

**CITY OF ONTARIO
ARTIST AGREEMENT**

This Artist Agreement (“Agreement”) is made and entered into this ___ day of _____, 2014 (“Effective Date”), by and between the by and between the **CITY OF ONTARIO** (the “City”), and [INSERT NAME OF ARTIST] (the “Artist”). The City and the Artist are herein individually referred to as “Party” and collectively referred to as the “Parties.”

WITNESSETH

WHEREAS, the City desires to retain the services of an artist to provide those services as set forth in Attachment A – Scope of Work (“Work”); and

WHEREAS, the City issued a Request for Proposals seeking proposals for such Work; and

WHEREAS, Artist was selected by the City and represents that they possess the skills necessary to complete the Work; and

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, it is mutually agreed between the Parties as follows:

ARTICLE 1. SCOPE OF SERVICES

1.1 Duties.

a. Artist is hereby retained to perform all services and furnish all supplies, materials, outside expertise and equipment necessary for the completion of the Work as described in Attachment A and for completion of the foregoing in accordance with the schedule of completion set forth in Attachment A. Work shall be performed in a professional manner and in strict compliance with all the terms and conditions in this Agreement. The Artist’s Work shall be reviewed and subject to approval and acceptance of completion of the Work by the City and other applicable City departments or outside agencies, where appropriate.

b. Artist shall be responsible for complying with all Federal, State and local laws, ordinances, statutes and regulations and for obtaining all required licenses, permits, or other similar authorizations applicable to the performance of Artist’s services under this Agreement.

1.2 Final Acceptance.

a. Artist shall advise City in writing or via electronic mail when all required services for execution of the Work have been completed.

b. City shall notify Artist in writing of its final acceptance or non-acceptance of the Work.

c. Artist shall be responsible for promptly resolving the reasons for non-acceptance of the Work indicated by the City.

d. Final acceptance is effective on the date of City’s notification of final acceptance or 45 days after Artist has sent City written notice of completion, whichever first occurs, unless City, upon receipt of Artist’s notice of completion provides Artist, before 45 days have elapsed, with written notice specifying and describing any uncompleted services.

ARTICLE 2. COMPENSATION AND PAYMENT SCHEDULE

2.1 Artist Compensation.

The City shall pay to Artist a fixed fee of **FIVE THOUSAND DOLLARS (\$5,000)** as full compensation for all services to be performed and materials to be furnished by Artist under this Agreement. The fee shall be paid as described in Attachment B of this Agreement. All requests for payment must be accompanied by a detailed invoice as a condition of payment. Artist shall provide the City with Artist's Tax Identification Number and any proof of such number as requested.

2.2 Artist's Expenses.

Artist shall be solely responsible for all labor, materials and equipment necessary for completion of Work, and for all expenses including, without limitation, costs of all travel by Artist and Artist's agents and employees, for proper performance of the services required under this Agreement. Any State or Federal sales, use or excise taxes or similar charges relating to the services and materials under this Agreement shall be paid by the Artist.

2.3 Retention and Audit of Records.

Artist shall retain records pertinent to this Agreement and make such records available upon request by the Agency, City and/or Auditor General of the State of California, or representative of any of these offices, for a period of five years after final payment.

ARTICLE 3. TIME OF PERFORMANCE

3.1 Duration.

The services required of Artist as set forth in Article 1 shall be completed in accordance with the schedule for Work completion, which is attached hereto as Attachment A and incorporated herein by this reference.

3.2 Time Extension.

City agrees to grant reasonable extension of time to Artist in the event of delay on City's part in performing its obligations under this Agreement or if conditions beyond Artist's control render Artist's timely performance impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of agreement, provided that such obligations are suspended only for the duration of such conditions and the party with knowledge of the condition immediately notifies the other party, in writing, of such condition.

3.3 Termination.

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner or otherwise violate any of the covenants, agreements, or stipulations materials to this Agreement, the other party shall have the right thereupon to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate and, specifically, the grounds for termination. The defaulting party shall have thirty days after receipt of the notice to cure the default. If default is not cured, this Agreement shall terminate. In the event of City's default, City shall promptly compensate Artist for all services performed by Artist prior to termination, in accordance with the payment schedule described in Article 2. In the event of Artist's default, all products prepared and submitted or prepared for submission by Artist under this Agreement shall at City's option become City's property; Artist shall not be relieved of liability to City for damages sustained by City by virtue of Artist's breach of this Agreement. In such event, City may reasonably withhold payments to Artist until the exact amount of damages

due City from Artist is determined. In addition, the City shall retain the right to have the Work completed; however, the Artist shall retain the copyright in the Work to the extent it has become fixed in the applicable medium. By the artist allowing for completion of the work by another party in the event of default the artists is agreeing to share copyright in the completed work with the completing party.

ARTICLE 4. INSURANCE AND INDEMNIFICATION

4.1 Insurance.

Artist agrees to carry for the duration of this Agreement and any extensions thereof, at Artist's expense, insurance in the kinds and amounts as listed in Attachment C – Insurance Requirements for Artist. The required insurance shall be the primary coverage and cover the Artist and Artist's employees, agents, contractors and subcontractors. Proof of such insurance shall be provided to the City prior to undertaking any work under this Agreement and contain a provision that the policy shall not be canceled or reduced in coverage without thirty (30) days written notice to the City. The Artist must provide proof of renewal or replacement for any policy(s) that expire during the term of the Agreement. Failure of Artist to maintain or provide proof of insurance shall be considered a breach of this Agreement and the City shall have the right to terminate this Agreement without any financial or contractual obligation and reserves the right to select another Artist to complete the Work, alternatively the City may purchase the required insurance and deduct the cost from the monies otherwise due the Artist.

4.2 Indemnification.

Artist shall indemnify, protect, defend and hold harmless the City, its Council, officials, employees and agents from and against all liabilities, obligations, losses, damages, judgments, costs or expenses, including attorney's fees, court costs and other litigation costs (collectively "Loss") arising from, in connection with or caused by any personal injury or property damage caused, directly or indirectly, by any act or omission of Artist, or any infringement of patent copyright, trademark, trade secret or other proprietary right caused by Artist or Artist's employees, agents, contractors, or subcontractors, or in connection with the Work.

ARTICLE 5. RIGHTS, OWNERSHIP, AND INTEREST

5.1 Ownership and Moral Rights.

All work paid for and produced under this Agreement including, without limitation, all studies, drawings, design and models prepared and submitted under this Agreement, shall be the property of the City upon written final acceptance under Article 1.2. Artist bears the risk of damage to or loss of the Work until the City's final acceptance under Article 1.2 and shall take such measures as necessary to protect the Work from damage until final acceptance.

Artist understands that the Work is to be installed on property, at a site upon which City has the right to locate the Work ("Site") and that it may be integrated into the Site such that it becomes an integral, permanent and site-specific part of the building and/or environment and that the operation, management, or other circumstances of the Site, could result in significant alteration of the Work or Site. For purposes of this Agreement, the term "alter or alteration," with respect to the Work, shall mean: alter, repair, restore, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface.

City shall make a reasonable effort to notify and consult with Artist in the event that Work produced under this Agreement is in need of alteration and may enter into a separate agreement with Artist to participate in the Alteration, but is not obligated to do so. If Artist elects not to participate in, is unavailable, or fails to negotiate a mutually agreeable plan for the alteration of the Work, the City may retain another qualified Artist for such work. Regardless, the City retains the right to alter the Work if deemed necessary without such notification, consultation, approval or participation of the Artist, especially in situations where the Work is integrated into a building, poses a hazard and/or liability, is in conflict with any codes, laws or regulations, and/or cannot be altered due to lack of available funding and/or alternate suitable location. However, if the Work is altered without Artist's permission or falls below acceptable public display standards, through no fault of Artist, Artist retains the right to disavow authorship of the Work with written notice to the City.

Artist waives any and all claims, with respect to Work produced under this Agreement, arising against the City, its elected and appointed officials, employees and assigns, and owners (current and future) of the Site and its agents, officers and employees, arising under the Federal Visual Artist Rights Act, the California Art Preservation Act, and any other local, State, Federal or international laws that convey rights of the same nature as those conveyed under the California Civil Code or any other type of moral right protecting the integrity of works of art. Agency and City has no obligation to pursue claims against third parties to remedy or prevent alteration of the Work. However, the City, as owner of the Work, may pursue claims against third parties for damages or to restore the Work if it has been altered without City's authorization.

5.2 Reproduction.

Artist grants to City and its assigns an irrevocable license and right to duplicate, make, display, and distribute and authorize the making, display, and distribution of reproductions for commercial or noncommercial purposes, including but not limited to advertising, brochures, media publicity, educational and promotional materials, postcards, booklets, catalogues and other similar publications. To the extent this provision constitutes a transfer of the right to reproduction, this Agreement is intended to be and shall be deemed to constitute the document in writing required by California Civil Code Section 982 (c). Reproductions by City are not required to contain a credit to Artist, nor any form of copyright notice. Artist is not required to give credit to City in any public showing under Artist's control or in reproductions of the Work.

5.3 Copyright.

Artist shall retain all rights under Copyright Act of 1976 for original works produced under this Agreement except ownership and possession and as otherwise provided in this Agreement. Artist's copyright shall not extend to utilitarian aspects of the Work such as landscaping, furnishings or other similar objects. The City and its assigns are not responsible for any third party infringement of Artist's copyright and for protecting the intellectual property rights of Artist. Any registration of a copyright under the State's Register of Copyrights shall be the sole responsibility of the Artist, and the costs of such registration shall be borne by the Artist.

5.4 Royalty Rights.

Title to the Work shall pass to the City upon final acceptance pursuant to Section 1.2. The Artist hereby retains the right to collect the royalty payment provided by Civil Code Section 986. The Artist agrees that neither the Agency, City, or property owner of the Site is obligated to make any royalty payments to the Artist pursuant to Civil Code Section 986; provided, however,

that City may, but is under no obligation to, negotiate royalty payments for Artist in the event that the Work is used for commercial purposes pursuant to Section 5.2.

ARTICLE 6. ARTIST'S REPRESENTATIONS AND WARRANTIES

Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of Agency or City. Artist shall be supervised by an employee or official of the City but shall not exercise supervision over any employee or official of the Agency or City.

Artist represents and warrants that:

- 1) Artist is the sole owner of the Work and any copyrights and has the full power to enter into and execute this Agreement;
- 2) The Work is unique and original and solely the result of the artistic effort of the Artist, except as otherwise disclosed in writing to the City, does not infringe upon any copyright or rights of any person and is free and clear of any liens or disputes related to property, intellectual or any other rights;
- 3) The Work, or a duplicate thereof, has not been accepted for sale elsewhere.
- 4) The Work is free from defective, hazardous or inferior materials and workmanship or inherent vice or qualities that cause or accelerate deterioration, except as otherwise disclosed in writing to the City, and will not pose a danger to public health and safety.
- 5) No person has been employed or retained to solicit or secure this Agreement for commission, percentage, brokerage or contingent fee and that no member of the Agency or City has any interest, financially or otherwise in the Artist's business.

ARTICLE 7. NOTICES

All notices hereunder and communications regarding interpretation of the terms of the Agreement or changes thereto shall be provided by the mailing thereof by registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

ARTIST

[INSERT NOTICE INFORMATION]

CITY

City of Ontario
303 E B Street
Ontario, CA 91764
Attn: _____

Any notice so given shall be considered received by the other party three (3) days after deposit in the U.S. Mail, first class postage prepaid, addressed to the party at the above address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

ARTICLE 8. NON-DISCRIMINATION

Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, national origin, or disability in connection with or related to the performance of this Agreement.

ARTICLE 9. ASSIGNABILITY AND MODIFICATION

Artist shall not assign, sublet or transfer any interest in this agreement nor the performance of any of Consultant’s obligations hereunder, and any attempt by Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect without the prior written consent of City. The Parties may amend this Agreement to expand or otherwise modify the scope of work and this Agreement in a writing signed by both Parties.

ARTICLE 10. GOVERNING LAW

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

ARTICLE 11. ENTIRE AGREEMENT

This Agreement, including attachments and the recitals, embodies the entire understanding between the parties hereto. There are no other agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties. Any waiver of any breach of violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term of condition. The persons executing this Contract on behalf of their respective Parties represent and warrant that they have the authority to do so under law and from their respective Parties.

[SIGNATURES CONTINUED ON NEXT PAGE]

Entered into as of the Effective Date first above written, the Parties hereby execute this Artist Agreement, as follows:

ARTIST

CITY OF ONTARIO

By: _____
Name: _____
Title: _____
Federal Tax ID No.: _____

By: _____
Name: _____
Title: _____

ATTACHMENT A

SCOPE OF WORK

A Design, generally described as a scaled rendering for a mural design (see picture attached), to be located at Ontario Town Square, in the City of Ontario, California. The size of the completed mural shall be approximately 6' x 24'. The Work shall be executed in a manner to then be enlarged and printed onto tiles, and then installed onto the back wall of the band shell.

The Work shall be completed in accordance with the following schedule:

March 7, 2014

BANDSHELL REAR ELEVATION
SCALE: 3/8" = 1'-0"

BANDSHELL LEGEND:

- ① 12" SQ. TILES, TYPICAL
- ② FINAL ARTWORK TO BE PROVIDED BY CITY AT TIME OF CONSTRUCTION.
- ③ BANDSHELL --- SEE ARCHITECT'S PLANS

NOTES:

- A DIMENSIONS SHOWN FOR BIDDING PURPOSES ONLY. FINAL DISPLAY DIMENSIONS SHALL BE DETERMINED IN THE FIELD AFTER CONSTRUCTION OF BANDSHELL IS COMPLETE.
- B CONTRACTOR SHALL BE RESPONSIBLE FOR ALL LABOR AND MATERIALS TO TAKE APPROVED IMAGE FROM CITY, SCAN AND PRINT ON 12" SQ. TILES, AND INSTALL TILES AS SHOWN.
- C CONTRACTOR SHALL BE RESPONSIBLE FOR FINAL COORDINATION BETWEEN CITY AND ARTIST TO DETERMINE FINAL IMAGE SIZE, BORDER TREATMENT, ETC.
- D PROVIDE 4FT MOCKUP OF TILE INSTALLATION METHOD FOR REVIEW AND APPROVAL BY CITY PRIOR TO COMMENCING WORK. MOCK-UP SHALL ADDRESS EDGE CONDITION WHERE TILE RESTS ON / ABUTS STUCCO/PLASTER FINISH.

BANDSHELL TILE MOSAIC PROVIDED BY:
BRAVO SIGN & DESIGN
520 E. CENTRAL PARK AVE.
ANAHEIM, CA 92802
(714) 284-0500
CONTACT: FRANK FIORE
OR APPROVED EQUAL

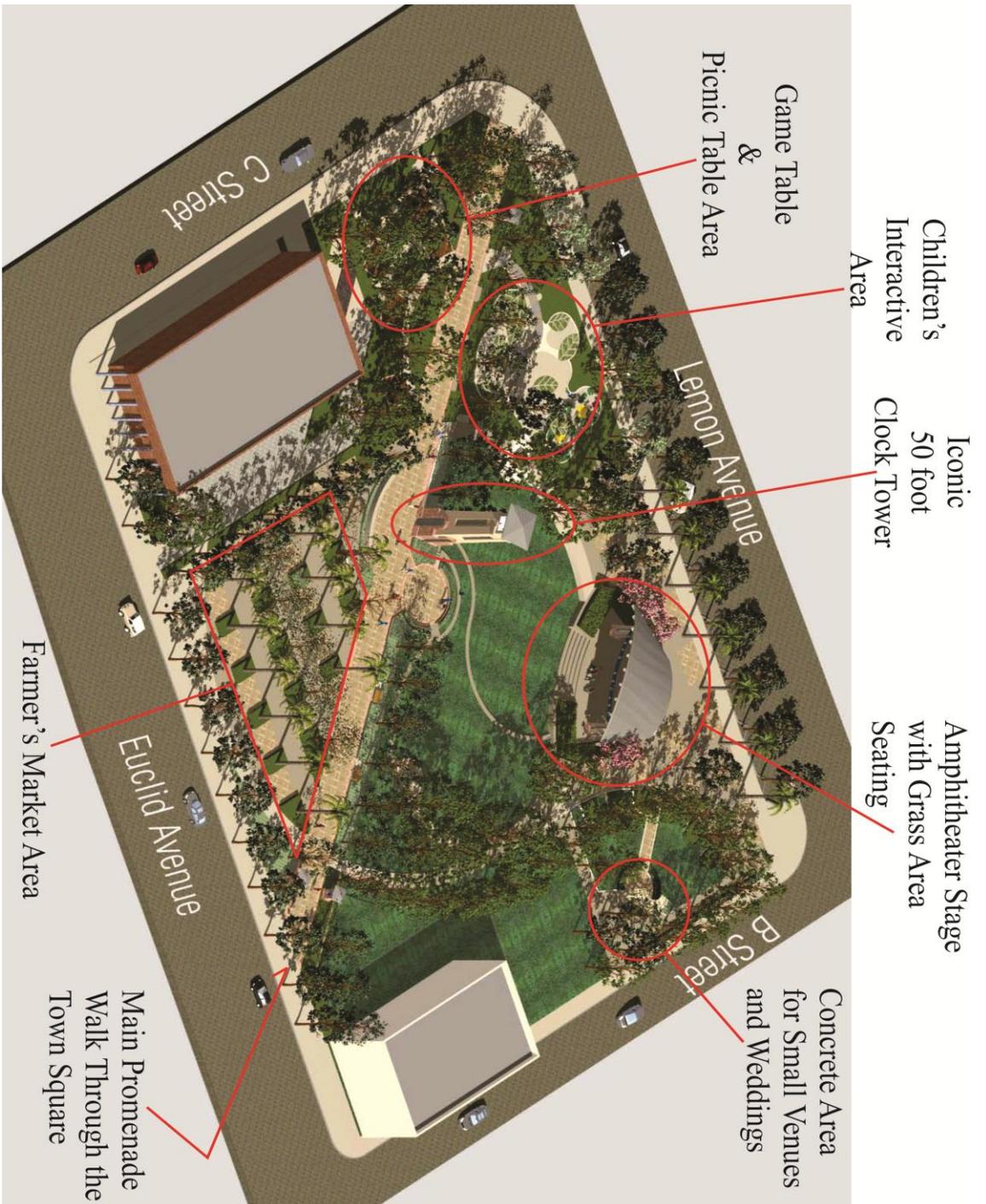
MOSAIC ARTWORK | C

Use 1/2" hardy board over studs as underlayment and backing for tile graphics. Graphic proportions are 6'-0" high by approx. 24'-6" long

Two layers of 5/8" Densglass at side and top panels under the plaster

Bandshell Rear Graphic Elevation





Attachment A

ATTACHMENT B

COMPENSATION AND PAYMENT SCHEDULE

Artist shall execute the Work in accordance with the budget set forth herein. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof. Artist shall submit a detailed invoice listing the item or task, dates of service, purchase order number and any other relevant information as requested by the City for all requests for payment.

Payment #1 – Contract Execution - Upon execution of this Agreement, Artist may invoice for an amount not to exceed \$0

Payment #2 – Design/Working Documents - Upon notification of approval by City, Artist may invoice for an amount not to exceed \$0

Payment #3 – Final Acceptance – Upon notification by Artist that all services have been completed, including submittal of maintenance and preservation instructions, and notification of approval by City pursuant to Article 1.2 of Agreement, Artist may invoice for an amount not to exceed \$5,000

Total obligation under this Agreement: \$5,000

Improperly completed invoices which have to be returned for correction may result in payment delay and should not be subject to an interest penalty. Invoice payment requirements do not start until a properly completed invoice is provided to the City.

ATTACHMENT C

INSURANCE REQUIREMENTS FOR ARTIST

(a) General Liability with a combined single limit of no less than \$1,000,000 dollars per occurrence, written on a form acceptable to the City and including protection against claims arising from bodily and personal injury, including death resulting therefrom, broad form property damage, contractual liability and cross liability, with the City named as additional insured. If such insurance contains a general aggregate limit, such limit shall apply separately to each project Artist performs for Agency or City. Such insurance shall name the Agency and City, its appointed and elected officials and its employees as additional insured. The coverage shall not contain any special limitations on the scope of protection afforded the Agency and City.

(b) Automobile Liability with a combined single limit of no less than \$500,000 per occurrence for bodily injury and property damage, written on a form acceptable to the City, with the City named as additional insured. Such insurance shall include coverage for owned, hired and non-owned automobiles used in the performance of this Agreement.

(c) Worker's Compensation in accordance with the statutory requirements of the State of California for all employees of the Artist. A waiver of subrogation in favor of the City shall apply.