

**COUNTY OF TULARE
SERVICES AGREEMENT
Lily Pond Installation Project**

THIS AGREEMENT ("Agreement") is entered into as of _____, between the **COUNTY OF TULARE**, a political subdivision of the State of California ("COUNTY"); **GARDEN STREET ART STUDIO** ("ARTIST"); and the **VISALIA ARTS CONSORTIUM, INC.**, a California corporation ("CONTRACTOR"). COUNTY, ARTIST, and CONTRACTOR are each a "Party" and together are the "Parties" to this Agreement, which is made with reference to the following:

- A. COUNTY desires to have art installed at the COUNTY owned Lily Pond in Mooney Grove Park, Visalia, CA ("Site");
- B. The ARTIST has been selected by the COUNTY to design, fabricate, deliver and install a work of art ("Artwork") at the Site, on such terms and conditions as follow ("Project"); and
- C. The CONTRACTOR has previously elicited artist proposals for this Project, will manage the fabrication and installation by ARTIST, and insure the work on behalf of the ARTIST and COUNTY for this Project.

THE PARTIES AGREE AS FOLLOWS:

1. TERM: The fabrication and installation of Artwork shall be commenced within ten (10) calendar days after the date the COUNTY'S Notice to Proceed is received by the ARTIST and, subject to authorized adjustments, completion of the Artwork shall be achieved for the Project within one hundred eighty (180) calendar days from the date to be established in the Notice to Proceed.

2. SERVICES: See attached **Exhibits A, A-1**.

3. PAYMENT FOR SERVICES: See attached **Exhibit B**.

4. INSURANCE: Before approval of this Agreement by COUNTY, CONTRACTOR must file with the Clerk of the Board of Supervisors evidence of the required insurance as set forth in the attached **Exhibit C**.

5. GENERAL AGREEMENT TERMS AND CONDITIONS:

a. PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK: Payments to ARTIST by COUNTY shall not excuse ARTIST from its obligation to replace unsatisfactory deliverables, including equipment, components, materials, or services even if the unsatisfactory character of such deliverables, equipment, components, materials, or services may not have been apparent or detected at the time such payment was made. Deliverables, equipment, components, materials and services that do not conform to the requirements of this Agreement may be rejected by COUNTY and in such case must be replaced by ARTIST without delay and at no cost to the COUNTY.

b. LIABILITY OF COUNTY: COUNTY'S payment obligations under this Agreement shall be limited to the payment of the compensation provided for in section, "PAYMENT FOR SERVICES," of this Agreement. Notwithstanding any other provision of this Agreement, in no event shall COUNTY be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental

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damages, including, but not limited to, lost profits, arising out of or in connection with this Agreement or the services performed in connection with this Agreement.

c. QUALIFIED PERSONNEL: ARTIST shall utilize only competent personnel under the supervision of, and in the employment of, ARTIST (or ARTIST's authorized subcontractors) to perform the services. ARTIST will comply with COUNTY'S reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at COUNTY'S request, must be supervised by ARTIST. ARTIST shall commit adequate resources to allow timely completion within the Project schedule specified in this Agreement.

d. INDEPENDENT CONTRACTOR STATUS: The Parties enter into this Agreement with the express understanding that ARTIST and CONTRACTOR will perform all services required under this Agreement as an independent contractor. The Parties agree that the ARTIST, CONTRACTOR and any of its agents, employees, or officers cannot be considered agents, employees, or officers of COUNTY. ARTIST and CONTRACTOR agree to advise everyone it assigns or hires to perform any duty under this Agreement that they are not employees of COUNTY. Subject to any performance criteria contained in this Agreement, ARTIST and CONTRACTOR will be solely responsible for determining the means and methods of performing the specified services and COUNTY will have no right to control or exercise any supervision over ARTIST and CONTRACTOR as to how the ARTIST and CONTRACTOR will perform the services. As ARTIST and CONTRACTOR are not COUNTY'S employee, ARTIST and CONTRACTOR are responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- i. Withhold FICA (Social Security) from ARTIST' and CONTRACTOR'S payments.
- ii. Make state or federal unemployment insurance contributions on ARTIST' and CONTRACTOR'S behalf.
- iii. Withhold state or federal income tax from payments to ARTIST and CONTRACTOR.
- iv. Make disability insurance contributions on behalf of ARTIST and CONTRACTOR.
- v. Obtain unemployment compensation insurance on behalf of ARTIST and CONTRACTOR.

Notwithstanding this independent contractor relationship, COUNTY will have the right to monitor and evaluate the performance of ARTIST and CONTRACTOR to assure compliance with this Agreement.

e. COMPLIANCE WITH LAW: ARTIST and CONTRACTOR must provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to ARTIST' and CONTRACTOR'S employees, ARTIST and CONTRACTOR must comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.

f. GOVERNING LAW: The laws of the State of California, without reference to California conflict of laws principles, govern this Agreement and its interpretation. The Parties agree that this Agreement is made in and will be performed in Tulare County, California.

g. RECORDS AND AUDIT: ARTIST and CONTRACTOR must maintain complete and accurate records with respect to the services rendered and the costs incurred under this Agreement. In addition, ARTIST and CONTRACTOR must maintain complete and accurate records with respect to any payments to employees or subcontractor. All of the records must be prepared in accordance with generally accepted accounting procedures, must be clearly identified, and must be kept readily accessible. Upon request, ARTIST and CONTRACTOR must make the records available within Tulare County to the Auditor of Tulare

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County and to his or her agents and representatives, for the purpose of auditing and/or copying the records for a period of five (5) years from the date of final payment under this Agreement.

h. CONFLICT OF INTEREST:

- i. At all times during the performance of this Agreement, ARTIST and CONTRACTOR must comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to, Government Code section 1090 et seq., and the Political Reform Act, Government Code section 81000 et seq. and regulations promulgated by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including ARTIST and CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which the officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision that has the potential to confer any pecuniary benefit on ARTIST and CONTRACTOR or any business firm in which ARTIST and CONTRACTOR have an interest, with certain narrow exceptions.
- ii. ARTIST and CONTRACTOR agree that if any facts come to its attention that raise any questions as to the applicability of conflicts of interests laws, then it will immediately inform COUNTY and provide all information needed for resolution of this question.

i. INDEMNIFICATION AND DEFENSE:

- i. To the fullest extent permitted by law, ARTIST and CONTRACTOR must indemnify, defend (at ARTIST' and CONTRACTOR's sole cost and expense and with legal counsel approved by COUNTY, which approval may not be unreasonably withheld), protect and hold harmless COUNTY, all subsidiaries, divisions and affiliated agencies of COUNTY, and all of their representatives, partners, designees, officers, directors, employees, consultants, agents, successors and assigns, (each, an "Indemnified Party" and collectively, the "Indemnified Parties"), from and against all claims (including, without limitation, claims for bodily injury, death or damage to property), demands, obligations, damages, actions, causes of action, suits, losses, judgments, fines, penalties, liabilities, costs and expenses (including, without limitation, attorneys' fees, disbursements and court costs, and all other professional expert or consultants' fees and costs and COUNTY general and administrative expenses) of every kind and nature whatsoever (individually, a "Claim"; collectively, "Claims") which may arise out of, pertain to, or relate (directly or indirectly) to the negligence, recklessness, or misconduct of ARTIST or CONTRACTOR with respect to any work performed or services provided under this Agreement (including, without limitation, the acts, errors and/or omissions of ARTIST or CONTRACTOR, its principals, officers, agents, employees, vendors, suppliers, consultants, sub-consultants, ARTIST, anyone employed directly or indirectly by any of them or for whose acts they may be liable or any or all of them). ARTIST' and CONTRACTOR'S obligation to indemnify applies unless it is finally adjudicated that the liability was caused by the sole active negligence or sole willful misconduct of an Indemnified Party. If it is finally adjudicated that liability is caused by the comparative active negligence or willful misconduct of an Indemni-

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fied Party, then ARTIST' and CONTRACTOR'S indemnification obligation shall be reduced in proportion to the established comparative liability.

- ii. The duty to defend is a separate and distinct obligation from ARTIST' and CONTRACTOR'S duty to indemnify. ARTIST and CONTRACTOR shall be obligated to defend, in all legal, equitable, administrative, or special proceedings, the Indemnified Parties immediately upon tender to ARTIST and CONTRACTOR of the Claim in any form or at any stage of an action or proceeding, whether or not liability is established. Payment to ARTIST and CONTRACTOR by any Indemnified Party or the payment or advance of defense costs by any Indemnified Party cannot be a condition precedent to enforcing the Indemnified Party's rights to indemnification under this Agreement. An allegation or determination that persons other than ARTIST or CONTRACTOR are responsible for the Claim does not relieve ARTIST or CONTRACTOR from its separate and distinct obligation to defend under this section. The obligation to defend extends through final judgment, including exhaustion of any appeals. The defense obligation includes an obligation to provide independent defense counsel if ARTIST or CONTRACTOR asserts that liability is caused in whole or in part by the negligence or willful misconduct of an Indemnified Party. If it is finally adjudicated that liability was caused by the comparative active negligence or willful misconduct of an Indemnified Party, then ARTIST or CONTRACTOR may submit a claim to the COUNTY for reimbursement of reasonable attorneys' fees and defense costs in proportion to the established comparative liability of the Indemnified Party. ARTIST' and CONTRACTOR'S indemnification obligations under this Agreement will survive the expiration or earlier termination of this Agreement until action against the Indemnified Parties for the matter indemnified is fully and finally barred by the applicable statute of limitations or statute of repose. ARTIST'S and CONTRACTOR'S liability for indemnification under this Agreement is in addition to any liability ARTIST and CONTRACTOR may have to COUNTY for a breach by ARTIST or CONTRACTOR of any of the provisions of this Agreement. Under no circumstances may the insurance requirements and limits set forth in this Agreement be construed to limit ARTIST' and CONTRACTOR'S indemnification obligation or other liability under this Agreement. The terms of this Agreement are contractual and the result of negotiation between the Parties.
- iii. ARTIST and CONTRACTOR must indemnify and hold COUNTY harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses, for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by COUNTY, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.
- iv. This indemnification specifically includes any claims that may be made against COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging civil rights violations by ARTIST or CONTRACTOR under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for ARTIST or CONTRACTOR'S failure to provide form DE-542, when applicable. This indemnification obli-

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gation shall continue beyond the term of this Agreement as to any acts or omissions occurring under this Agreement or any extension of this Agreement.

- v. The absence of insurance or insufficient insurance limits will not eliminate the obligation to indemnify and defend hereunder.

j. **TERMINATION:**

- i. **Without Cause:** COUNTY may terminate this Agreement without cause by giving thirty (30) days' prior written notice to ARTIST and CONTRACTOR of its intention to terminate under this provision, specifying the date of termination. COUNTY will pay to ARTIST and CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. COUNTY will not pay lost anticipated profits or other economic loss. The payment of any compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from ARTIST and CONTRACTOR of all plans, specifications and estimates, and other documents prepared by ARTIST and CONTRACTOR in accordance with this Agreement. COUNTY will not impose sanctions on ARTIST and CONTRACTOR under these circumstances.

- ii. **With Cause:** Either Party may terminate this Agreement immediately, by written notice to the other Party, should the other Party:

- (1) Be adjudged a bankrupt, or
- (2) Become insolvent or have a receiver appointed, or
- (3) Make a general assignment for the benefit of creditors, or
- (4) Suffer any judgment that remains unsatisfied for 30 days, and that would substantively impair the ability of the judgment debtor to perform under this Agreement, or
- (5) Materially breach this Agreement.

In addition, COUNTY may terminate this Agreement based on:

- (6) Material misrepresentation, either by ARTIST or CONTRACTOR or anyone acting on ARTIST' or CONTRACTOR behalf, as to any matter related in any way to COUNTY'S retention of ARTIST or CONTRACTOR, or
- (7) Other misconduct or circumstances that, in the sole discretion of COUNTY, either impairs the ability of ARTIST or CONTRACTOR to competently provide the services under this Agreement, or exposes COUNTY to an unreasonable risk of liability.

For any of the occurrences except item (5) above, termination may be effected upon written notice by the terminating Party specifying the date of the termination. If ARTIST or CONTRACTOR fail to perform according to the terms and conditions of this Agreement, then COUNTY may, in addition to any other remedy it may have, issue a declaration of default after 10 days written notice to ARTIST and CONTRACTOR.

Upon a material breach, the Agreement may be terminated after the failure of the defaulting Party to remedy the breach to the satisfaction of the non-defaulting Party within five (5) days of written notice specifying the breach. If the breach is not remedied within that five

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(5) day period, then the non-defaulting Party may terminate this Agreement on further written notice specifying the date of termination. If the nature of the breach is such that it cannot be cured within a five (5) day period, then the defaulting Party may submit a written proposal within that period which sets forth a specific means to resolve the default. If the non-defaulting Party consents to that proposal in writing, which consent may not be unreasonably withheld, then the defaulting Party must immediately embark on its plan to cure the default or breach. If the default or breach is not cured within the time agreed, then the non-defaulting Party may terminate this Agreement upon written notice specifying the date of termination.

COUNTY will pay to ARTIST and CONTRACTOR the compensation earned for work satisfactorily performed and not previously paid for to the date of termination. The payment of such compensation is subject to the restrictions on payment of compensation otherwise provided in this Agreement, and is conditioned upon receipt from ARTIST and CONTRACTOR of all plans, specifications and estimates, and other documents prepared by ARTIST and CONTRACTOR by the date of termination in accordance with this Agreement. COUNTY will not pay lost anticipated profits or other economic loss, nor will COUNTY pay compensation or make reimbursement to cure a breach arising out of or resulting from such termination. If COUNTY terminates this Agreement for cause and the expense of finishing ARTIST' or CONTRACTOR'S scope of work exceeds the unpaid balance of the Agreement, then ARTIST and CONTRACTOR must pay the difference to COUNTY. COUNTY may impose sanctions under these circumstances, which may include possible rejection of future proposals based on specific causes of ARTIST or CONTRACTOR'S non-performance.

- iii. **Effects of Termination:** Expiration or termination of this Agreement will not terminate any obligations to indemnify, to maintain and make available any records pertaining to the Agreement, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where COUNTY terminates ARTIST' or CONTRACTOR'S services, that termination will not affect any rights of COUNTY to recover damages against ARTIST or CONTRACTOR.
- iv. **Suspension of Performance:** Independent of any right to terminate this Agreement, the authorized representative of the COUNTY department or agency for which ARTIST' or CONTRACTOR services are to be performed, may immediately suspend performance by ARTIST or CONTRACTOR, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by ARTIST or CONTRACTOR to comply with the provisions of this Agreement, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

k. **SUBMITTING FALSE CLAIMS; MONETARY PENALTIES:** Under applicable federal and state law, if ARTIST or CONTRACTOR submits a false claim to COUNTY under this Agreement, then ARTIST or CONTRACTOR will be liable to COUNTY for the statutory penalties set forth in those statutes, including but not limited to statutory fines, treble damages, costs, and attorneys' fees. ARTIST or CONTRACTOR will be deemed to have submitted a false claim to COUNTY if ARTIST or CONTRACTOR:

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- i. Knowingly presents or causes to be presented to COUNTY a false claim or request for payment or approval;
- ii. Knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by COUNTY;
- iii. Conspires to defraud COUNTY by getting a false claim allowed or paid by COUNTY;
- iv. Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to COUNTY; or
- v. Is a beneficiary of an inadvertent submission of a false claim to COUNTY, later discovers the falsity of the claim, and fails to disclose the false claim to COUNTY within a reasonable time after discovery of the false claim.

I. FORM DE-542: Because ARTIST are individuals, ARTIST and CONTRACTOR acknowledge that this Agreement is subject to filing obligations under Unemployment Insurance Code Section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include ARTIST' full name, social security number, address, the date this Agreement was executed, the total amount of the Agreement, its expiration date or whether it is ongoing. ARTIST and CONTRACTOR agrees to cooperate with COUNTY to make that information available and to complete Form DE- 542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

m. WORKS FOR HIRE: ARTIST and CONTRACTOR acknowledges that all work(s) under this Agreement are "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to COUNTY all rights and interests ARTIST and CONTRACTOR may have in the work(s) it prepares under this Agreement, including any right to derivative use of the work(s). Any and all software and related materials developed by ARTIST and CONTRACTOR in performance of this Agreement for COUNTY will be the sole property of COUNTY, and ARTIST and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to COUNTY. ARTIST and CONTRACTOR will execute all necessary documents to enable COUNTY to protect COUNTY'S intellectual property rights under this section. This agreement further discusses ARTIST intellectual property rights below.

n. WORK PRODUCT: All work product, equipment, or materials created for COUNTY or purchased by COUNTY under this Agreement belong to COUNTY and ARTIST must immediately deliver them to COUNTY at COUNTY'S request upon termination or completion of this Agreement, unless otherwise specified under this Agreement.

o. TIME OF ESSENCE: The Parties agree that time is of the essence under this Agreement, unless they agree otherwise in writing.

p. CONFIDENTIALITY: ARTIST and CONTRACTOR may not use or disclose any information it receives from COUNTY under this Agreement that COUNTY has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by COUNTY. Unless required to do so by law, including, but not limited to, the Ralph M. Brown Act or the California Public Records Act, COUNTY may not disclose to third parties any information it receives from ARTIST and CONTRACTOR that ARTIST and CONTRACTOR has previously identified as confidential. If COUNTY determines that it must disclose any information that ARTIST and CONTRACTOR previously identified as confidential, then it shall promptly give ARTIST or CONTRACTOR

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written notice of its intention to disclose such information and the authority for such disclosure. ARTIST or CONTRACTOR shall have period of five (5) calendar days thereafter within which to seek a protective court order to prevent such disclosure or to notify COUNTY that it will not seek such an order. COUNTY shall cooperate with ARTIST or CONTRACTOR in any efforts to seek such a court order. COUNTY shall not disclose the information until the five (5) day period has expired without a response from ARTIST or CONTRACTOR, or ARTIST or CONTRACTOR has notified COUNTY that it will not seek such an order, or ARTIST or CONTRACTOR has sought and a court has declined to issue a protective order for such information. If ARTIST or CONTRACTOR seeks a protective order for such information, ARTIST or CONTRACTOR shall defend and indemnify COUNTY from any and all loss, injury, or claim arising from COUNTY'S withholding of the information from the requestor. This includes any attorney's fees awarded to the requestor. The duty of COUNTY, ARTIST and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

q. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this Agreement, COUNTY is relying on the personal skill, expertise, training and experience of ARTIST and CONTRACTOR, and ARTIST'S and CONTRACTOR'S employees and no part of this Agreement may be assigned or subcontracted by ARTIST or CONTRACTOR without the prior written consent of COUNTY, which consent COUNTY may grant, delay, deny, or condition in its absolute discretion.

r. DISPUTES AND DISPUTE RESOLUTION: ARTIST and CONTRACTOR shall continue with its responsibilities under this Agreement during any dispute. If a dispute arises out of or relating to this Agreement, or the breach of the Agreement, and if the dispute cannot be settled through negotiation, then the Parties agree first to try in good faith to settle the dispute by non-binding mediation, to be held in Tulare County, California, before resorting to litigation or some other dispute resolution procedure, unless the Parties mutually agree otherwise. The Parties must mutually select the mediator, but in case of disagreement, then the Parties will select the mediator by lot from among two nominations provided by each Party. The Parties will split equally all costs and fees required by the mediator; otherwise each Party will bear its own costs of mediation. If mediation fails to resolve the dispute within thirty (30) days, then either Party may pursue litigation to resolve the dispute.

s. FURTHER ASSURANCES: Each Party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this Agreement.

t. CONSTRUCTION: This Agreement reflects the contributions of all Parties and so the provisions of Civil Code section 1654 will not apply to address and interpret any alleged uncertainty or ambiguity.

u. HEADINGS: Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning, or intent of the provisions under the headings.

v. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the Parties to this Agreement do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

w. WAIVERS: The failure of either Party to insist on strict compliance with any provision of this Agreement will not be considered a waiver of any right to do so, whether for that breach or any later breach. The acceptance by either Party of either performance or payment will not be considered a waiver of any preceding breach of the Agreement by the other Party.

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x. ORDER OF PRECEDENCE: In the event of any conflict or inconsistency between or among the body of the Agreement (which includes these “General Agreement Terms and Conditions”) and any Exhibit or Attachment, then the terms and conditions of the body of the Agreement shall prevail.

y. CONFLICT WITH LAWS OR REGULATIONS/ SEVERABILITY: This Agreement is subject to all applicable laws and regulations. If any provision of this Agreement is found by any court or other legal authority, or is agreed by the Parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision will be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit of the Agreement to either Party is lost, then the Agreement may be terminated at the option of the affected Party. In all other cases, the remainder of the Agreement will continue in full force and effect.

z. ENTIRE AGREEMENT: This Agreement represents the entire agreement between all Parties as to its subject matter and no prior oral or written understanding will be of any force or effect. No part of this Agreement may be modified without the written consent of all Parties.

aa. ASSURANCES OF NON-DISCRIMINATION: ARTIST and CONTRACTOR must not discriminate in employment or in the provision of services based any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation. The Parties recognize that ARTIST and CONTRACTOR and COUNTY have the responsibility to protect COUNTY employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace. Accordingly, ARTIST and CONTRACTOR agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities. COUNTY, in its sole discretion, has the right to require ARTIST and CONTRACTOR to replace any employee who provides services of any kind to COUNTY under this Agreement with other employees where COUNTY is concerned that its employees or clients may have been or may be the subjects of discrimination or harassment by such employees. COUNTY’S right to require replacement of employees under this section does not preclude COUNTY from terminating this Agreement with or without cause as provided for under this Agreement.

bb. DRUG-FREE WORKPLACE POLICY: ARTIST and CONTRACTOR acknowledges that under the Federal Drug-Free Workplace Act of 1989 and the California Drug-Free Workplace Act of 1990, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on COUNTY premises. ARTIST and CONTRACTOR agrees that any violation of this prohibition by ARTIST or CONTRACTOR, its employees, agents, or assigns will be deemed a material breach of this Agreement.

cc. RECYCLED PAPER CONTENT: To the extent ARTIST’S and CONTRACTOR’S services under this Agreement include printing services, pursuant to Public Contract Code section 22153 ARTIST and CONTRACTOR shall use paper that meets the recycled content requirements of Public Contract Code section 12209.

6. NOTICES:

a. Except as may be otherwise required by law, any notice to be given must be written and must be either personally delivered, or sent by first class mail, postage prepaid and addressed as follows:

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COUNTY:

Director, Tulare County General Services Agency
2637 W. Burrel Ave., Suite 200
Visalia, CA 93291

With a Copy to:

County Administrative Officer
2800 W. Burrel Ave.
Visalia, CA 93291

ARTIST:

C/O Jessica Smith
Garden Street Art Studio
303 N Garden Street
Visalia, CA 93291
(559)802-5239

CONTRACTOR:

Visalia Arts Consortium, Inc.
300 E. Oak Ave.
Visalia, CA 93291
(559) 802-3266

b. Notice personally delivered is effective when delivered. Notice sent by first class mail will be deemed received on the fifth (5th) calendar day after the date of mailing. Either Party may change the above address by giving written notice under this section.

7. AUTHORITY: ARTIST and CONTRACTOR represent and warrant to COUNTY that the individual(s) signing this Agreement on its behalf are duly authorized and have legal capacity to sign this Agreement and bind ARTIST and CONTRACTOR to its terms. ARTIST and CONTRACTOR acknowledge that COUNTY has relied upon this representation and warranty in entering into this Agreement.

8. COUNTERPARTS: The Parties may sign this Agreement in counterparts, each of which is an original and all of which taken together form one single document.

9. RIGHT, TITLE, AND INTEREST IN WORK: All work produced under this Agreement shall be the property of the COUNTY. All documents including, but not limited to, reproducible copies of tracings, drawings, estimates, field notes, investigations, design analysis and studies which are prepared in the performance of the creation of the WORK are to be and remain the property of the COUNTY and are to be delivered to the General Services Agency, 2637 W. Burrel Ave., Ste 200, Visalia, California 93291. Upon final payment to CONTRACTOR, all right, title and interest in the WORK shall become vested in the COUNTY. ARTIST will retain all right, title and interest to any designs that are rejected by the COUNTY.

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10. RISK OF LOSS: ARTIST and CONTRACTOR bear the risk of damage to or loss of the WORK until title passes to the COUNTY, and shall take all necessary measures to protect the WORK from loss or damage until title passes. ARTIST and CONTRACTOR, at ARTIST and CONTRACTOR'S own expense, shall rebuild, repair, restore and make good all damage to any portion of the WORK that occurs prior to title passing to the COUNTY. However, ARTIST and CONTRACTOR are not responsible for damage occurring during installation of the WORK through the sole negligence or willful misconduct of the COUNTY, its agents, employees, representatives, or officials.

11. INTELLECTUAL PROPERTY AND PUBLICITY RIGHTS:

a. Copyright. Subject to usage rights and licenses granted to the COUNTY hereunder, ARTIST shall retain their respective rights under the Copyright Act of 1976, 17 U.S.C. section 101 et seq., in all original works of authorship produced under this Agreement. ARTIST's copyright shall not extend to predominantly utilitarian aspects of the Artwork, such as landscaping elements, furnishings, or other similar objects. ARTIST shall be deemed sole author of the Artwork.

b. COUNTY's Intellectual Property License. ARTIST grants to COUNTY and to COUNTY's agents, authorized contractors, and assigns, an unlimited, non-exclusive and irrevocable and royalty-free license to do the following with respect to the Artwork, and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

- i. Implementation, Use and Display.** COUNTY may use and display the Artwork. To the extent the ARTIST's Artwork under this Agreement involves design elements that are incorporated by COUNTY into the design of the Site, COUNTY may implement such elements at the Site.
- ii. Reproduction and Distribution.** The ARTIST grant the COUNTY, and other parties duly authorized by the COUNTY, a nonexclusive irrevocable and royalty-free license to reproduce the Artwork for all COUNTY educational, public relations, commercial, tourism and arts promotional purposes including, but not limited to, displaying the Artwork, lending the Artwork, reproducing or preparing photographs, other two-dimensional reproductions, or digital reproductions of the Artwork, and displaying, distributing, transmitting such reproductions or images to the general public. Such reproductions and transmissions may be magazines, books, newspapers, journals, brochures and pamphlets, exhibition catalogues, films, television, video, websites, slides, negatives, prints and electronic media, DVD, CD, computerized retrieval systems, and by all means or methods now known or hereafter invented in connection with standard COUNTY activities.
- iii. Third Party Infringement.** The COUNTY is not responsible for any third party infringement of ARTIST's copyright and is not responsible for protecting the intellectual property rights of ARTIST.
- iv. Trademark.** In the event that COUNTY's use of the Artwork creates trademark, service mark or trade dress rights in connection with the Artwork, COUNTY shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

c. Publicity. COUNTY shall have the right to use ARTIST's name, likeness, and/or biographical information in connection with the display or reproduction and distribution of the Artwork, including all

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advertising and promotional materials regarding COUNTY. ARTIST shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the Artwork.

d. Intellectual Property Warranty and Indemnification. In addition to indemnification provisions contained elsewhere in this Agreement, the ARTIST represent and warrant that any materials or deliverables, including the artwork proposal and artwork, provided under this Agreement are either original, not encumbered and do not infringe upon the copyright, trademark, patent or other intellectual property rights of any third party, or are in the public domain. If the artwork proposal and artwork provided hereunder become the subject of a claim, suit or allegation of copyright, trademark or patent infringement, the COUNTY shall have the right, in its sole discretion, to require ARTIST to produce, at ARTIST's own expense, new artwork proposal and artwork as a means of remedying any claim of infringement in addition to any other remedy available to the COUNTY under law or equity. ARTIST further agree to indemnify and hold harmless the COUNTY, its elected officials, officers, employees and agents from and against any and all claims, actions, costs, judgments or damages of any type alleging or threatening that any artwork proposals, materials, deliverables, supplies, equipment, services or artworks provided under this Agreement infringe the copyright, trademark, patent or other intellectual property or proprietary rights of any third party (Third Party Claims of Infringement). If a Third Party Claim of Infringement is threatened or made before the ARTIST receives payment under this Agreement, the COUNTY shall be entitled, upon written notice to the ARTIST, to withhold some or all of such payment.

12. MAINTENANCE. Unless specifically provided in this Agreement, ARTIST shall not be responsible for ongoing maintenance of the Artwork. ARTIST shall provide the COUNTY Maintenance Instructions for the Artwork, generally describing anticipated maintenance requirements; a recommended maintenance schedule; anticipated and recommended care and/or replacement of any part of the Artwork. The Artwork must be durable, taking into consideration that the Site is exposed to elements such as weather, temperature variation, and movement of people and equipment. ARTIST must ensure that all maintenance recommendations will be reasonable in terms of time and expense.

Although COUNTY strives to maintain its public art collections in good repair and condition, COUNTY is not required by this Agreement to maintain the Artwork to any particular standard. COUNTY may determine to allow the Artwork to deteriorate in accordance with the Artwork's temporary life span, if deemed appropriate by COUNTY or if COUNTY lacks sufficient funds for required maintenance and/or conservation. If the Artwork suffers deterioration, COUNTY shall have 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.

13. COUNTY'S RIGHT TO REPAIR AND CONSERVE. The COUNTY shall have the right to determine when and if repairs and restorative conservation to the Artwork will be made. It is the intent of the COUNTY to consult with the ARTIST regarding repairs and restorative conservation which are undertaken up to five years after final payment has been made on this Agreement when practicable.

**COUNTY OF TULARE
SERVICES AGREEMENT
Lily Pond Installation Project**

14. ARTIST WARRANTIES.

a. Warranty of Title. ARTIST represents and warrants that ARTIST are the sole creator of the Artwork and that ARTIST are the sole owner of any and all copyrights pertaining to the Artwork. ARTIST further represent that the Artwork is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights, or any other rights in the Artwork or any parts of the Artwork.

b. Warranty of Workmanship. ARTIST represent and warrants that, for a period of three years after final acceptance, the Artwork will be free of defects in workmanship or materials, including Inherent Defects, and that the Artwork will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at the Site. "Inherent Defect" refers to a quality within the material or materials, which, either alone or in combination, results in the tendency of the Artwork to destroy itself. "Inherent Defect" does not include any tendency to deteriorate that is specifically identified in writing and approved by the COUNTY. ARTIST and CONTRACTOR shall, at ARTIST and CONTRACTOR'S sole cost and expense, remedy any defects in workmanship or materials that appear within a period of three years from the date of final acceptance of the Artwork by COUNTY.

c. Warranty of Public Safety. ARTIST represents and warrants that the Artwork will not contain sharp points or edges or otherwise pose a danger to public health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement. ARTIST warrant that the Artwork will comply with any applicable requirements of the California statutes and codes. ARTIST agree to cooperate with COUNTY in making or permitting adjustments to the Artwork if necessary to eliminate hazards or code violations that become apparent after the Artwork is finally accepted by the COUNTY.

d. Acceptable Standard of Display. ARTIST represent and warrant as follows:

- i. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment by COUNTY will maintain the Artwork within an acceptable standard of public display;
- ii. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display; and
- iii. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

e. Manufacturer's Warranties. To the extent the Artwork incorporates products covered by a manufacturer's warranty, ARTIST shall provide copies of such warranties and assign any paid warranties to COUNTY.

f. Unique. ARTIST warrant that the design of the Artwork as expressed in **Exhibit A** is an edition of one, and that neither ARTIST nor ARTIST's agents will execute or authorize another to execute another work of the same or substantially similar image, design, dimensions and materials as the Artwork. ARTIST may create works that utilize or incorporate various individual art elements that comprise the Artwork, so long as the work utilizing or incorporating such individual elements (1) does not consist pre-

**COUNTY OF TULARE
SERVICES AGREEMENT
Lily Pond Installation Project**

dominantly of such elements, (2) is not the same or substantially similar in image, design, dimensions and materials as the WORK, and (3) is not displayed in an environment that is the same or substantially similar to the environment in which the Artwork is to be displayed at the Site. This warranty shall continue in effect for a period of one hundred (100) years, and shall be binding on ARTIST and ARTIST's heirs and assigns. Recognizing that COUNTY has no adequate remedy at law for ARTIST's violation of this warranty, ARTIST agrees that, in the event ARTIST breach this warranty, COUNTY shall be entitled to enjoin ARTIST's breach. Nothing hereunder shall be construed to constrain ARTIST from creating posters, note-cards, or other reproductions of the Artwork.

g. Enforcement Costs. The ARTIST agree to pay any and all costs the COUNTY incurs enforcing the indemnity and defense provisions set forth in this Agreement, including but not limited to, attorney's fees.

h. Defects in Workmanship. The ARTIST represents and warrants that all work by the ARTIST and/or sub-consultants will be performed in accordance with professional standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the artwork) for three year after the date of final acceptance by the COUNTY.

i. Inherent Defects. If within three years from the date the Artwork is formally accepted, the COUNTY observes any breach of warranty that is curable by the ARTIST, the ARTIST shall, at the request of the COUNTY, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the COUNTY. The COUNTY shall give notice to the ARTIST of such breach with reasonable promptness.

j. Hazardous Materials. The ARTIST represent and warrant that the Artwork and the materials used are not currently known to be hazardous or potentially hazardous to any plant life, animal life, human life or natural ecosystem.

k. Public Safety. The ARTIST represent and warrant that the Artwork shall not constitute any threat to the safety of persons or property when used in the manner for which it is designed.

l. Adjustments to Eliminate Hazards. The ARTIST agree to cooperate with the COUNTY in making or permitting adjustments to the Artwork if necessary to eliminate hazards which become apparent after the Artwork is accepted by the COUNTY. The ARTIST shall be notified in writing when an adjustment is necessary and the COUNTY shall consult with the ARTIST with reasonable promptness.

15. CONTRACTOR AND COUNTY'S MORAL RIGHTS. The COUNTY, having expended considerable public funds to commission the WORK, and pursuant to its governmental responsibilities, intends to display at the Site the Artwork, as originally created by ARTIST, and to maintain the Artwork in good condition. Public artworks commissioned by the COUNTY are sometimes integrated into their sites, such that they become an integral, permanent and site-specific part of the building's architecture or landscaped environment and removal of the Artwork would result in significant changes to the Artwork and the building's architecture. COUNTY, however, must preserve complete flexibility to operate and manage COUNTY property in the public's interest. Therefore, COUNTY retains the absolute right to alter the Artwork in COUNTY's sole judgment. For example, COUNTY may alter the Artwork to eliminate hazard, to comply with the disabled access laws, to otherwise aid COUNTY in the management of its property and affairs,

**COUNTY OF TULARE
SERVICES AGREEMENT
Lily Pond Installation Project**

or through neglect or accident. If, during or after the term of this Agreement, COUNTY finds the Site to be inappropriate, COUNTY has the right to install the Artwork at an alternate location that COUNTY chooses in its sole discretion. If the Artwork is free-standing such that it can be removed without significant damage to the Artwork or the Site, and if the COUNTY authorizes the removal of the Artwork, the COUNTY shall take reasonable precautions to minimize alteration of the Artwork during removal.

With respect to the Artwork produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, ARTIST waive any and all claims, arising at any time and under any circumstances, against COUNTY, its officers, agents, employees, successors and assigns, arising under the federal Visual Artist Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (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. section 106A, Civil Code section 987 et seq., or any other type of moral right protecting the integrity of works of art. The ARTIST acknowledges and understands that the installation of the Artwork may subject the Artwork to destruction, distortion, mutilation, or other modification due to the acts of third parties. If the Artwork cannot be removed from the Site or property without alteration of the Artwork, ARTIST waive any and all such claims against any future owners of the Site, and its agents, officers and employees, for alteration of the Artwork.

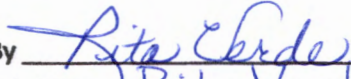
[THIS SPACE LEFT BLANK INTENTIONALLY; SIGNATURES FOLLOW ON NEXT PAGE]

**COUNTY OF TULARE
SERVICES AGREEMENT
Public Art Installation Project**

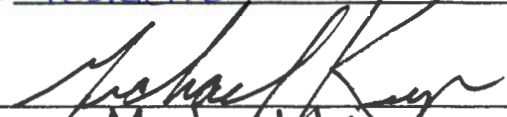
THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

THE VISALIA ARTS CONSORTIUM, INC.

Date: 3-08-2019

By 
Print Name Rita Verde
Title President


Date: 3-11-2019

By 
Print Name Michael Kreps
Title Treasurer

[Pursuant to Corporations Code section 313, County policy requires that contracts with a Corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president (or another officer having general, operational responsibilities), and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer (or another officer having recordkeeping or financial responsibilities), unless the contract is accompanied by a certified copy of a resolution of the corporation's Board of Directors authorizing the execution of the contract. Similarly, pursuant to California Corporations Code section 17703.01, County policy requires that contracts with a Limited Liability Company be signed by at least two managers, unless the contract is accompanied by a certified copy of the articles of organization stating that the LLC is managed by only one manager.]

GARDEN STREET ART STUDIO

Date: March 8, 2019

By 
Print Name Jessica Smith
Title Owner

**COUNTY OF TULARE
SERVICES AGREEMENT
Lily Pond Installation Project**

COUNTY OF TULARE

Date: _____

By _____
Chairman, Board of Supervisors

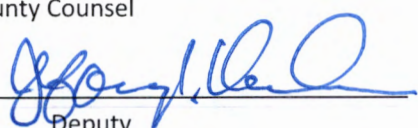
ATTEST: JASON T. BRITT
County Administrative Officer/Clerk of the Board of
Supervisors of the County of Tulare

Date: _____

By _____
Deputy Clerk

Approved as to Form
County Counsel

Date: 3/12/19

By 
Deputy

Matter # 20181546

- Attachments:
Exhibit A – ARTIST Services
Exhibit A1 – CONTRACTOR Services
Exhibit B – Payment for Services
Exhibit C – Insurance

Exhibit A

ARTIST SERVICES

ARTIST shall perform the following services to the satisfaction of the COUNTY:

1. **SITE SELECTION.** COUNTY has identified the Lily Pond Site within Mooney Grove Park, Visalia as an appropriate site for the installation of Artwork.
2. **ARTWORK SELECTION.** At COUNTY's request, CONTRACTOR conducted a request for proposals from local artists for artwork proposals at the Lily Pond Site. ARTIST submitted a proposal maquette (Final Proposal) to COUNTY through the CONTRACTOR. The Final Proposal was reviewed and selected to proceed by the COUNTY Art Selection Committee.

ARTIST Final Proposal



3. **NOTICE TO PROCEED.** COUNTY may decide to proceed or not to proceed with the Artwork. If COUNTY decides to proceed and all approvals are secured, COUNTY will issue a written Notice to Proceed with fabrication and installation to the ARTIST. ARTIST shall not commence fabrication and installation of Artwork until COUNTY has issued such Notice.

If Notice to Proceed is issued such that COUNTY and ARTIST agrees that there is reason to anticipate a delay in the mutually agreed schedule of performance through no fault of ARTIST, then COUNTY and ARTIST shall identify the revised Schedule of Performance in writing on the Notice to Proceed with Fabrication and Installation or on such other mutually executed amendment to the Schedule of Performance.

4. **FABRICATION AND INSTALLATION.** ARTIST shall fabricate the Artwork consistent with the Final Proposal, including without limitation, supervising all aspects of the fabrication of the Artwork. As more particularly provided below, ARTIST shall be responsible for the transportation and delivery of the Artwork to the Site. ARTIST shall be responsible for the installation of the Artwork at the Site consistent with the Final Proposal.

- a. **Progress and Completion.** All time limits stated in this Agreement are of the essence. The ARTIST shall begin the Artwork within ten (10) calendar days after the date the Notice to Proceed is received by the ARTIST. The ARTIST shall carry the Artwork forward expeditiously with adequate forces and shall achieve completion of the Artwork within the Term.

- b. **Delays and Extensions of Time.** The ARTIST shall not be granted an extension of time except on the written consent of the COUNTY, based on good cause for such extension.
 - i. **Notice of Delay.** Whenever the ARTIST foresees any delay in the prosecution of the Artwork, and in any event immediately upon the occurrence of any delay which the ARTIST regards as good cause for an extension, the ARTIST shall notify the CONTRACTOR and COUNTY in writing of the delay. The notice shall specify with detail the cause asserted by the ARTIST to constitute good cause for an extension together with a description of the effect of the delay on the progress of the Artwork and a quantification of the length of the requested extension of time. Any claim or extension of time shall be made in writing to the CONTRACTOR and the COUNTY not more than ten (10) days after the commencement of the delay; otherwise it shall be waived. In the case of a continuing delay only one claim is necessary.
 - ii. **Investigation Procedure.** Upon receipt of a request for extension, the CONTRACTOR shall conduct an investigation of the facts asserted by the ARTIST to constitute good cause for an extension. The CONTRACTOR shall report the results of this investigation, as well as the propriety of the time extension requested, to the COUNTY in writing within ten (10) days of receipt of the request and shall indicate whether it will recommend for or against the extension.
 - iii. **Discretionary Time Extensions.** The COUNTY reserves the right to extend the time for completion of the Artwork if the COUNTY determines that such extension is in the best interest of the COUNTY.
 - iv. **Extension of Time Not a Waiver:** Any extension of time granted the ARTIST pursuant to this section shall not constitute a waiver by the COUNTY of, nor a release of the ARTIST from the ARTIST' obligation to perform this Agreement in the time specified by the Agreement, as modified by the particular extension in question.

The COUNTY'S decision to grant a time extension due to one circumstance set forth in one request, shall not be construed as a grant of an extension for any other circumstance or the same circumstance occurring at some other time, and shall not be viewed by the ARTIST as a precedent for any other request for extension.

The COUNTY shall not be responsible or liable to the ARTIST for any constructive acceleration due to failure of the COUNTY to grant time extensions under the Agreement, should the ARTIST fail to comply with the submission and justification requirements of the Agreement for time extension requests. The ARTIST' failure to perform in accordance with the Agreement's Term shall not be excused because the ARTIST have submitted time extension requests, unless and until such requests are approved by the COUNTY.

- c. **Deviations from Final Proposal.** The goal of the Project is to improve the aesthetics of the Site using the creative talents of ARTIST in accordance with the specifications set forth in the Final Proposal for the

Artwork. The parties recognize that they must consult closely during all stages of development of the Artwork in order to accomplish these goals and that changes from the Final Proposal may become desirable as the Artwork is fabricated. Additionally, the parties recognize and agree that certain specifications regarding the Artwork, such as, but not limited to, the size, color, material, of some of the elements of the Artwork are not identified in the Final Proposal. To the extent that any specification for the Artwork is not identified in the Final Proposal, ARTIST shall seek COUNTY's prior approval of these specifications before commencing with fabrication of the Artwork.

The parties also recognize that the shift in scale from preliminary drawings, maquettes and mock-ups to a full-scale work may require artistic adjustments. ARTIST reserves the right to make minor adjustments to the Artwork, as ARTIST deems aesthetically necessary. In no event, however, may the change in design increase the Artwork budget without prior written approval by COUNTY.

- d. **Personnel.** ARTIST has, or will secure at ARTIST's expense, all personnel required to perform ARTIST's Services. All persons retained by ARTIST shall possess the requisite licenses and permits necessary.
- e. **Review of Progress.** At reasonable times and with advance notice to ARTIST, COUNTY has the right to review the work in progress and to require and receive progress reports from ARTIST. COUNTY shall have the right to visit ARTIST's studio at all reasonable times to inspect and review the progress of the Artwork. ARTIST shall be responsible for arranging with ARTIST's subcontractors for reasonable access for review and inspection of the Artwork at any subcontractors' place of business.
- f. **Risk of Loss.** Until the Artwork is formally accepted by COUNTY, any damage to, theft or vandalism to, or acts of God or nature affecting the Artwork are the responsibility of Artist, including, but not limited to, any loss occurring during the fabrication, storage, transportation, delivery or installation of the Artwork.

5. NOTICE OF COMPLETION

- a. **Notices.** CONTRACTOR shall notify COUNTY that the Artwork has been installed at the Site (Notice of Completion). Within ten (10) days of COUNTY's receipt of the Notice of Completion from the Artist, COUNTY shall notify Artist in writing that the Artwork as completed and installed meets the requirements of this Agreement ("Acceptance Notice"), or if the Artwork does not meet this Agreement's requirements, COUNTY shall notify Artist of the defects ("Defects Notice").
- b. **Remedy of Defects.** ARTIST shall promptly remedy at ARTIST's own cost any defects noted in COUNTY's Defects Notice to the satisfaction of COUNTY's Representative.
- c. **Maintenance Instructions.** As a condition of COUNTY's acceptance of the Artwork, ARTIST shall supply COUNTY with written maintenance instructions for the Artwork. These instructions shall include information in sufficient detail regarding the care, repair and maintenance of the Artwork.

Exhibit A1

CONTRACTOR SERVICES

CONTRACTOR shall be responsible for the following services:

1. Oversee and manage the fabrication and installation of the Artwork at the Site.
2. Ensure the project is completed within the designated timeline in Section 1 of the Agreement.
3. Verify completed work and request progress payments from the COUNTY on behalf of the ARTIST and CONTRACTOR in accordance with the Payment Schedule (Exhibit B).
4. Insure the Project until Final Payment occurs to ARTIST and CONTRACTOR.
5. Verify and submit the Notice of Completion to COUNTY, to be verified by COUNTY, when the fabrication and installation of Artwork is 100% complete.

Exhibit B

PAYMENT FOR SERVICES

1. **FEE.** Artist's fee for Artwork Design, Fabrication and Installation, including all expenses relating thereto, shall not exceed the sum of Fifteen Thousand Dollars (\$15,000). This fee includes but is not limited to the following costs: labor of assistants; materials, programming, communication and other indirect costs; travel expenses of the Artist for site visits and research, and a 10% contingency.
2. **PROGRESS PAYMENT SCHEDULE.** COUNTY agrees to pay installments as set forth in the schedule below and in accordance with the terms of this Agreement.

PROGRESS	PAYMENT TO ARTIST	PAYMENT TO CONTRACTOR¹
ARTWORK SELECTION		
Upon COUNTY's Notice to Proceed	\$1,500	\$0
FABRICATION & INSTALLATION		
Upon 30% Completion	\$4,000	\$0
Upon 60% Completion	\$4,000	\$0
Upon 90% Completion	\$4,000	\$0
CONTINGENCY		
Upon COUNTY's Acceptance Notice	\$1,500	\$0
TOTAL	\$15,000	\$0

3. **COMPLETION.** At a monthly meeting, scheduled by the CONTRACTOR, the COUNTY, CONTRACTOR, and ARTIST will review the ARTIST's proposed percentages of completion. If the agreed upon final percentage for that month corresponds with the completion percentages required for progress payments as listed in the table above, the CONTRACTOR will submit a payment request to the COUNTY.
4. **PAYMENTS.** The CONTRACTOR will be responsible for submitting payment requests the COUNTY in accordance with the Progress Payment Schedule on behalf of the ARTIST and CONTRACTOR. All payments from the COUNTY to the ARTIST will be made through the CONTRACTOR.
5. **FINAL PAYMENT.** Final payment, constituting the entire unpaid balance of the Agreement Sum, shall be paid by the COUNTY to the CONTRACTOR when the Artwork fabrication and installation has been completed; the Agreement fully performed, the COUNTY has issued a Acceptance Notice, which approves the final payment due the CONTRACTOR. When the CONTRACTOR and ARTIST determine that the Agreement is complete, the CONTRACTOR shall submit a request for final payment.

¹ The PROJECT MANAGER will be paid a \$1,500 administrative fee for this project through Tulare County Agreement No. PA3420.

Exhibit C

INSURANCE

UNEMPLOYMENT INSURANCE COMPLIANCE: CONTRACTORS acknowledges that this Agreement is subject to filing obligations pursuant to Unemployment Insurance Code section 1088.8. Accordingly, COUNTY has an obligation to file a report with the Employment Development Department, which report will include the CONTRACTORS' full name, social security number, address, the date this Agreement was executed, the total amount of the contract, the Agreement's expiration date or whether it is ongoing. CONTRACTORS agrees to cooperate with COUNTY to make such information available and to complete DE Form 542. Failure to provide the required information may, at COUNTY'S option, prevent approval of this Agreement, or be grounds for termination by COUNTY.

INSURANCE: The attached **Exhibit C** outlines the minimum scope, specifications, and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Exhibit C** cannot be used to reduce limits available to COUNTY as an additional insured from CONSTRUCTION MANAGER'S full policy limits. Insurance policies cannot be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer(s). If CONSTRUCTION MANAGER fails to maintain or renew coverage, or to provide evidence of renewal, then COUNTY may consider that failure a material breach of this Agreement. COUNTY may also withhold any payment otherwise due to CONTRACTOR or CONSTRUCTION MANAGER for failure to provide evidence of renewal until CONSTRUCTION MANAGER provides such evidence.

WORKERS COMPENSATION. Workers' Compensation Insurance must be obtained by the CONTRACTORS, or by the CONSTRUCTION MANAGER on behalf of the CONTRACTORS, as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTORS, its employees, agents and subcontractors.

A. **Waiver of Subrogation.** The workers' compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTORS, its employees, agents and subcontractors. CONTRACTORS waive all rights against the COUNTY and its officers, agents, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.



Policy Number:

Date Entered: 03/20/2019

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

3/20/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Sharon Jansma Agency 1700 West Walnut Suite A Visalia, CA 93277	CONTACT NAME: MIKE JANSMA	FAX (A/C, No): (559) 625-1603	
	PHONE (A/C, No, Ext): (559) 625-4926	E-MAIL ADDRESS: mike@kjagency.com	
INSURED VISALIA ARTS CONSORTIUM, INC. 300 E. OAK AVENUE SUITE 301 VISALIA, CA 93291	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A:	PHILADELPHIA	
	INSURER B:	STATE COMPENSATION INSURANCE FUND	
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:		<input checked="" type="checkbox"/>	PHPK1887548	9/28/2018	9/28/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000 MED EXP (Any one person) \$ 0 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			PHPK1887548	9/28/2018	9/28/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		<input type="checkbox"/> N/A <input checked="" type="checkbox"/>	9118153-18	11/18/2018	11/18/2019	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	DIRECTORS & OFFICERS			PHSD1372778	09/28/2018	09/28/2019	1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
CERTIFICATE HOLDER IS HEREBY NAMED AS ADDITIONAL INSURED AS THEIR INTERESTES MAY APPEAR. ADDITIONAL CERT HOLDERS INCLUDE THE COUNTY, ITS OFFICERS, AGENTS, OFFICIALS, EMPLOYEES AND VOLUNTEERS (ENDROSEMMENT ATTACHED).

GENERAL LIABILITY WAIVER OF SUBROGATION IN FAVOR OF CERT HOLDER INCOUDED (ENDORSEMENT TO FOLLOW)

WORK COMP INCLUDES BLANKET WAIVER OF SUBROGATION (ENDORSEMENT ATTACHD).

CERTIFICATE HOLDER COUNTY OF TULARE 5957 S. MOONEY BLVD. VISALIA, CA 93277	CANCELLATION SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE SHARON JANSMA
--	---

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ACORD 25 (2016/03)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

The County of Tulare, its officers,
agents, employees and volunteers
individually and collectively

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.



ENDORSEMENT AGREEMENT
WAIVER OF SUBROGATION
BLANKET BASIS

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RENEWAL
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PAGE 1

HOME OFFICE
SAN FRANCISCO

EFFECTIVE NOVEMBER 19, 2018 AT 12.01 A.M.
AND EXPIRING NOVEMBER 19, 2019 AT 12.01 A.M.

ALL EFFECTIVE DATES ARE
AT 12:01 AM PACIFIC
STANDARD TIME OR THE
TIME INDICATED AT
PACIFIC STANDARD TIME

VISALIA ARTS CONSORTIUM, INC.

300 E OAK AVE
VISALIA, CA 93291

WE HAVE THE RIGHT TO RECOVER OUR PAYMENTS FROM ANYONE
LIABLE FOR AN INJURY COVERED BY THIS POLICY. WE WILL
NOT ENFORCE OUR RIGHT AGAINST THE PERSON OR
ORGANIZATION NAMED IN THE SCHEDULE.

THIS AGREEMENT APPLIES ONLY TO THE EXTENT THAT YOU
PERFORM WORK UNDER A WRITTEN CONTRACT THAT REQUIRES YOU
TO OBTAIN THIS AGREEMENT FROM US.

THE ADDITIONAL PREMIUM FOR THIS ENDORSEMENT SHALL BE
2.00% OF THE TOTAL POLICY PREMIUM.

SCHEDULE

<u>PERSON OR ORGANIZATION</u>	<u>JOB DESCRIPTION</u>
ANY PERSON OR ORGANIZATION FOR WHOM THE NAMED INSURED HAS AGREED BY WRITTEN CONTRACT TO FURNISH THIS WAIVER	BLANKET WAIVER OF SUBROGATION

NOTHING IN THIS ENDORSEMENT SHALL BE HELD TO VARY, ALTER, WAIVE OR EXTEND
ANY OF THE TERMS, CONDITIONS, AGREEMENTS, OR LIMITATIONS OF THIS POLICY
OTHER THAN AS ABOVE STATED. NOTHING ELSEWHERE IN THIS POLICY SHALL BE
HELD TO VARY, ALTER, WAIVE OR LIMIT THE TERMS, CONDITIONS, AGREEMENTS OR
LIMITATIONS IN THIS ENDORSEMENT.

COUNTERSIGNED AND ISSUED AT SAN FRANCISCO:

DECEMBER 20, 2018

2572

AUTHORIZED REPRESENTATIVE

PRESIDENT AND CEO