Council on _____ (hereinafter the "Artwork"). The Artwork shall not materially deviate from the proposal and shall be as represented regarding the size, materials, and color of the actual rendition.

ARTIST warrants that the Artwork is the only edition of this Artwork. ARTIST will not execute or authorize another to execute another artwork of the same design, dimensions, or materials as the Artwork purchased by CITY pursuant to this Agreement.

ARTIST shall provide a translation of any foreign languages and symbols used in the Artwork. ARTIST warrants that any translations provided shall adequately and accurately translate the symbols and language in the Artwork.

2. **Compensation.** Maximum compensation to ARTIST for the design, production, and installation of the Artwork described herein shall not exceed _____ Dollars

(\$_____). Said sum shall include all expenses incurred for design, fabrication, delivery, and all other costs and shall constitute full compensation for all of ARTIST’s responsibilities set forth herein.

3. **Schedule and Term.** ARTIST shall commence work under this Agreement on written notice to proceed by CITY (“Notice to Proceed”) and shall complete delivery and installation of the Artwork on or before _____, 2024.

4. **Milestones and Payment Schedule.** Payment for services rendered pursuant to this Agreement shall be provided to ARTIST upon satisfactory completion of the milestones described herein as follows:

a. CITY shall pay ARTIST _____ Dollars (\$____) within thirty (30) days of receiving and approving a billing statement for satisfactory completion of the _____.

b. CITY shall make final payment within thirty (30) days of receiving and approving a billing statement for the satisfactory delivery and installation of the Artwork.

5. **Fabrication or Installation by Subcontractor.** If the Artwork will be fabricated or installed by one (1) or more subcontractors, ARTIST shall provide CITY with the name, address, and telephone number of each subcontractor not less than ten (10) days after the Notice to Proceed is issued under this Agreement.

6. **Lien Releases.** ARTIST shall provide CITY with signed lien release forms from all suppliers selling or providing materials to ARTIST for inclusion in the Artwork, for which payment has not been received by suppliers, not less than ten (10) days prior to ARTIST beginning any installation work.

7. **Delivery of Artwork.** ARTIST shall deliver the completed Artwork to _____ or at another destination within the City of Mountain View to be selected by CITY (hereinafter “the Site”). ARTIST shall coordinate delivery and installation with CITY.

8. **Installation of Artwork.** ARTIST shall install the Artwork and shall be responsible for the repair of any damage to the Artwork which may occur during delivery or installation. The Artwork shall be installed at the Site which shall be designated by CITY. ARTIST shall be responsible for Site preparation, permits, and engineering, if required. ARTIST shall provide CITY with detailed plans and specifications for installation a minimum of sixty (60) days prior to the scheduled installation of the Artwork.

9. **Display.** ARTIST hereby grants to CITY or CITY’s agents the exclusive right to display the Artwork.

10. **Title.** Title to the Artwork will remain in the possession of ARTIST until the Artwork has been installed and CITY has provided final written acceptance of the Artwork to ARTIST (hereinafter “Final Acceptance”). Title shall transfer to CITY upon Final Acceptance.

11. **Credits.** When publicly displayed, a plaque identifying ARTIST and the title of the Artwork shall be publicly displayed in the area adjacent to the Artwork.

12. **Maintenance Instructions.** ARTIST shall provide CITY with written instructions for appropriate maintenance and preservation of the Artwork a minimum of thirty (30) days prior to its installation.

13. **ARTIST Warranty of Quality and Uniqueness.** Upon Final Acceptance of the Artwork by CITY, ARTIST warrants that it shall be free from defects in materials and workmanship, including inherent vice. ARTIST shall, for a period of three (3) years after Final Acceptance by CITY, correct any such defects at ARTIST’s own expense. “Inherent vice” refers to a quality within the material or materials which comprise the Artwork which, either alone or in combination with other materials used in the Artwork or reacting to the environment, results in the tendency of the Artwork to destroy itself. Upon written notification of a defect in materials or workmanship, ARTIST shall have sixty (60) days to commence repairs and shall conclude repairs within a reasonable time. Regardless of the foregoing, CITY is not required by this Agreement to maintain the Artwork to any particular standard. CITY may, in CITY’s sole discretion, permit the Artwork to deteriorate in accordance with the Artwork’s temporary life span. If the Artwork suffers deterioration, CITY shall have the sole discretion to determine whether to remove the Artwork from display as a result of deterioration or whether to maintain the Artwork on display despite its deteriorated condition.

14. **Right of First Refusal.** In the event CITY determines to sell the Artwork, CITY shall send notice to ARTIST at the last known address provided to CITY and provide ARTIST with a right of first refusal to purchase the Artwork at the then-current appraised value.

15. **Intellectual Property Rights.**

a. **ARTIST’s Copyright.** Subject to usage rights and licenses granted to CITY as set forth in this Agreement, ARTIST shall retain all copyrights in the Artwork. ARTIST may place a copyright notice on the Artwork in the form and manner required to protect copyrights in the Artwork under the United States copyright law. If the copyright is registered with the U.S. Copyright Office, ARTIST shall provide CITY with a copy of the application for registration, the registration number, and the effective date of the registration.

b. **CITY’s Right to Display, Reproduce.** ARTIST grants to CITY and to CITY’s agents, authorized contractors, and assigns, an unlimited, nonexclusive, and irrevocable license to do the following with respect to the Artwork, in all media:

(1) **Implementation, Use, and Display.** CITY may use and display the Artwork.

(2) Reproduction and Distribution. CITY may make, display and distribute, and authorize the making, display, and distribution of, photographs and other two (2) dimensional reproductions. CITY may use such reproductions for any CITY-related noncommercial purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multi-media publicity, documentation of CITY's public art collection, and catalogues or similar publications. CITY shall credit ARTIST for the Artwork upon publication of any two (2) dimensional reproductions of the Artwork.

c. Third-Party Infringement. CITY is not responsible for any third-party infringement of ARTIST's copyright and is not responsible for protecting the intellectual property rights of ARTIST.

16. **ARTIST's Moral Rights; CITY's Ownership Rights**.

a. CITY intends to display the Artwork at the Site as originally created by ARTIST and to maintain the Artwork in good condition. ARTIST understands and agrees that the Artwork, when installed, will be incorporated within and made a part of the Site in such a way that removing the Artwork from the Site or the destruction or modification of the Site may cause destruction, distortion, mutilation, or other modification of the Artwork. Accordingly, ARTIST agrees that CITY, in connection with CITY's power and duty to operate and manage CITY property in the public's interest, shall have the right: to remove the Artwork from the Site; to damage or alter CITY's own property in a manner that defaces, mutilates, alters, or destroys the Artwork to transport and install the Artwork at an alternate location that CITY chooses in CITY's sole discretion; and to the extent any element of the Artwork constitutes a public safety hazard, the right to remove or modify the element posing the hazard.

b. If CITY alters the Artwork without ARTIST's consent in a manner that is prejudicial to ARTIST's reputation, ARTIST retains the right to disclaim authorship of the Artwork.

c. To the extent this Agreement is inconsistent with the Federal Visual Artists Rights Act (17 U.S.C. §§ 106A & 113(d)), the California Art Preservation Act (CA Civil Code §§ 987, *et seq.*), and any other local, State, Federal, or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A, CA Civil Code §§ 987, *et seq.*, or any other type of moral right protecting the integrity of works of art (the "Laws"), this Agreement shall control. With respect to the Artwork produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, ARTIST expressly waives any rights to preservation of the Artwork and to any rights provided by the Laws, and CITY and CITY's officers, agents, employees, successors, and assigns shall have no liability to ARTIST or any other person arising under the Laws.

17. **Independent Contractor**. It is agreed that ARTIST is an independent contractor, and all persons working for or under the direction of ARTIST are ARTIST's agents and employees, or qualify as independent contractors as defined and required by applicable law, and said persons

shall not be deemed agents, officers, partners, or joint venturers of CITY or employees of CITY by virtue of this Agreement. ARTIST will defend, indemnify, and hold CITY harmless from any claims, demands, liabilities, costs, and expenses arising from ARTIST's misclassification of workers providing services under this Agreement.

18. **Business License.** Prior to the execution of this Agreement, ARTIST shall comply with Article I of Chapter 18 of the Mountain View City Code. More information is available online at www.mountainview.gov/our-city/departments/finance-and-administrative-services/billing/business-licenses or at City Hall, 500 Castro Street, Second Floor, Finance and Administrative Services Department Lobby.

19. **Insurance.**

a. **Commercial General Liability Insurance.** ARTIST shall obtain and maintain Commercial General Liability insurance in a minimum amount of Two Million Dollars (\$2,000,000) per occurrence. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this Agreement or the general aggregate limit shall be twice the required occurrence limit. ARTIST's insurance coverage shall be written on an occurrence basis.

b. **Automobile Liability Insurance.** ARTIST shall obtain and maintain Automobile Liability insurance in a minimum amount of One Million Dollars (\$1,000,000) per occurrence.

c. **Workers' Compensation Insurance.** ARTIST is an individual or a company that has entered, or will be entering, into an agreement with CITY to provide goods or services.

ARTIST is familiar with the Workers' Compensation laws of California (generally contained in Section 3700 of the Labor Code), including those provisions which provide for specific exemptions from the requirement that all employers must carry Workers' Compensation insurance, and ARTIST maintains they are exempted under the law from the requirement to maintain Workers' Compensation insurance coverage.

In addition, during the term of any work for CITY under said Agreement: (1) ARTIST will not employ any person in any manner so as to become subject to the Workers' Compensation laws of California; or (2) should ARTIST become subject to the Workers' Compensation provisions of Section 3700 of the Labor Code for any reason, ARTIST shall forthwith comply with those provisions and send evidence of financial compliance to CITY.

d. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current *A.M. Best's Rating* of A:VII unless otherwise acceptable to CITY.

e. **Verification of Coverage.** Insurance, deductibles, or self-insurance retentions shall be subject to CITY's approval. Original Certificates of Insurance with endorsements shall be received and approved by CITY before work commences, and insurance must be in effect for the duration of the Agreement. The absence of insurance or a reduction of stated limits shall cause

all work on the project to cease. Any delays shall not increase costs to CITY or increase the duration of the project.

f. Other Insurance Provisions:

(1) If ARTIST maintains broader coverage and/or higher limits than the minimums shown above, CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by ARTIST. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to CITY.

(2) The City of Mountain View and CITY's officers, officials, employees, and volunteers are to be covered as an additional insured by an endorsement at least as broad as ISO Form CG 20 10 11 85 or, if not available, through the addition of **both** CG 20 10, CG 20 26, CG 20 33, or CG 20 38 and CG 20 37 if a later revision is used, or other endorsement approved by CITY's Risk Manager for Commercial General and Automobile Liability coverages.

(3) For any claims related to ARTIST's services pursuant to this Agreement, ARTIST's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to CITY and CITY's officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by CITY and CITY's officers, officials, employees, and volunteers shall not contribute to it.

(4) ARTIST grants CITY a waiver of any rights to subrogation which any insurer of ARTIST may acquire against CITY by virtue of the payment of any loss under such insurance (ISO CG 24 04 for CGL) and an endorsement to the Workers' Compensation policy. This provision applies regardless of whether or not CITY has received a waiver of subrogation endorsement from the insurer.

(5) ARTIST shall provide thirty (30) days' notice to CITY in the event of cancellation or modification to the stipulated insurance coverage.

(6) In the event ARTIST employs subcontractors as part of the work covered by this Agreement, it shall be the responsibility of ARTIST to ensure that all subcontractors comply with the same insurance requirements as stated in this Agreement.

(7) Approval of the insurance by CITY or acceptance of the Certificate of Insurance by CITY shall not relieve or decrease the extent to which ARTIST may be held responsible for payment of damages resulting from ARTIST's services or operations pursuant to this Agreement, nor shall it be deemed a waiver of CITY's rights to insurance coverage hereunder.

(8) If, for any reason, ARTIST fails to maintain insurance coverage that is required pursuant to this Agreement, the same shall be deemed a material breach of Agreement. CITY, at CITY's sole option, may terminate this Agreement and obtain damages from ARTIST resulting from said breach. Alternately, CITY may purchase such required insurance coverage,

and without further notice to ARTIST, CITY may deduct from sums due to ARTIST any premium costs advanced by CITY for such insurance.

20. **Hold Harmless.** To the fullest extent permitted by law, ARTIST shall defend, indemnify, and hold CITY and CITY's officers, employees, agents, and volunteers harmless from any liability for damage or claims of same, including, but not limited to, personal injury, property damage, and death, which may arise from services or operations of ARTIST or ARTIST's contractors, subcontractors, agents, or employees under this Agreement, or a defect in materials or workmanship (including, without limitation, installation and inherent vice) of the Artwork. CITY shall cooperate reasonably in the defense of any action, and ARTIST shall employ competent counsel reasonably acceptable to the City Attorney.

21. **Applicable Laws and Attorneys' Fees.** This Agreement shall be construed and enforced pursuant to the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Santa Clara. Should any legal action be brought by a Party for breach of this Agreement or to enforce any provision herein, the prevailing Party of such action shall be entitled to reasonable attorneys' fees, court costs, and such other costs as may be fixed by the court. Reasonable attorneys' fees of the City Attorney's Office, if private counsel is not used, shall be based on comparable fees of private attorneys practicing in Santa Clara County.

22. **Nondiscrimination.** ARTIST shall afford equal employment opportunities for all persons without discrimination because of race, color, religion, sex, sexual orientation, political affiliation, national origin, ancestry, age, marital status, physical or mental disability, military or veteran status, gender identity or expression, or genetic information.

23. **Amendment.** This Agreement may be amended in writing and signed by the Parties.

24. **Termination.** CITY may terminate this Agreement at any time by providing ten (10) days' advance written notice to ARTIST. Should CITY terminate pursuant to said notice, CITY shall pay ARTIST for ARTIST's services rendered to the date of termination based on percentage of completion of the milestones, as set forth above, including actual reimbursable expenses, and ARTIST shall provide all Artwork materials generated commensurate with progress payments made to CITY forthwith. In no event shall said fees exceed the maximum compensation established in this Agreement.

25. **Attachments or Exhibits.** Except as expressly referenced herein, no portion of any terms or conditions included in any attachments or exhibits shall be a part of this Agreement, and they shall have no force or effect. If any attachments or exhibits to this Agreement are inconsistent with this Agreement, this Agreement shall control.

26. **Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There are no representations, agreements, or

understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein.

27. **Authority to Execute.** The persons executing this Agreement on behalf of the Parties warrant that they are duly authorized to execute this Agreement.

28. **Waiver.** The failure of CITY to insist upon a strict performance of any of the terms, conditions, and covenants contained herein shall not be deemed a waiver of any rights or remedies that CITY may have and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions, and covenants contained herein.

29. **Headings.** The headings in this Agreement are inserted for convenience purposes only and shall not affect the terms of this Agreement.

30. **Public Records.** The Parties recognize and acknowledge that CITY is subject to the California Public Records Act, California Government Code Section 7920.000 and following. Public records are subject to disclosure.

31. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be void, invalid, or unenforceable, the same will either be reformed to comply with applicable law or stricken if not so conformable, so as not to affect the validity or enforceability of this Agreement.

32. **Notices.** Any notice given under this Agreement shall be in writing and shall be given by delivering the same to such Party in person, by delivering the same to such Party by reputable overnight courier or express service, or by sending the same to such Party by registered or certified mail, return receipt requested, with postage prepaid. The address(es) of each Party for the giving of notices hereunder are, until changed as hereinafter provided, the following:

To CITY: _____
City of Mountain View
500 Castro Street
P.O. Box 7540
Mountain View, CA 94039-7540

To ARTIST: _____

With a copy to: _____ (optional)

Any notice will be deemed given on the date of delivery, on the date of refusal to accept delivery, or when delivery is first attempted but cannot be made due to a change of address for which no notice was given. A Party may change its notice address(es) at any time by giving written notice of such change to the other Party in the manner provided herein. Notice given by counsel shall be deemed given by the Party represented by such counsel.

33. **Compliance with Law.** ARTIST shall comply with all applicable laws and regulations of the Federal, State, and local government, including, but not limited to, “The Code of the City of Mountain View, California.” ARTIST specifically agrees to comply with any applicable laws, regulations, and/or guidelines relating to COVID-19, including, but not limited to, Centers for Disease Control and Prevention (CDC) guidelines, Santa Clara County Department of Public Health orders and/or guidelines, and CITY’s protocols for contractors related to COVID-19 which are located at www.mountainview.gov/our-city/departments/finance-and-administrative-services/purchasing and incorporated herein by this reference, as amended from time to time.

34. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which in the aggregate shall constitute one and the same instrument, and the Parties agree that signatures on this Agreement shall be sufficient to bind the Parties.

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IN WITNESS WHEREOF, this Agreement, dated _____ for identification, between the City of Mountain View and _____ for commission of the Artwork for _____, is executed by CITY and ARTIST.

“CITY”:
CITY OF MOUNTAIN VIEW,
a California charter city and municipal
corporation

“ARTIST”:

By: _____
City Manager

By: _____
Name: _____

Attest: _____
City Clerk

Title: _____

APPROVED AS TO CONTENT:

Taxpayer I.D. No.: _____

Assistant City Manager/
Community Development Director

FINANCIAL APPROVAL:

Finance and Administrative
Services Director

APPROVED AS TO FORM:

City Attorney