

**ARTIST PARTICIPATION AGREEMENT
FOR SANTA CRUZ RECYCLED ART PROGRAM
2018 “WORK FOR HIRE” PROJECT AND GALLERY SHOW**

THIS AGREEMENT (“Agreement”) is made this _____ day of XXX, 2017 between CITY of Santa Cruz, a municipal corporation, herein referred to as “CITY” and NAME, herein referred to “ARTIST.”

WHEREAS, the City of Santa Cruz Arts Commission has created a Santa Cruz Recycled Art (SCRAP) Pilot Program to recycle and reclaim materials in a creative way and raise awareness regarding consumption and waste; and

WHEREAS, SCRAP offers artists access to the waste stream at the City’s Resource Recovery Facility (RRF) to glean refuse and recycled materials and access to free tools; and

WHEREAS, ARTIST wishes to participate in SCRAP and the City Arts Commission desires ARTIST to participate in SCRAP.

NOW THEREFORE, in consideration of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, CITY and ARTIST agree as follows:

I. DUTIES OF ARTIST

1. The ARTIST shall be responsible for providing services described in Exhibit A including designing, fabricating, and installing artwork (Work) for display at gallery show. All Work shall be made primarily from materials gleaned from RRF. ARTIST shall be responsible for designing the Work so that it can be constructed without exceeding the approved project budget. The ARTIST shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his/her Work.
2. If the ARTIST is involved in the execution, fabrication, transportation, inspection and/or installation of an artwork, the following provisions shall apply:
 - A. The ARTIST shall, when working on CITY property, supervise such clean-up as may be reasonably requested by the CITY. After completing the WORK, the ARTIST shall remove his/her equipment, excess materials and supplies promptly as requested by the CITY.
 - B. CITY and any third-party contractor on the project shall notify the ARTIST of their operation, construction and maintenance schedules in and around the area where the Work is to be performed. The ARTIST shall perform his/her services in a manner and time so as not to cause interference with any of the operations, construction, or maintenance of the CITY or third party contractor. In the event of a conflict between the

schedules of the contractor and/or the CITY and the ARTIST, the conflict will be resolved by the CITY. If the resolution of the conflict results in a delay of the performance, the ARTIST shall have the right to renegotiate this Agreement to compensate him or her for any additional costs or expenses caused by the delay.

- C. If, in the prosecution of the Work, it is necessary to conduct field operations, security and safety of the job site will be the ARTIST'S responsibility excluding, nevertheless, the security and safety of any CITY facility within the job site, which is not under the ARTIST'S control.
- D. ARTIST shall meet with the City Arts Manager or other City personnel, or third parties as necessary, on all matters connected with carrying out of ARTIST'S services. Such meeting shall be held at the request of either party hereto. CITY review and approval of completed tasks shall be obtained monthly, during the course of the Work.
- E. The ARTIST agrees that an essential element of this Agreement is the skill and creativity of the ARTIST. The ARTIST shall not assign the creative or artistic portions of the Work to another party for the production of the Work without the written consent of the CITY. Failure to conform to this provision may be cause for termination of this Agreement, at the sole option of the CITY.

II. DUTIES OF CITY

CITY shall be responsible for the following:

1. Make available all public information pertaining to SCRAP program.
2. Perform in a timely way each and every activity as set forth in the Scope of Work. If delays occur when deliverables of ARTIST are dependent upon the CITY'S timeliness, the ARTIST'S schedule of performance shall be adjusted accordingly.
3. Arrange for access so that ARTIST may enter upon public and private property as required for ARTIST to perform the services under this Agreement.
4. Give prompt written notice to ARTIST whenever the CITY observes or otherwise becomes aware of any development that affects the scope or timing of ARTIST'S services.
5. Arrange appointments, meetings, consultations as needed for the ARTIST to fulfill his/her obligations under this Agreement.
6. Review materials as set forth in Exhibit A in a timely manner.

III. COMPENSATION

1. The ARTIST shall be paid a stipend of Five Hundred Dollars (\$500.00) for services satisfactorily rendered pursuant to this Agreement. Such payment shall be full compensation for Work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals including transportation of the WORK to the designated site.
2. In the event the ARTIST incurs costs in excess of Five Hundred Dollars (\$500.00), the ARTIST shall pay such excess from his/her own funds, and the CITY shall not be required to pay any part of such excess, and the ARTIST shall have no claim against the CITY on account thereof. This section shall not be construed to require the ARTIST to absorb excess costs not primarily attributable to the ARTIST'S conduct, erroneous cost estimates or failure to perform in a timely fashion.
3. No payment to the ARTIST for any work performed or services rendered shall constitute a waiver or release by the CITY of any claims, rights or remedies it may have against the ARTIST under this Agreement or by law, nor shall such payment constitute a waiver, remission, or discharge by the CITY of any failure or fault of the ARTIST, to satisfactorily perform the WORK and services as required under this Agreement.
4. ARTIST shall bear any transportation and storage costs resulting from the completion of the Work prior to the time provided in the schedule for installation of the Work.

IV. WARRANTIES/STANDARDS

1. The ARTIST warrants that (a) the design or WORK being commissioned is original; and (b) that the ARTIST shall not sell or reproduce the WORK, separate from portfolio reproductions, or allow others to do so without the prior written consent of the CITY.
2. The ARTIST shall faithfully perform the services required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the work described in this Agreement.

V. TIME OF PERFORMANCE

1. The services to be required of the ARTIST under this Agreement shall be completed in accordance with the schedule for completion of the Work as proposed by the ARTIST and approved by the CITY, provided that such time limits may be extended or otherwise modified by

written agreement between the ARTIST and the CITY. Upon payment and completion of services, ARTIST agrees to meet with City Arts Manager to discuss success of project.

2. If, when the ARTIST completes fabrication or procurement of the WORK in accordance with the approved schedule and notifies the CITY that the WORK is ready for installation, the ARTIST is delayed from installing the WORK within the time specified in the schedule as a result of the construction on the Site not being sufficiently complete reasonably to permit installation of the Work therein, or the CITY otherwise does not make the Site available to the ARTIST in accordance with the approved schedule, the CITY shall promptly reimburse the ARTIST for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is made available to the ARTIST for installation of the Work.
3. CITY shall grant a reasonable extension of time to the ARTIST in the event that there is a delay on the part of the CITY in performing its obligations under this Agreement or in completing the underlying capital project, or if conditions beyond the ARTIST'S control or Acts of God render timely performance of the ARTIST'S services impossible or unduly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such conditions.

VI. WAIVER OF ARTIST'S RIGHTS

1. ARTIST expressly agrees that the Work performed hereunder is “Work Made for Hire” under the provisions of 17 U.S.C. section 101. The provisions of this paragraph shall apply to modify ARTIST’s rights of attribution and integrity as set out in the Visual ARTISTs Rights Act, 17 U.S.C §§ 106A and 113(d) (“VARA”), the California Art Preservation Act, Cal. Civil Code §§ 987 and 989 (“CAPA”), and any rights arising under United States federal or state law or under the laws of another country that convey rights of the same nature as those conveyed under VARA and CAPA, as against the City of Santa Cruz and its agents.

VII. COPYRIGHT

1. The ARTIST agrees that the Work and services performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. The ARTIST further agrees that the Work will not utilize any protected patent, trademark or copyright in performance of Work under this Agreement unless the ARTIST has obtained proper permission and all releases and other necessary documents. If the ARTIST specifies any material, equipment, process or procedure which is protected, the ARTIST shall disclose such patents, trademarks and copyrights in the construction drawings and technical specifications.

2. The ARTIST agrees to indemnify, defend, and hold harmless the CITY, its officers and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind resulting from the performance of the Work or services under this Agreement which infringes upon any patent, trademark or copyright protected by law.

VIII. PERFORMANCE SCHEDULE

1. Prior to beginning the performance of the services under this Agreement, ARTIST must receive a written Notice to Proceed.
2. In the event ARTIST is unable to complete the above services because of delays resulting from untimely issuance of a Notice to Proceed or from untimely review and approval by CITY, and such delays are not the fault of ARTIST, CITY shall grant a reasonable extension of time for completion.

IX. TERMINATION

1. Either party may terminate this Agreement with or without cause by providing thirty (30) days notice, in writing, to the other party. Upon the expiration date of said notice, this Agreement shall become of no further force or effect whatsoever and each of the parties shall be relieved and discharged here from.
2. In the event that the Agreement is terminated by the CITY without cause, the CITY shall pay the ARTIST for all WORK performed and services rendered up to the effective date of the termination.
3. In the event that the Agreement is terminated by the ARTIST without cause, the ARTIST shall promptly reimburse the CITY for all payments made under this Agreement prior to the termination by the ARTIST.
4. In the event that the CITY determines that the ARTIST has substantially failed to fulfill his/her obligations as provided under this Agreement, the CITY shall provide the ARTIST with written notice detailing the specific obligations which the CITY claims the ARTIST has failed to fulfill and notifying the ARTIST that he/she is deemed to be in breach of the Agreement. If the breach is not cured or if the CITY and the ARTIST cannot agree on a schedule for curing the breach, the Agreement will be deemed terminated on a date specified by the CITY which will be no sooner than ten (10) days from the date of issuance of the notice. In the event that the Agreement is so terminated by the CITY, the ARTIST shall promptly reimburse the CITY for all payments made under this Agreement prior to the termination by the CITY.
5. If, because of the death, or any other occurrence, it becomes impossible for the ARTIST to render services or perform Work under this Agreement, the Agreement shall be deemed terminated.

X. INSURANCE

1. ARTIST shall at all times during the term of this Agreement have General Commercial Liability Insurance, which the CITY's Arts Program Manager will purchase on your behalf.

XI. PUBLICITY/MEDIA

1. Acknowledgment Of City. Whenever interviewed or otherwise contacted by the media with reference to the Site improvements which are the subject of this Agreement, ARTIST agrees to reference the CITY's SCRAP Program.
2. City Publicity. In order to assist the CITY in publicizing the SCRAP Program, upon reasonable advance notice provided by CITY, ARTIST shall allow CITY to access the site in order to photograph or otherwise record the WORK before, during and following that project's implementation and construction so as to document the WORK itself as well as the visual impact of the WORK on the site. ARTIST expressly permits CITY to use any such visual images for its promotion of the SCRAP Program, for the promotion of the CITY in general and for the cross-promotion of the ARTIST. All such visual images obtained by the CITY shall be, and remain, the property of the CITY. All such visual images shall constitute public records that are subject to disclosure pursuant to the California Public Records Act.
3. Representative Interview. Upon reasonable notice by CITY, ARTIST shall make a representative available to CITY to record an interview arranged by the CITY's Economic Development Department in which the Participant will be asked to comment upon the CITY's SCRAP Program and the ARTIST's experience as a beneficiary of that Program. All such recordings may be used by the CITY for those promotional purposes, shall be, and remain, the property of the CITY and shall constitute public records that are subject to disclosure pursuant to the California Public Records Act.

XII. EXHIBITION OF WORK AT FINAL SHOW

1. Terms Of Display. All artwork must remain in R. Blitzer Gallery for the duration of the exhibition. All artwork must be "exhibition" quality. No seconds or discount bins. Exhibitors are responsible for installation and take down of the exhibition, unless otherwise agreed with Gallery Director. Gallery Director may remove artwork from exhibition if not in agreement with the mission of R. Blitzer Gallery, unsafe, or harmful. R. Blitzer Gallery is not liable for any damages to artwork due to improper hanging mechanism or installation.
2. Sale Of Artwork. Pricing of artwork will be negotiated between the ARTIST, CITY and R. Blitzer Gallery. Artwork may be purchased during the exhibition. Gallery Director may offer the

sale of the artwork to be paid in installments and will notify ARTIST if occurs. R. Blitzer Gallery will process all transactions and handle sales tax. If artwork is not for sale “NFS”, exhibitor must indicate it on the exhibition contract. ARTIST shall receive payment on the 15th day of the month following the sale. ARTIST must not sell artwork included in this exhibition outside of R. Blitzer Gallery during the exhibition dates.

3. Exhibition Contract. A separate Exhibition Contract will be negotiated between the ARTIST, CITY and R. Blitzer Gallery. All artwork on exhibition must be included on the Exhibition Contract. Any artwork not listed will not be exhibited.

XIII. MISCELLANEOUS

1. Civil Rights Compliance/Equal Opportunity Assurance. Every supplier of materials and services and all ARTISTs doing business with the CITY shall be in compliance with the applicable provisions of the Americans with Disabilities Act of 1990, and shall be an equal opportunity employer as defined by Title VII of the Civil Rights Act of 1964 and including the California Fair Employment and Housing Act of 1980. As such, ARTIST shall not discriminate against any person on the basis of race, religious creed, color, national origin, ancestry, disability, medical condition, marital status, age or sex with respect to hiring, application for employment, tenure or terms and conditions of employment. In addition, the CITY, as defined in Resolution NS-20, 137 and Ordinance 92-11, further prohibits discrimination on the basis of sexual orientation, height, weight and physical characteristics. ARTIST agrees to abide by all of the foregoing statutes, regulations, ordinances and resolutions.
2. Independent Contractor. In the performance of its Work, it is expressly understood that ARTIST, including ARTIST’s agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and ARTIST shall not be considered an employee of the CITY for any purpose.
3. Subcontractors. In the event ARTIST, during the course of the Work under this Agreement, requires the service of any subcontractors or other professional associates in connection with services or activities covered by this Agreement, ARTIST must secure the prior written approval of the CITY.
4. Assignment. This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by ARTIST, without the prior written consent of CITY.
5. Conformity With Law And Safety. ARTIST shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable Federal, State, municipal and local safety regulations. All services performed by ARTIST must be in accordance with these laws, ordinances, codes and regulations. ARTIST shall indemnify,

defend, and hold CITY harmless from any and all liability, fines, penalties and consequences from any noncompliance or violations of such laws, ordinances, codes and regulations.

6. Accidents. If death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, ARTIST shall immediately notify the CITY Risk Manager's Office by telephone. ARTIST shall promptly submit to CITY a written report, in such form as may be required by CITY of all accidents which occur in connection with this contract. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of ARTIST'S subcontractors, if any; (3) name and address of ARTIST'S liability insurance carrier; and (4) a detailed description of accident and whether any of CITY'S equipment, tools, material or staff were involved.
7. Conflict of Interest. No officer, member, employee and member of their governing boards, councils or commissions shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this provision shall be considered a material breach of this Agreement.
8. Use of City Property. ARTIST shall not use CITY premises, property (including equipment, instruments and supplies) or personnel for any purpose other than the performance of his/her obligations under this Agreement.
9. Entire Contract. The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded.
10. Indemnification. ARTIST agrees to indemnify, defend, and hold harmless the CITY, its officers, agents and employees, from and against any and all claims, demands, actions, damages, or judgments, including associated costs of investigation and defense arising in any manner from ARTIST's performance of the Work under this Agreement.
11. Amendments. This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the CITY and ARTIST.
12. Legal Action/Attorney's Fees. If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which he or she may be entitled. The Santa Cruz County Superior shall have jurisdiction over any such action and that Court shall be authorized to determine which party is the prevailing party and what amount constitutes reasonable attorneys' fees to be awarded to the prevailing party.
13. Severability. In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

14. MacBride Principles/Peace Charter. The City Council of the City of Santa Cruz approved Resolution No. NS-19,378 on the 24th day of July 1990, endorsing the MacBride Principles and the Peace Charter and encourages all companies doing business in Northern Ireland to abide by the MacBride Principles and the Peace Charter.

15. Notices. All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

ARTIST
Address

CITY
City of Santa Cruz
Economic Development
337 Locust Street
Santa Cruz, CA 95060

IN WITNESS WHEREOF, City and Consultant have executed this Agreement as of the latest date written below.

ARTIST

Name

Date

EXHIBIT A
INSURANCE REQUIREMENTS

The Artist shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Artist, his or her agents, representatives, employees or subcontractors.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$2,000,000** per occurrence.

If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

2. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Artist has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than **\$1,000,000** per accident for bodily injury and property damage.
3. **Workers’ Compensation:** 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.

If the Artist has no employees, execute Workers’ Compensation Exemption Declaration and Release of Liability.

If the Artist maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Artist. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status

The City of Santa Cruz, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Artist including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Artist’s insurance (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).

Primary Coverage

For any claims related to this contract, the Artist's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the City of Santa Cruz, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City of Santa Cruz, its officers, officials, employees, or volunteers shall be excess of the Artist's insurance and shall not contribute with it.

Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the City.

Waiver of Subrogation

Artist hereby grants to the City a waiver of any right to subrogation which any insurer of said 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 provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Contractor, its employees, agents and subcontractors.

Self-Insured Retentions

Self-insured retentions must be declared to and approved by the City. The City may require the Artist to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or the City.

Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

Verification of Coverage

Artist shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause, and a copy of the policy declarations and endorsement page pertaining to the policy. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Artist's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Special Risks or Circumstances

The City reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.