

APPENDIX A

Memorandum of Understanding Community Public Art Program

This agreement made the ____ day of _____ 201X

Between:

CITY OF KELOWNA

a municipal corporation having its offices at 1435 Water Street,

Kelowna, British Columbia V1Y 1J4

(the City)

And: *Name of and address of Applicant*

(the Applicant)

Whereas:

- A. The City has established a Community Art Program and requested proposals for Community Art projects for 201X;
- B. An evaluation panel has recommended the proposal (the Proposal) submitted by the Applicant for *name of project*: (the Project), as a Community Art Project for 201X; and
- C. City Council has approved the recommendation to fund the Project from the Community Art Program;

Therefore:

The Memorandum of Understanding (MOU) set out herein between the City and the Applicant stipulates the terms of the Project including responsibilities of the respective parties, identification of deliverables, and a timeline for completion of principal tasks.

This MOU can be amended at any time by written agreement of the City and the Applicant.

Name of Applicant will:

- a) provide documentation to the City verifying that the Applicant is a registered British Columbia Society in good financial standing and that it has the authority, by resolution of its directors to enter into this agreement;
- b) demonstrate proof of insurance, satisfactory to the City, prior to commencing work on the Project;
- c) abide by all applicable by-laws, statutes, ordinances, and regulations of any governmental agency having jurisdiction over the Project or the site;
- d) not assign or transfer any interest in this agreement or the Project without the prior written consent of the City;
- e) indemnify and hold harmless the City and its personnel from all actions, proceedings, losses, expenses, and costs arising out of, or in any way connected with the Applicant's use of and presence on the site, the construction of the Project, failure by the Artist and/or Applicant to pay for labour and materials, contamination of the site resulting from the Project, breach or default by the Artist and/or Applicant under this agreement, or any wrongful act, omission, or negligence of the Artist and/or Applicant;
- f) provide verification that matching support in the amount of \$xxx has been applied to the Project;
- g) invoice the City for all funds payable by the City pursuant to this agreement to a maximum of \$xxx;
- h) pay on a timely basis, the Artist, all suppliers, and any other providers of services and/or materials associated with the Project;
- i) manage the Project and the work of the Artist to ensure that the timelines as outlined in Appendix A are met;
- j) provide interim and final reports and any other documentation to the City as set out in Appendix A and to otherwise communicate on a timely basis with the City regarding the progress of the Project;
- k) facilitate access to the Project site or other locations where Project work is being done, for City staff; and
- l) create original artworks and not infringe upon any copyright.

The City will:

- a) upon receipt of an invoice and satisfactory progress reports, pay to the Applicant the amounts specified in Appendix A provided that there is full compliance with all of the other terms of this agreement;
- b) at its expense, prepare, and install at the site a plaque or other means of identifying the Artist, the Applicant, the title of the artwork, the year of completion, and any other pertinent project-related information.

The parties also agree that:

- a) all reports will be in digital format. Additionally, if any report is deemed incomplete by the City, it will not be accepted by the City, and the City will notify the Applicant immediately of the changes required to complete the report;

- b) any communication by the Applicant with the public, including any media organization, with regard to the Project must have approval of the City;
- c) the City will have the right to alter, remove, or relocate the completed artwork;
- d) the City will maintain the completed artwork in good repair and may consult with the Artist, Applicant, and/or a professional conservator in making its decisions regarding maintenance;
- e) the Artist and the Applicant are independent contractors and are not employees or agents of the City and as such are not entitled to employment-related benefits from the City;
- f) if the Applicant violates or fails to comply with any provisions of this agreement, the City may give the Applicant notice of default. If the default is not rectified to the City's satisfaction within the time specified in the City's notice, the City may, by giving one week's notice, terminate the Artist's and Applicant's rights under this agreement. The notice of termination may require removal of the Project and restoration of the site at the Applicant's expense, or alternatively, the transfer and delivery of the artwork or work in progress to the City.
- g) upon completion or termination of the Project, ownership of the artwork will be transferred to the City and the Applicant will sign a transfer document to this effect;
- h) copyright in the completed work will be held by the City; and
- i) All communication regarding the Project will be through:
 - *Applicant's contact information*
 - Cultural Services Branch, City of Kelowna, #105 – 1014 Glenmore Drive, Kelowna, BC V1Y 4P2

The signatures below confirm that both parties understand and agree to the terms set out herein.

ACKNOWLEDGED AND AGREED:

Name of Applicant:

Date: _____ Authorized Signatory: _____

Print name: _____

By the City of Kelowna:

Date: _____ Authorized Signatory: _____

Print name: _____

APPENDIX A

TIMELINES AND DELIVERABLES

PHASE 1: Upon execution of this agreement:

\$xxx to be paid by the City to the Applicant upon receipt from the Applicant of:

- a) verification that matching support in the form of cash and/or in-kind donations is in place;
- b) proof of insurance;
- c) evidence that the Applicant is in good financial standing; and
- d) if an organization, a copy of a resolution from the Applicant authorizing execution of this agreement.

PHASE 2:

By *date*, the Applicant will provide to the City a progress report including:

- a) a budget including expenditures to date, cash and in-kind donations received, as well as projected expenditures, and cash and in-kind donations;
- b) a summary of public participation to date, including the number of people involved, and a description of tasks completed by participants including photographic documentation.
- c) an invoice for \$xxx.

Upon receipt and acceptance of the progress report, the City will pay the Applicant \$xxx.

PHASE 3:

By *date*, the Applicant will complete the project and provide to the City a final progress report including:

- a) photographic documentation in digital format of the completed artworks;
- b) a final financial report indicating all revenues and in-kind donations, and expenditures;
- c) a summary outlining how the outcome has met the Project objectives outlined in the proposal;
and
- d) a final invoice for \$xxx.