

## **PUBLIC ART COMMISSION**

**Monday, August 9, 2021**  
**MEETING OF THE PUBLIC ART COMMISSION**  
**3:00 p.m.**  
**201 N. Broadway, Escondido, CA 92025**

The Brown Act provides an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item. If you wish to speak regarding an agenda item, please fill out a speaker's slip and give it to the minutes clerk who will forward it to the chairman who will allocate each speaker 2-5 minutes to address the commission. If you wish to speak concerning an item not on the agenda, you may do so under Oral Communications.

The City of Escondido recognizes its obligation to provide equal access to public services to those qualified individuals with disabilities. Please contact the ADA Coordinator (760) 839-4643 with any requests for reasonable accommodation, to include sign language interpreters, at least forty-eight (48) hours prior to the meeting.

**A. CALL TO ORDER**

**B. APPROVAL OF MINUTES – June 14, 2021**

**C. NEW BUSINESS**

1. Esco Alley Art

**D. LIASON REPORT**

1. Washington Park ribbon cutting
2. Public Art webpage
3. Community repair
4. Murals on Center City Pkwy
5. Escondido Creek Trail
6. Final Mural Policy

**E. FINANCIAL REPORT – May 30, 2021**

**F. SUBCOMMITTEE UPDATES**

1. Mural Subcommittee
2. Queen Calafia Subcommittee

**G. ITEMS FROM COMMISSIONERS**

Under state law, all items under Oral Communications can have no action, and will either be referred to staff for administrative action or scheduled on a subsequent agenda.

- H. FUTURE AGENDA ITEMS
- I. ORAL COMMUNICATIONS
- J. ADJOURNMENT

**CITY OF ESCONDIDO  
MINUTES OF THE MEETING OF THE  
PUBLIC ART COMMISSOIN  
June 14, 2021  
REGULAR MEETING**

**Call to Order:** The meeting was called to order by Commissioner Velasco at 3:02 p.m.

**Commissioners Present:** Commissioners Velasco, Ryan and Spann.

**Special Guest:** James Stone and Carol Rogers, Stone & Glass; Belle Morelock, City Intern

**Approval of Minutes:** MSC Spann/Ryan to approve the minutes of April 26, 2021, 3/0.

**NEW BUSINESS:** The Commission took this item out of order as a courtesy to the presenters.

1. Lighting the Way: James Stone and Carol Rogers described their artwork, design and vision for the public art donation they are making to the City. They described their passion for glasswork and what their vision is for the monument. They stressed the installation of the project will not cost the City any money. It will be a donation to the City. Commissioner Ryan questioned the funding source, and a discussion was held. Glare will not be an issue. It is 25' from all curbs, so collision by automobiles is unlikely/slight. They estimate the finished project by end of the year. Commissioner Velasco asked about who was going to maintain the sculpture. The City will provide the maintenance. The Commissioners liked the concept and design. Commissioner Velasco said she wants the pedestal to be larger and the pillars to be more separated. The final height 8' pedestal 32' from ground level. Their architect briefly spoke, Bob Rosenthal.
2. Introduction of Intern: Belle Morelock was introduced. She will be the new intern working with the Public Art Commission. Belle is a junior in high school; and is excited about the possibilities of working with the Public Art Commission, the mural program and the artist rosters.
3. NFC Mural: National Fitness Campaign courts are coming to the City. We have four courts to be installed around the City. The first one has already been installed in Mountain View Park. We would like to have an artist design murals on the backside of the courts. The NFC will grant the artist \$5,000 for this work. Assistant Director Lopez asked if the Commission would like to fund one or more of the artist wraps. They cost is \$25,000. Commissioner Velasco wanted to postpone this discussion until more Commissioners were present.
4. Palomar Heights Update: Commissioner Velasco reported on this committee. The committee has selected five artists so far. The total budget is \$175,000.00, which covers three art installations.
5. 2021 Priorities and Vision: Commissioner Velasco spoke about the need for the Commission to have a mission statement. She has put together a packet of information, which Danielle Lopez will send to all commissioners. This will be discussed on the next meeting. The Commissioners will bring more information since Vargas is absent. Commissioner Velasco went through slides regarding her ideas.

**LIASON REPORT:** Assistant Director Lopez said the next public meeting of the Escondido Creek Trail is on Tuesday, June 22, 2021 at 6:00 p.m. at the East Valley Community Center in the Vineyard Room.

**FINANCIAL REPORT:** There have been no changes; the report is for your reference. Assistant Director Lopez explained that the new monies will fund the budget on July 1, 2021.

**SUBCOMMITTEE UPDATES:**

1. Mural Subcommittee: **MSC Spann/Ryan to place a call for artists for two locations for murals in Escondido, Vote 3/0.** Assistant Director Lopez will be presenting a Request for Proposal at the next Public Art Commission meeting. Commissioner Velasco reported Larry from the Art Association said he would fund \$30K to fund mural projects in the City.

2. Queen Califia Subcommittee: Assistant Director Lopez reported that California Center for the Arts Escondido (CCAIE) would collaborate with us on Queen Califia initiatives. CCAIE would partner with us on promotion, selling merchandise, and hosting events, etc. These monies would be used to replenish the maintenance fund. Lopez is meeting with them on 24<sup>th</sup> for details. Commissioner Spann said 350 people came through the Queen last weekend.

**ITEMS FROM COMMISSIONERS:**

**FUTURE AGENDA ITEMS:** Commissioner Ryan would like to discuss the painting of electrical boxes, highlighting a theme of Wild Animal Park. Also, for Escondido Ally Art - can we contribute to the Second Session.

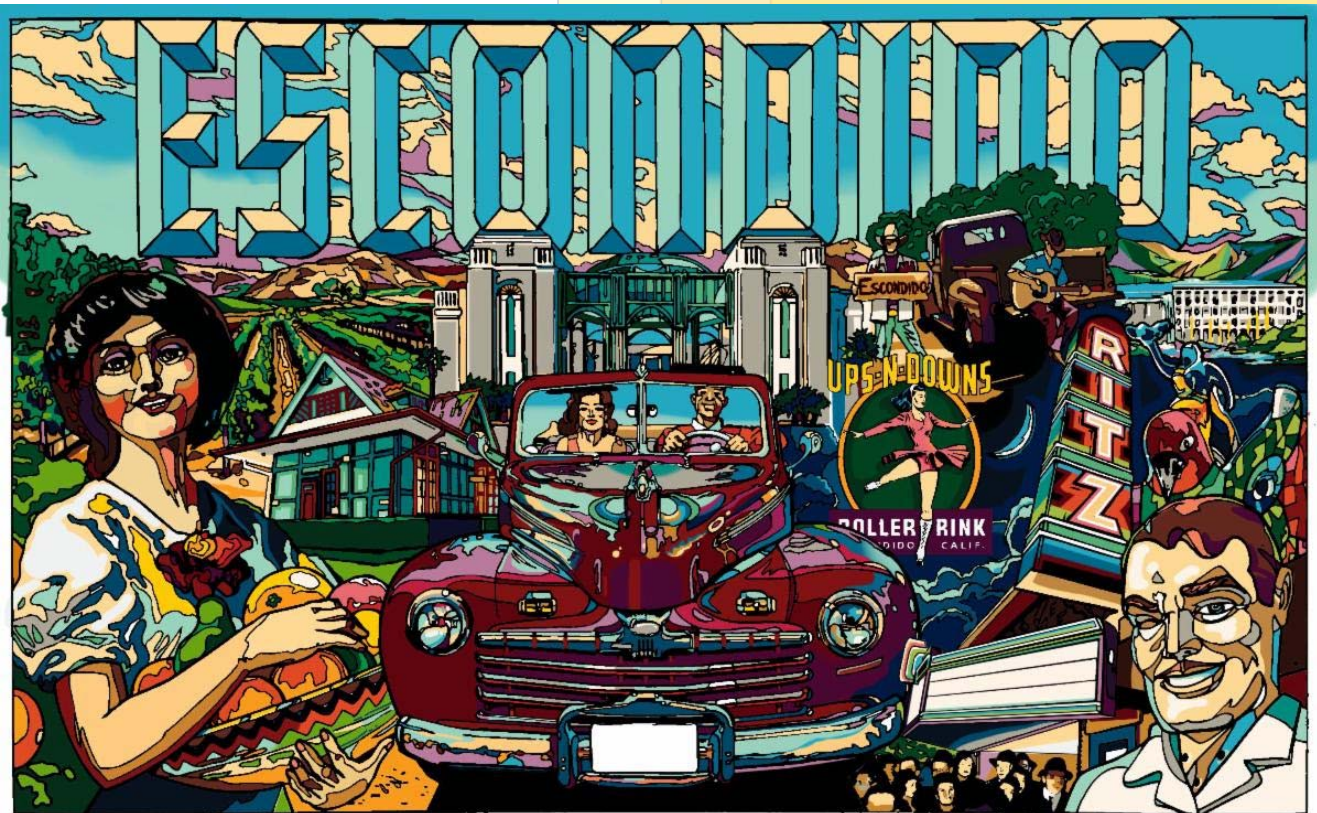
**ADJOURNMENT:** Adjourned at 4:30 p.m.

---

Ana Marie Velasco



## PUBLIC ART MURAL PROGRAM



## **INTRODUCTION**

A mural is a large-scale artwork, painting, or mosaic, applied or mounted directly to an exterior surface of a building or other structure. The City of Escondido Mural Program (“Program”) is designed to enrich Escondido, promote community, and bring beauty to unexpected places. The Program will also act as a form of economic development, acting as a catalyst for providing quality improvements and enhancements to the exterior appearance of properties and neighborhoods.

Program applicants may include business and property owners interested in hosting public art and artists in search of canvases. Applicants meeting the Program requirements may be eligible to receive Program funds through the Public Art Commission.

## **ELIGIBILITY**

The property proposed as a mural canvas (“Canvas”) must meet all the following requirements:

1. Be located within Escondido city limits;
2. Be a retail, commercial, office, industrial, or residential use (except single-family residences)<sup>1</sup>; and
3. Conform to all applicable City of Escondido codes, requirements, and policies.

Program applicants interested in hosting public art (“Hosts”) may include:

1. An owner of real property;
2. A business owner;
3. A commercial tenant with written consent from the property owner;
4. A not-for-profit organization (e.g., neighborhood association, educational organization, or community organization).

Program applicants in search of a Canvas (“Artist”) may include:

1. An individual artist; or
2. A group of artists.

## **APPLICATION SUBMISSION**

Program applicants must submit a completed Program application, including all collateral materials, to the Program liaison. The proposed mural must substantially enhance the aesthetic of the area in which the Canvas is located, and must be vetted through the City’s Mural Committee, Appearance Committee, and the Public Art Commission.

Interested Hosts may:

1. Submit a request to the Program liaison to be added to a roster of eligible mural locations;  
or

---

<sup>1</sup> For murals proposed on private property and not funded through the Program, please see Appendix A.

2. Seek out a qualified artist to partner with through the “Mural Artist Roster.” The application, roster, and eligible mural locations can be found here: <https://www.escondido.org/public-art-program>.

Interested Artists may:

1. Submit their resume and credentials to the Program liaison to be added to a roster of mural artists;
2. Submit a joint application with a prospective Host; or
3. Reply to a City-issued Request for Proposals regarding mural art.

## **APPLICATION APPROVAL PROCESS**

The proposed mural must receive all necessary approvals from the City’s Mural Committee, Appearance Committee, and Public Art Commission before any work begins (“Necessary Approvals”).<sup>2</sup> After all necessary approvals have been granted, the Host and Artist must enter into a Public Art Mural Program Agreement with the City, the form of which must be approved by the City Attorney. The City’s form Public Art Mural Program Agreement is attached as Exhibit 1 and incorporated herein by this reference.

The Program review process will generally proceed as follows:

- An applicant must submit a complete Program application.<sup>3</sup>
- Once the Program liaison confirms the application is complete, the application will be presented to the City Appearance Committee for review and approval.
- If the application is approved by the City Appearance Committee, the application will be added to the next Public Art Commission meeting agenda for review and approval. Special meetings may be requested between regular Public Art Commission meetings, at the discretion of the Public Art Commission. Applicants are invited to attend the Public Art Commission meeting when their application is scheduled for review, at which time questions may be posed to the applicant regarding the mural application.
- If the application is approved by the Public Art Commission, the Artist, Host, and the City will enter into a Public Art Mural Program Agreement, the form of which is attached as Exhibit 1.
- Thereafter, the applicant must work with the Program Liaison and secure all Necessary Approvals and permits for creation of the proposed mural.
- Once all Necessary Approvals and permits have been granted, the City will provide the Artist with an amount up to one-third of the total Program fund amount for the mural work to begin.

## **MURAL CREATION**

The Artist/Applicant may be paid Program funds at the completion of the mural or in one-third

---

<sup>2</sup> See Appendix A for the City’s policy for review of proposed murals in non-residential zones as approved by the Appearance Committee on February 13, 2021.

<sup>3</sup> See Appendix B for a detailed list of required information, documents, and materials.

increments during mural creation. Throughout the mural creation process, the Artist shall submit receipts or paid invoices to the City for reimbursement.

Within 14 days of mural completion, the Artist shall submit high quality “after photos” to the Mural Committee or Program liaison. A final inspection of the mural will be conducted to confirm completion and conformance with previously approved plans and specifications. If the mural is to the satisfaction of the Program liaison, the Artist will receive reimbursement in the appropriate amount within 30 days of the final inspection. Any portions of the mural that do not conform with previously approved plans and specifications will not be reimbursed.

## **MAINTENANCE**

The City is not responsible for the maintenance or preservation of murals created on private property as a result of the Program. A mural placed on a private structure becomes the physical property of the property owner. As such, the property owner is responsible for monitoring the condition of the mural and facilitating its maintenance by assuming any costs associated with its maintenance, repair, and removal. Murals not maintained properly may be subject to City Municipal Code compliance penalties and removal.

The Artist/applicant will be responsible for the maintenance or preservation of all murals created on City property.

The Public Art Mural Program Agreement for each mural created as a result of the Program will set forth the rights and responsibilities of each party thereto, including but not limited to the Host’s maintenance and repair obligations described in Section 6 of Exhibit 1.

## **PROMOTIONAL RIGHTS**

By participating in the Program, the Artist authorizes the Host and the City to use photographs and descriptions of the mural created as a result of the Program subject to the terms of Section 5 of Exhibit 1.

## **MURAL CRITERIA**

The proposed mural must receive all necessary approvals before any work may commence. The following factors will be considered during the mural approval process:

- **Accessibility and Location:** Proposed murals must be easily visible and in public view.
- **Design:** All murals created as a result of the Program must add to the appearance of and complement the Canvas and surrounding neighborhood.
- **Scale:** All murals created as a result of the Program must work within the scale of the Canvas.
- **Feasibility:** All murals created as a result of the Program must have a realistic budget and timeline.

- **Support:** Program applicants must provide written evidence of support for the design, including but not limited to a letter of support from the host and/or a letter of support from the applicable neighborhood association.
- **Durability:** Mural media<sup>4</sup> should be weather-resistant and ensure mural integrity for at least 5 years following completion.
- **Design Standards:** All murals created as a result of the Program must meet the following design standards:
  - Designs complementary to the architectural, geographical, socio-cultural, or historical context of the Canvas and surrounding area;
  - Original works of art;
  - Mural media may be plain or incorporate decorative, ornamental elements;
  - The mural may be illuminated, subject to City requirements; and
  - The mural must be topped with an anti-graffiti varnish to protect against vandalism.

## PROGRAM FUNDS

All Program funds awarded as a result of the Program are matching and will be based on the actual cost of mural creation. In order to receive reimbursement and ensure accurate calculation of Program funds, Artists must submit original invoices and proof of payment for mural materials and work performed. All mural creation work must be completed within the time period specified in the Public Art Mural Program Agreement. If work is not completed by the agreed upon deadline, reimbursement via Program funds will be subject to funding availability upon actual completion of the mural.

Costs eligible for reimbursement via Program funds may include:

- Artist fees for design and execution of mural, including artist's transportation and liability insurance fees.<sup>5</sup>
- Materials associated with creating and installing the mural (e.g., paints, panels, fencing, lighting, and electrical equipment).
- Other expenses pre-approved by the Mural Committee or Public Art Commission.
- Photographs of completed work.

### For Questions, please contact:

Danielle Lopez,  
 Assistant Director of Community Services/Public Art Program Liaison  
 760-839-6269  
 dmlopez@escondido.org

---

<sup>4</sup> Mural media is the material and tools used by an Artist in creating the mural.

<sup>5</sup> Artists may charge a flat rate per square foot of the mural. Artists may account for assistant fees.

## Appendix A

### **POLICY FOR THE REVIEW OF PROPOSED MURALS IN NON-RESIDENTIAL ZONES**

Approved by the City Appearance Committee on 02-13-21

1. Murals are generally large pictures/mosaics painted or adhered directly on a wall or on backing material that is attached to the wall. Murals are not considered signs and do not include super-graphic signs as defined in EZC Article 66 –Sign Ordinance.
2. Murals proposed on building exteriors within public view that do not involve public art funds, are considered a change to the building exterior subject to staff design review.
3. Each proposal subject to staff design review may be referred by the Director of Community Development to the City Appearance Committee and/or the Planning Commission, or other appropriate body.
4. Murals proposed on city-owned property or within the public right-of-way will be referred to the City Appearance Committee. An encroachment permit may be required.
5. Murals proposed to be located on private property adjacent to and visible from a major road/prime arterial or at a gateway into the City may be referred to the City Appearance Committee and/or the Planning Commission.
6. Murals proposed at a location within the Downtown Specific Planning Area require review and the issuance of a Certificate of Appropriateness from the Planning Division.
7. Minor identification of the artist and/or a sponsor may be acceptable.
8. Any signage incorporated within a mural will be considered wall signage subject to the sign ordinance.
9. The property owner's approval is required.
10. Murals on private property shall be maintained and repaired as part of the exterior of the building, including removal of any graffiti within 24 hours.
11. Murals on city-owned property or within the public right-of-way shall be maintained and repaired by the proponent and may be subject to a maintenance agreement with the City that may include provisions for the removal of the mural upon notification by the City.

## Appendix B

### **REQUIRED APPLICATION MATERIALS**

The following materials are required for a Program application:

- Completed City of Escondido Mural Program Application;
- Artist resume or biography including at least four images highlighting the Artist's work as a muralist;
- Description of the proposed mural (150 words or less);
- Digital images:
  - o One color image of the proposed design (conceptual); and
  - o One color image of the proposed building and wall.
- Materials list;
- Detailed budget and timeline for completion of the proposed mural;
- Letter of support from the Host;
- Letter of support from the neighborhood association, if applicable;
- Proof of Host's current property ownership and letter of intent to sign the Public Art Mural Program Agreement; and
- Any other information or materials necessary to comply with the requirements of any applicable Request for Proposal.

Note: If the proposed mural will require attaching panels to a wall of the proposed Canvas, drawings and attachment plan must also be submitted.

Program information, application materials, and photos of existing murals will be maintained on the City's website at <https://www.escondido.org/public-art-program.aspx>.



## CITY OF ESCONDIDO PUBLIC ART MURAL PROGRAM AGREEMENT

This Public Art Mural Program Agreement ("Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021 ("Effective Date"), by and among the City of Escondido, a California municipal corporation ("CITY"); [Entity Type: e.g., "a California corporation"] ("ARTIST"); and [Entity Type: e.g., "a California corporation"] ("HOST"). (The CITY, ARTIST, and HOST each may be referred to herein as a "Party" and collectively as the "Parties.")

WHEREAS, pursuant to [insert applicable authority/resolution/Code section], the CITY has established the Public Art Mural Program ("Program"), whereby Program funds may be awarded by the CITY to ARTIST, at the CITY's sole discretion;

WHEREAS, pursuant to the Program, ARTIST desires to create a Mural (as more specifically defined in this Agreement) at HOST's real property located at [address], as more particularly described in **Exhibit A** of this Agreement, attached hereto and incorporated herein by this reference ("Property");

WHEREAS, the Program application regarding the Mural was approved by the CITY's Appearance Committee on [date]; and

WHEREAS, the Program application regarding the Mural was approved by the CITY's Public Art Commission on [date] ("Approved Application").

NOW, THEREFORE, in consideration of the mutual covenants, promises, terms, and conditions set forth herein, and the mutual benefits derived therefrom, the Parties hereby agree as follows:

1. **Recitals.** The Recitals set forth above are included herein by reference as part of this Agreement and the Parties agree that said Recitals are essential facts to this Agreement.
2. **Project Documents.** The Approved Application, description of the Mural, digital images, materials list, detailed budget, timeline, letters of support, materials required by an applicable Request for Proposals, plans, drawings, specifications, and all modifications, addenda, and amendments thereto (collectively, "Project Documents") are incorporated herein by this reference as if fully set forth herein. The Project Documents are complementary, and what is called for by any one shall be as binding as if called for by all. "Mural," as that term is used in this Agreement, shall mean the work of art designed, created, or produced by ARTIST in accordance with the Project Documents.
3. **Program Funds.** Subject to the terms and conditions of the Program, the CITY will reimburse ARTIST for eligible reimbursement costs in an amount not to exceed the sum of [Dollar Amount]. Costs eligible for reimbursement pursuant to this Agreement include the following: (i) fees incurred by ARTIST for design and completion of the Mural, (ii) materials necessary for completion and installation of the Mural, and (iii) other expenses previously approved by the CITY's Mural

Committee and Public Art Commission. ARTIST will not be compensated or reimbursed for any work related to the Mural that do not conform with the Project Documents.

4. Mural Creation, Installation, and Removal.

- a. *Authorization.* HOST authorizes ARTIST to install the Mural at the Property in accordance with the Project Documents.
- b. *Supervision.* The CITY and HOST, jointly and severally, reserve the right to supervise ARTIST's installation of the Mural. ARTIST shall provide HOST and CITY each 10 days' advance written notice of when ARTIST intends to install the Mural. ARTIST may proceed with such installation if the other Parties are not present, unless at least one of the other Parties has notified ARTIST in writing that ARTIST may not proceed unless the CITY, HOST, or both are present.
- c. *Performance.* ARTIST shall faithfully complete the Mural in a proficient manner, to the satisfaction of the CITY, and in accord with the terms of this Agreement and the Project Documents. ARTIST shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all reports and other information furnished by ARTIST pursuant to this Agreement, except that ARTIST shall not be responsible for the accuracy of information supplied by the CITY. ARTIST understands and acknowledges that if the Mural is not completed by the deadline set forth in the Project Documents, any reimbursement pursuant to Section 3 of this Agreement will be subject to the availability of funding at the time of actual completion of the Mural.
- d. *Removal.* If HOST reasonably determines that the Mural is limiting use of the Property, HOST may provide ARTIST with 60 days' advance written notice that HOST will remove the Mural from the Property at the end of the 60-day notice period ("Removal Notice"). HOST shall also send the CITY a copy of the Removal Notice. Upon ARTIST's receipt of a Removal Notice, HOST and ARTIST shall make reasonable efforts to find another suitable site for the Mural.

5. Intellectual Property and Artist's Rights.

- a. *Copyright.* Subject to the restrictions, rights, and authorizations hereunder, licenses granted to Owner hereunder, and unless otherwise agreed to by the Parties in writing, ARTIST shall retain all applicable rights pursuant to 17 U.S.C. § 106 in all original works of authorship produced under this Agreement. If ARTIST is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Mural.
- b. *Owner's Intellectual Property License.* ARTIST hereby grants to HOST; to HOST's agents, authorized contractors, and assigns; and to the CITY an unlimited and irrevocable license to do the following with respect to the Mural:
  - (1) *Use, Display, and Implementation.* HOST may use and display the Mural on the Property only. To the extent the Mural involves design elements that are incorporated by ARTIST into the design of the Property, HOST may implement such elements at the Property.
  - (2) *Reproduction and Distribution.* HOST and the CITY may each make, display, and distribute, and authorize the making, display, and distribution of, photographs and other reproductions of the Mural. HOST and the CITY may each use such reproductions for any HOST-related or CITY-related purpose, including with respect to advertising, educational, and promotional materials, brochures, books, flyers, postcards, prints, broadcasts, film, internet-based, and other multimedia publicity. HOST and the CITY shall ensure that such

reproductions are made in a professional and tasteful manner, in their sole and reasonable judgment. HOST and the CITY shall make reasonable efforts to ensure that such reproductions include the following credit line and copyright notice where practicable: "[Title of Artwork]" © [Year of completion] by [ARTIST'S name or other copyright holder's name]." Neither HOST nor the CITY may license or sublicense its rights for any private or commercial purpose. This license granted hereunder does not include the right to sell photographs or reproductions of the Mural or to authorize the sale of such photographs or reproductions.

- c. *Third Party Infringement.* Neither HOST nor the CITY is responsible for any third-party infringement of ARTIST's copyright or for protecting ARTIST's intellectual property rights.
  - d. *Publicity.* HOST and the CITY shall have the right to use ARTIST's name, likeness, and biographical information in connection with the display or reproduction and distribution of the Mural. ARTIST shall be reasonably available to attend any ceremonies related to the Mural at the request of HOST or the CITY.
  - e. *Trademark.* In the event that HOST's or the CITY's use of the Mural creates trademark, service mark, or trade dress rights in connection with the Mural, HOST and the CITY shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.
  - f. *Resale Royalty.* If HOST sells the Mural as a fixture to the Property, HOST and ARTIST agree that the resale price of the Mural shall be presumed to be less than the funds provided to ARTIST under this Agreement. Thus, HOST has no obligation to pay resale royalties pursuant to California Civil Code section 986 or any other law requiring the payment of resale royalties.
  - g. *Waiver of Artist's Rights.* With respect to the Mural produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, ARTIST hereby waives any and all claims, arising at any time and under any circumstances, against HOST and the CITY (including its officers, agents, employees, successors, and assigns), arising under the federal Visual Artists Rights Act (17 U.S.C. §§ 106A and 113(d)); the California Art Preservation Act (Cal. Civ. Code § 987 et seq.); any other local, state, federal, or international laws that convey rights of the same nature as those conveyed under the above-referenced laws; or any other type of moral right protecting the integrity of works of art. Specifically, ARTIST hereby waives any and all such claims against HOST (including its officers, agents, employees, successors, and assigns); any future owners or successors in interest of the Property; and the CITY (including its officers, agents, employees, successors, and assigns) for any alteration of the Mural regardless of whether such alteration is made necessary for HOST to use the Property for its own business purposes. ARTIST hereby represents and warrants that the ARTIST is authorized to sign this waiver.
6. Maintenance and Repairs. HOST, as the owner of the Property, shall be responsible for maintenance and repair of the Mural. HOST and the City agree to notify ARTIST if maintenance or repair of the Mural is required. ARTIST shall not be entitled to any compensation or reimbursement from the CITY for any costs associated with maintenance or repair of the Mural.
7. Termination. The Parties may mutually terminate this Agreement through a writing signed by all Parties. The CITY may unilaterally terminate this Agreement for any reason upon providing ARTIST with 10 days' advance written notice. ARTIST agrees to cease all work under this Agreement on or before the effective date of any notice of termination. If the CITY terminates this Agreement due to no fault or failure of performance by ARTIST, then ARTIST shall be reimbursed pursuant to Section 3 of this Agreement for work satisfactorily performed at the time of such termination. In no

event shall ARTIST be entitled to receive more than the amount that would be paid to ARTIST for completion of the Mural.

8. Insurance Requirements.

- a. ARTIST shall procure and maintain, at its own cost, during the entire term of this Agreement, insurance against claims for injuries to persons or damages to property that may arise from or in connection with creation of the proposed mural, and the results of such work, by ARTIST, its agents, representatives, employees, or subcontractors. Insurance coverage shall be at least as broad as the following:
  - (1) *Commercial General Liability.* Insurance Services Office (“ISO”) Form CG 00 01 covering Commercial General Liability on an “occurrence” basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury, with limits no less than \$500,000 per occurrence and \$1,000,000 general aggregate.
  - (2) *Workers’ Compensation.* If applicable, Worker’s Compensation as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limits of no less than \$1,000,000 per accident for bodily injury or disease.
  - (3) If ARTIST maintains broader coverage and/or higher limits than the minimums otherwise required by this Agreement, the CITY requires and shall be entitled to the broader coverage and/or the higher limits maintained by ARTIST.
- b. Each insurance policy required by this Agreement must be acceptable to the City Attorney and shall meet the following requirements:
  - (1) *Acceptability of Insurers.* Insurance coverage must be provided by an insurer authorized to conduct business in the state of California with a current A.M. Best’s rating of no less than A-:VII, or as approved by the CITY.
  - (2) *Additional Insured Status.* The Commercial General Liability must name the CITY (including its officials, officers, agents, employees, and volunteers) specifically as an additional insured under the policy on a separate endorsement page. The Commercial General Liability additional insured endorsement shall be at least as broad as ISO Form CG 20 10 11 85, or if not available, through the addition of *both* CG 20 10, CG 20 26, CG 20 33, or CG 20 38, *and* CG 20 37 if a later edition is used.
  - (3) *Primary Coverage.* ARTIST’s insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 with respect to the CITY, its officials, officers, agents, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officials, officers, agents, employees, or volunteers shall be in excess of ARTIST’s insurance and shall not contribute with it.
  - (4) *Notice of Cancellation.* Each insurance policy shall provide that coverage shall not be canceled, except with prior written notice to the CITY.
  - (5) *Waiver of Subrogation.* ARTIST hereby grants to the CITY a waiver of any right to subrogation that any insurer of ARTIST may acquire against the CITY by virtue of the payment of any loss under such insurance. ARTIST agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this subsection shall apply regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer. Any Workers’ Compensation policy required by this Agreement shall be endorsed with a waiver of subrogation in favor of the CITY for all work performed by the ARTIST, its agents, representatives, employees and subcontractors.
- c. *Verification of Coverage.* At the time ARTIST executes this Agreement, ARTIST shall provide the CITY with original Certificates of Insurance including all required amendatory endorsements (or copies of the applicable policy language effecting the insurance coverage required by this Agreement), which shall meet all requirements under this Agreement. The CITY reserves the

right to require complete, certified copies of all required insurance policies, including endorsements required by this Agreement, at any time.

- d. *Special Risks or Circumstances.* The CITY reserves the right, at any point during the term of this Agreement, to modify the insurance requirements in this Agreement, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.
- e. *No Limitation of Obligations.* The insurance requirements in this Agreement, including the types and limits of insurance coverage ARTIST must maintain, and any approval of such insurance by the CITY, are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by ARTIST pursuant to this Agreement, including but not limited to any provisions in this Agreement concerning indemnification.
- f. *Insurance Fees.* ARTIST may request that the CITY pay costs associated with ARTIST's compliance with this Section 8. The CITY, in its sole discretion, may elect to pay all, a portion of, or none of such costs.
- g. Failure to comply with any of the insurance requirements in this Agreement, including but not limited to a lapse in any required insurance coverage during the term of this Agreement, shall be a material breach of this Agreement. In the event that ARTIST fails to comply with any such insurance requirements in this Agreement, in addition to any other remedies the CITY may have, the CITY may, at its sole option, (i) immediately terminate this Agreement; or (ii) order ARTIST to stop work under this Agreement and/or withhold any payment that becomes due to ARTIST until ARTIST demonstrates compliance with the insurance requirements in this Agreement.

9. Indemnification, Duty to Defend, and Hold Harmless.

- a. ARTIST represents and warrants that the Mural is the sole work of the ARTIST and does not infringe the intellectual property rights of any third parties. ARTIST agrees to indemnify HOST and the CITY against any claims brought against HOST or the CITY alleging that the Mural infringes the intellectual property rights of any third parties.
- b. ARTIST (including ARTIST's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with ARTIST's creation of the proposed mural or its failure to comply with any of its obligations contained in this Agreement, except where caused by the sole negligence or willful misconduct of the CITY.
- c. HOST (including HOST's agents, employees, and subcontractors, if any) shall indemnify, defend, and hold harmless the CITY, its officials, officers, agents, employees, and volunteers from and against any and all claims, demands, actions, causes of action, proceedings (including but not limited to legal and administrative proceedings of any kind), suits, fines, penalties, judgments, orders, levies, costs, expenses, liabilities, losses, damages, or injuries, in law or equity, including without limitation the payment of all consequential damages and attorney's fees and other related litigation costs and expenses (collectively, "Claims"), of every nature caused by, arising out of, or in connection with ARTIST's creation of the proposed mural or its failure to comply with any of its obligations contained in this Agreement, except where caused by the sole negligence or willful misconduct of the CITY.
- d. All terms and provisions within this Section 9 shall survive the termination of this Agreement.

10. Attorney's Fees and Costs. In any action to enforce the terms and conditions of this Agreement, the prevailing Party shall be entitled to reasonable attorney's fees and costs.

11. Independent Contractor. ARTIST is an independent contractor, and no agency or employment relationship is created by the execution of this Agreement.
12. Amendment. This Agreement shall not be amended except in a writing signed by all Parties.
13. Merger Clause. This Agreement, together with its attachments or other documents described or incorporated herein, if any, constitutes the entire agreement and understanding of the Parties concerning the subject of this Agreement and supersedes and replaces all prior negotiations, understandings, or proposed agreements, written or oral, except as otherwise provided herein. In the event of any conflict between the provisions of this Agreement and any of its attachments or related documents, if any, the provisions of this Agreement shall prevail.
14. Anti-Waiver Clause. None of the provisions of this Agreement shall be waived by the CITY because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived by the CITY, in whole or in part.
15. Severability. This Agreement shall be performed and shall be enforceable to the full extent allowed by applicable law, and the illegality, invalidity, waiver, or unenforceability of any provision of this Agreement shall not affect the legality, validity, applicability, or enforceability of the remaining provisions of this Agreement.
16. Governing Law. This Agreement and all rights and obligations arising out of it shall be construed in accordance with the laws of the State of California. Venue for any action arising from this Agreement shall be conducted only in the state or federal courts of San Diego County, California.
17. Counterparts. This Agreement may be executed on separate counterparts, each of which shall be an original and all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement by electronic means, including an attachment to an email, shall be effective as delivery of an executed original. The Agreement on file with the City is the copy of the Agreement that shall take precedence if any differences exist between or among copies or counterparts of the Agreement.
18. Provisions Cumulative. The foregoing provisions are cumulative to, in addition to, and not in limitation of any other rights or remedies available to the CITY.
19. Notice. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated herein, and each Party shall promptly provide the other Parties with notice of any changes to such contact information.
20. Business License. ARTIST shall obtain a City of Escondido Business License prior to execution of this Agreement and shall maintain such Business License throughout the term of this Agreement.
21. Compliance with Laws, Permits, and Licenses. ARTIST and HOST shall each keep itself informed of and comply with all applicable federal, state, and local laws, statutes, codes, ordinances, regulations, rules, and other legal requirements in effect during the term of this Agreement. ARTIST shall obtain any and all permits, licenses, and other authorizations necessary to complete the proposed mural. Neither the CITY, nor any elected or appointed boards, officers, officials, employees, or agents of the CITY, shall be liable, at law or in equity, as a result of any failure of ARTIST or HOST to comply with this section.
22. Advice of Counsel. The Parties hereby acknowledge that they have executed this Agreement after having the opportunity to consult with, and receive the advice of, their own legal counsel.
23. Effective Date. Unless a different date is provided in this Agreement, the effective date of this Agreement shall be the latest date of execution set forth by the names of the signatories below.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, this Agreement is executed by the Parties or their duly authorized representatives as of the Effective Date:

CITY OF ESCONDIDO

Date: \_\_\_\_\_

\_\_\_\_\_  
[City Manager/Department Head/Designee Name/Title]

[ARTIST]

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title (please print)

[HOST]

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name & Title (please print)

APPROVED AS TO FORM:  
OFFICE OF THE CITY ATTORNEY  
MICHAEL R. MCGUINNESS, CITY ATTORNEY

BY: \_\_\_\_\_

THE CITY OF ESCONDIDO DOES NOT DISCRIMINATE AGAINST QUALIFIED PERSONS WITH DISABILITIES.

# ATTACHMENT “A”

## A. General

[Artist], [entity type] (“Artist”) will create and install a work of art (“Mural”) at certain real property, as more particularly described in Section B, owned by [Host], [entity type] (“Host”) pursuant to the City of Escondido’s (“City”) Public Art Mural Program (the “Program”).

## B. Property

Artist will install the Mural at [description of property including address].

## C. Program Fund Payment Terms

Program funds provided to Artist pursuant to the Agreement shall not exceed \$10,000 and will be based on the actual cost of Mural creation. Artist may be paid Program funds at the completion of the mural or in one-third increments during Mural creation and installation. In order to receive reimbursement and ensure accurate calculation of Program funds, Artists must submit original invoices and proof of payment for Mural materials and costs to the City within 30 days of incurrence.

All Mural creation work must be completed within the time period specified in the Agreement (“Completion Deadline”). If the Mural is not completed by the Completion Deadline, Artist understands and acknowledges that reimbursement via Program funds will be subject to funding availability at the time of actual completion of the Mural.

Costs eligible for reimbursement via Program funds pursuant to the Agreement may include:

- Artist fees for design and execution of mural, including artist’s transportation and liability insurance fees. Artists may charge a flat rate per square foot of the mural. Artists may account for assistant fees;
- Materials associated with creating and installing the mural (e.g., paints, panels, fencing, lighting and electrical equipment); and
- Other expenses pre-approved by the Mural Committee or Public Art Commission.

## D. Final Inspection

Within 14 days of mural completion, the Artist shall submit high quality “after photos” to the Mural Committee or Program liaison. A final inspection of the mural will be conducted to confirm completion and conformance with previously City-approved plans and specifications. If the mural is to the satisfaction of the Program liaison and Mural Committee, the Artist will receive reimbursement in the appropriate amount within 30 days of the final inspection. Any portions of the mural that do not conform with previously City-approved plans and specifications, will not be reimbursed.

## E. Term

The term of the Agreement shall be for five years, commencing on the Effective Date of the Agreement. Host agrees to maintain the Mural on the Property for a minimum of 5 years from the date that installation is completed.

## F. Permits and Licenses

*List all license and permit requirements.*

## **ATTACHMENT “A”**

**City of Escondido**  
**Capital Project Balance**  
**As of May 30, 2021**

**Agenda Item No.: E**

| <b>Project</b>         | <b>Description</b>             | <b>Total Budget</b> | <b>Expenditures</b> | <b>Subtotal</b> | <b>Encumbrances</b> | <b>Balance</b> |
|------------------------|--------------------------------|---------------------|---------------------|-----------------|---------------------|----------------|
| 420149                 | City Murals                    | 30,000              | 0                   | 30,000          | 0                   | 30,000         |
| 420119                 | Niki de Saint Phalle Art       | 105,852             | 0                   | 105,852         | 0                   | 105,852        |
| 420801                 | Queen Califia Education        | 29,999              | 1,900               | 28,099          | 0                   | 28,099         |
| 421001                 | Pedestrian Pathfinders         | 31,180              | 0                   | 31,180          | 0                   | 31,180         |
| 421301                 | Escondido Creek Art            | 50,000              | 0                   | 50,000          | 0                   | 50,000         |
| 427201                 | Maintenance Program Public Art | 136,195             | 18,540              | 117,655         | 0                   | 117,655        |
| 428901                 | Grand Avenue Art Project       | 250,000             | 0                   | 250,000         | 0                   | 250,000        |
| <b>Public Art Fund</b> |                                | <b>633,226</b>      | <b>20,440</b>       | <b>612,786</b>  | <b>0</b>            | <b>612,786</b> |

## **Project Descriptions**

**City Murals** – Funding for new Murals to be located throughout the City.

**Niki de Saint Phalle Art:** Funding for maintenance costs of Queen Calafia.

**Queen Calafia Education:** Funding for educational opportunities related to Queen Calafia.

**Pedestrian Pathfinders:** Funding for the creation of a series of visual markers to direct pedestrians along the transit center/downtown corridor.

**Escondido Creek Art:** Funding for planning and construction of potential public art along the Escondido Creek Trail, in conformance with the Escondido Creek Master Plan.

**Maintenance Program Public Art:** Funding for maintenance of all public art pieces.

**Grand Ave Art Project:** Funding for planning and construction of potential public art in conjunction with the Grand Ave street Improvements.