

ARTIST AGREEMENT

THIS AGREEMENT (Agreement) is made and entered into, effective on _____, by and between the City of Fresno, a California municipal corporation (City), and [Contractor NAME], [legal identity], (Contractor).

RECITALS

- A. The City hereby engages Contractor to perform certain services (Artwork) in connection with the Traffic Cabinet Mural Art Pilot Program.
- B. Contractor is engaged in the business of furnishing such services as an artist/muralist and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement.
- C. Contractor acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107.
- D. WHEREAS, this Agreement will be administered for City by its [SELECT TITLE] (Administrator) or designee.

AGREEMENT

1. **Scope of Services.** Contractor shall perform to the satisfaction of the City the services described in Exhibit A, including all work incidental to, or necessary to perform, such services even though not specifically described in Exhibit A.
2. **Contract Term and Extension.** The Contract shall be effective from the date first set forth above (Effective Date) and shall continue in full force and effect through [End Date], subject to any earlier termination in accordance with this Agreement. The services of Contractor as described in Exhibit A are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in Exhibit A.
3. **Contractor's Compensation and Payment.** In consideration of the services provided, the City agrees to pay Contractor \$1,000 per traffic cabinet with a maximum of three (3) traffic cabinets for the tasks described in Exhibit A. The maximum compensation paid to Contractor shall not exceed \$3,000.
4. **Termination, Remedies, and Force Majeure.**
 - (a) This Agreement shall terminate without any liability of the City to Contractor upon the earlier of: (i) Contractor's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against Contractor; (ii) seven calendar days' prior written notice with or without cause by the City to Contractor; (iii) the City's non-appropriation of funds sufficient to meet its obligations hereunder

during any City fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

- (b) Immediately upon any termination or expiration of this Agreement, Contractor shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to the City any and all unearned payments and all properties and materials in the possession of Contractor that are owned by the City. Subject to the terms of this Agreement, Contractor shall be paid compensation for services satisfactorily performed prior to the effective date of termination. Contractor shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.
- (c) In the event of termination due to failure of Contractor to satisfactorily perform in accordance with the terms of this Agreement, the City may withhold an amount that would otherwise be payable as an offset to, but not in excess of, the City's damages caused by such failure. In no event shall any payment by the City pursuant to this Agreement constitute a waiver by the City of any breach of this Agreement which may then exist on the part of Contractor, nor shall such payment impair or prejudice any remedy available to the City with respect to the breach.
- (d) Upon any breach of this Agreement by Contractor, the City may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that the City improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.
- (e) Contractor shall provide the City with adequate written assurances of future performance, upon Administrator's request, in the event Contractor fails to comply with any terms or conditions of this Agreement.
- (f) Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of City in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. Contractor shall notify Administrator in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Administrator of the cessation of such occurrence.

5. Contractor will provide an invoice to City for payment. Invoices should be directed to Beautify Fresno by email at mark.standriff@fresno.gov. Detailed statements shall be rendered monthly for services performed in the preceding month and will be payable in the normal course of City business. The City shall not be obligated to reimburse

any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

6. Ownership of Intellectual Property.

City does not claim ownership, copyrights, royalties, or other claims to artwork produced as a result of participation in City's programs. However, the City reserves the right to reproduce and use such materials for official, non-commercial purposes. This includes the use of photographs, wraps, video/audio recordings, and written materials produced under contract. City may include said materials in its archival collections, and publicity materials (including website and newsletters) and may make them available to researchers and the public for scholarly and educational purposes, including print and internet publications, audio/visual presentations, and exhibitions.

Contractor shall execute the moral rights waiver in **Exhibit B** and all rights to the artwork design and completed installation will become the property of the City. As a material condition to this Agreement, Contractor understands and expressly agrees to waive their moral rights to the Work, including any and all part of the artwork created pursuant to this Agreement.

Contractor's Initials: _____ Date: _____

7. Confidential Information and Ownership of Documents.

- (a) Contractor shall comply with all applicable laws, rules, and regulations regarding the confidentiality of the Participant's record and information.
- (b) Artist shall not reproduce (such as photographs and prints), duplicate, distribute reproductions, or incorporate into any trademark or service mark, the artwork design(s) or submission(s) developed under the Traffic Cabinet Mural Project without the prior written consent of the City. Any rights of the Artist in the artwork design/submissions terminate upon the death of such artist and do not extend to such artist's heirs, successors or assigns.
- (c) Title to the artwork shall pass to the City upon installation and final acceptance of the artwork. The City shall have the exclusive right to publicly display the artwork and shall have a license to reproduce (such as photographs and prints) or create three-dimensional reproductions of the artwork for any noncommercial purpose (including, but not limited to, books, slides, postcards, film, Internet sites, reproductions for advertising, and other media). Such reproductions shall contain a credit to the artist and a copyright notice. Reproductions for commercial purposes are only to be made with the mutual written consent of Artist and the City. All references and reproductions or adaptations of the artwork will credit the artwork to the Artist unless Artist requests to the contrary. The City reserves the right to remove and/or relocate the artwork at any time, shall have the right to determine when and if repairs and/or restorations are needed. Any rights of the Artist in the artwork terminate upon the death of such Artist and do not extend to such Artist's heirs, successors or assigns. Artist agrees to

give City written notice prior to asserting any claim pertaining to the artwork and/or the artwork design/submissions, and the City shall have not less than 90 days from the date of receipt of claim to cure any such claim. City may incorporate the artwork into any trademark or service mark to be utilized by City to register the same in accordance with Federal, state or local law.

8. Level of Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as Contractor represents to the City that Contractor and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said industry necessary to perform the services agreed to be done by it under this Agreement, the City relies upon the skill of Contractor and its subcontractors, if any, to do and perform such services in a skillful manner and Contractor agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by the City shall not operate as a release of Contractor or any subcontractors from said industry and professional standards.

9. Indemnification. To the furthest extent allowed by law, Contractor shall indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage) incurred by the City, Contractor or any other person, and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees, litigation expenses and cost to enforce this Agreement), arising or alleged to have arisen directly or indirectly out of performance of this Agreement. Contractor's obligations under the preceding sentence shall apply regardless of whether the City or any of its officers, officials, employees, agents, or volunteers are negligent, but shall not apply to any loss, liability, fines, penalties, forfeitures, costs or damages caused solely by the gross negligence, or caused by the willful misconduct, of the City or any of its officers, officials, employees, agents, or volunteers.

If Contractor should subcontract all or any portion of the work to be performed under this Agreement, Contractor shall require each subcontractor to indemnify, hold harmless and defend the City and each of its officers, officials, employees, agents, and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

10. Conflict of Interest and Non-Solicitation.

- (a) Prior to the City's execution of this Agreement, Contractor shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in Exhibit D. During the term of this Agreement, Contractor shall have the obligation and duty to immediately notify the City in writing of any change to the information provided by Contractor in such statement.
- (b) Contractor shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state, and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act

(California Government Code Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). At any time, upon written request of the City, Contractor shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, Contractor and the respective subcontractor(s) are in full compliance with all laws and regulations. Contractor shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, Contractor shall immediately notify the City of these facts in writing.

- (c) Contractor's duties and services under this Agreement shall not include preparing or assisting the City with any portion of the City's preparation of a request for proposals, request for qualifications, or any other solicitation regarding a subsequent or additional contract with the City. The City entering this Agreement shall at all times retain responsibility for public contracting, including with respect to any subsequent phase of this Project. Contractor's participation in the planning, discussions, or drawing of project plans or specifications shall be limited to conceptual, preliminary, or initial plans or specifications. Contractor shall cooperate with the City to ensure that all bidders for a subsequent contract on any subsequent phase of this Project have access to the same information, including all conceptual, preliminary, or initial plans or specifications prepared by Contractor pursuant to this Agreement.
- (d) In performing the work or services to be provided hereunder, Contractor shall not employ or retain the services of any person while such person either is employed by the City or is a member of any City council, commission, board, committee, or similar City body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.
- (e) Contractor represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit, or procure this Agreement or any rights/benefits hereunder.
- (f) Contractor and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing. Notwithstanding any approval given by the City Manager under this provision, Contractor shall remain responsible for complying with Section 11(a), above.
- (g) If Contractor should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, Contractor shall include the provisions of this Section 11 in each subcontract and require its subcontractors to comply therewith.

(h) This Section 11 shall survive expiration or termination of this Agreement.

11. General Terms. Prior to execution of this Agreement by the City, Contractor shall have provided evidence to the City that Contractor is licensed to perform the services called for by this Agreement (or that no license is required). If Contractor should subcontract all or any portion of the work or services to be performed under this Agreement, Contractor shall require each subcontractor to provide evidence to the City that subcontractor is licensed to perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Independent Contractor.

(a) In the furnishing of the services provided for herein, Contractor is acting solely as an independent contractor. Neither Contractor, nor any of its officers, agents, or employees shall be deemed an officer, agent, employee, joint venturer, partner, or associate of the City for any purpose. The City shall have no right to control or supervise or direct the manner or method by which Contractor shall perform its work and functions. However, the City shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between Contractor and the City. Contractor shall have no authority to bind the City absent the City's express written consent. Except to the extent otherwise provided in this Agreement, Contractor shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, Contractor and its officers, agents, and employees shall have absolutely no right to employment rights and benefits available to the City employees. Contractor shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, Contractor shall be solely responsible, indemnify, defend and save the City harmless from all matters relating to employment and tax withholding for and payment of Contractor's employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in the City employment benefits, entitlements, programs and/or funds offered employees of the City whether arising by reason of any common law, de facto, leased, or co- employee rights or other theory. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to the City or to this Agreement.

13. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if

delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

14. Compliance With Governing Law. In providing the services required under this Agreement, Contactor shall at all times comply with all applicable laws of the United States, the State of California and City, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement. No party in its performance of this Agreement shall employ discriminatory practices on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

15. Binding. Subject to Section 16, below, once this Agreement is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferees, agents, servants, employees and representatives.

16. Assignment. There shall be no assignment by Contractor of its rights or obligations under this Agreement without the prior written approval of the other party. Any attempted assignment by Contractor, its successors or assigns, shall be null and void unless approved in writing by the City. Contractor hereby agrees not to assign the payment of any monies due Contractor from the City under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). The City retains the right to pay any and all monies due to Contractor directly to Contractor.

17. Attorney's Fees. If a party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

18. Waiver. The waiver by any party of a breach by the other of any provision of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Agreement. No provisions of this Agreement may be waived unless in writing and approved by and signed by all parties to this Agreement. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.

- 20. Headings.** The section headings in this Agreement are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Agreement.
- 21. Severability.** The provisions of this Agreement are severable. The invalidity or unenforceability of any one provision in this Agreement shall not affect the other provisions.
- 22. Representations and Warranties.** Each party hereby represents and warrants to the other party and agrees that it has the full power and authority to enter into this Agreement and perform each of its obligations hereunder, and it is legally authorized and has obtained all necessary regulatory approvals for the execution, delivery, and performance of this Agreement.
- 23. Interpretation.** The parties acknowledge that this Agreement in its final form is the result of the combined efforts of the parties and that, should any provision of this Agreement be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Agreement in favor of or against either party, but rather by construing the terms in accordance with their generally accepted meaning.
- 24. Exhibits.** Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.
- 25. Precedence of Documents.** In the event of any conflict between the body of this Agreement and any exhibit or attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the exhibit or attachment. Furthermore, any terms or conditions contained within any exhibit or attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.
- 26. Cumulative Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.
- 27. No Third Party Beneficiaries.** The rights, interests, duties, and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.
- 28. Entire Agreement.** It is mutually understood and agreed that the foregoing along with the attached exhibits constitutes the entire Agreement between the parties. Any modifications or amendments to this Agreement must be in writing signed by an authorized agent of each party.
- 29.** The City Manager, or designee, is hereby authorized and directed to execute and implement this Agreement. The previous sentence is not intended to delegate any authority to the City Manager to administer the Agreement, any delegation of authority must be expressly included in the Agreement.

[SIGNATURES FOLLOW ON THE NEXT PAGE.]

EXHIBIT A
SCOPE OF SERVICES

The Contractor understands and agrees to the following conditions in order to enter into an independent contractor arrangement with the City of Fresno.

1. The Contractor will be responsible for completing artwork for traffic cabinets approved by the City of Fresno. The location is subject to change per the direction of the City of Fresno.
2. The Contractor is responsible for purchasing materials, equipment, and other supplies needed to complete the project.
3. Artwork must be original and may not contain advertising, infringe upon a trademark, patent, or copyright, contain religious art, sexual or illegal drug content, negative imagery, convey political partisanship, or contain any representations of traffic lights, signs, or signals.
4. Artwork must not denigrate a specific group based on ethnicity, national origin, age, disability, religion, gender, or sexual orientation or denigrate the military, law enforcement, fire rescue, government services, public officials, animals, or any creature protected under the Federal Endangered Species Act.
5. Artwork must not depict any person, alive or deceased.
6. Artwork shall not contain words or letters.
7. Artists must adhere to the following specifications for digitizing art for the vinyl wraps:
 - a. If using a vector design, be sure all shapes are expandable.
 - b. All files should be in an editable format and/or vector format. AI, PSD, and PDF files are acceptable for artwork.
 - c. Dimensions of actual utility boxes may vary. Selected artists must be willing and able to adjust designs to the box assigned.
8. The design cannot restrict any vents or airflow through the boxes. City of Fresno maintenance crews must always be able to fully access the components inside the box.
9. Artists may be asked to attend a dedication ceremony in December, 2025.

**EXHIBIT B
WAIVER OF PROPRIETARY RIGHTS**

The Contractor understands and agrees to waive all rights to the artwork design, and the completed installation will become the property of the City of Fresno.

Artist waives any and all rights of Artist in the Artwork, including rights of attribution and integrity as set out in the Visual Artists Rights Act (17 U.S.C. §§ 106A and 113) (“VARA”), the California Art Preservation Act (Cal. Civ. Code, §§ 987 and 989 (“CAPA”)), and any rights arising under United States federal or state law or under the laws of another country that convey rights of the same nature as those conveyed under VARA and CAPA, as against the City and its agents. The City shall have the absolute right to change, modify, destroy, remove, relocate, move, replace, or transport the Artwork in whole or in part, in the City’s sole discretion.

Description of the Final Artwork:

Title:

[INSERT NAME OF ARTWORK HERE]

Size:

[INSERT SIZE OF ARTWORK HERE]

Category of Work: (Works of Visual Art) –

[MURAL, SCULPTURE, ETC.]

Project:

2025 Traffic Cabinet Mural Art Pilot Project

Installation Location:

[LOCATION, CORNER OF INTERSECTION]

Artist (Contractor):

[INSERT NAME OF ARTIST HERE]

Artist's (Contractor) Signature:
