

**ART PURCHASE AGREEMENT BETWEEN CITY OF CLAREMONT AND JOSE ANTONIO AGUIRRIE FOR THE EL BARRIO PARK PUBLIC ART PROJECT**

THIS ART PURCHASE AGREEMENT (the "Agreement") is entered into and effective this \_\_\_\_\_ day of \_\_\_\_\_, by and among **THE CITY OF CLAREMONT**, a California municipal corporation ("**City**"), and **Jose Antonio Aguirre** ("**Artist**").

**ARTICLE I. SCOPE OF SERVICES AND PAYMENT**

1.1 Scope of Design and Fabrication Services. Subject to the terms and conditions set forth in this Agreement, Artist shall (i) prepare, or cause to be prepared, conceptual design plans for the Artwork, including setting forth details and samples of the materials to be used and composition of the proposed Artwork; (ii) based on the conceptual design plans approved by City, develop working drawings which shall be incorporated into the Schedule of Performance attached hereto as **Exhibit B**; and (iii) fabricate and install the Artwork as more particularly described in the Scope of Design Build Services and the Schedule of Performance attached hereto as **Exhibit A** and **Exhibit B**, respectively, and incorporated herein by this reference (the "Design and Fabrication Services"). Artist shall perform his/her obligations in strict conformance with the terms and conditions set forth in this Agreement and shall take all other actions necessary and incidental to the performance of said obligations.

1.2 Periodic Review. City shall have the right to review the Artwork at reasonable times during the fabrication thereof. Artist shall submit to City regular progress narratives, including photographs, as required by the Schedule of Performance set forth in **Exhibit B**. The narratives shall clearly state the percentage of the Artwork completed to date and provide an estimated completion date.

1.3 Materials and Labor. Artist shall furnish all tools, equipment, apparatus, labor, services, materials and transportation necessary to perform the Design and Fabrication Services more fully described in **Exhibit A** and to install the Artwork, together with any appurtenances thereto, in a good and workmanlike manner in the "Site Location" as more fully described in said **Exhibit A** or reasonably inferable therein. If Artist fails to furnish the labor, materials, equipment, and or services necessary to perform all work and labor as herein provided in the manner herein set forth in good and workmanlike manner, Artist shall, in addition to any other penalties provided in this Agreement, be liable to City for all losses or damages that City may suffer as a result of such failure, including any additional costs incurred by City in obtaining such material or labor from other sources. It is understood and agreed that all said labor, services, materials, equipment, and facilities shall be furnished and said work performed and completed by Artist as an independent contractor, subject to the inspection and approval of City.

1.4 Change Orders. Artist shall strictly adhere to the Scope of Design Build Services set forth in **Exhibit A**, unless a change there from is authorized in writing by City. Artist shall present to City in writing for its review and advance approval any and all significant changes to the Artwork not permitted by or in substantial conformity with the approved working drawings and the Scope of Design Build Services set forth in **Exhibit A**. If City grants such approval, the terms of said change shall be memorialized in a written change order signed by the parties hereto prior to commencement of said revised work. For the

purposes of this section, a “significant change” is any change in the scope, design, color, size, material, texture, or site location which affects installation, scheduling, site preparation, or maintenance for the Artwork or the schematic concept of the Artwork as represented in the schematic drawings, the approved working drawings, and the Scope of Design Build Services set forth in **Exhibit A**.

1.5 Working Environment. Artist shall, at all times, maintain a safe work area and provide safe access to both the Artwork and the sites wherein the Artwork is located prior to installation at the Site Location for inspection of the Artwork by City and its representatives.

1.6 Testing and Inspections. Where specifications require the Artwork to be specially tested or approved, Artist shall not perform such testing, or cause such testing to be performed, until (1) Artist has first provided timely notice to City that the Artwork is ready for inspection and/or testing, and (2) City has inspected and approved of the Artwork or consented to said testing in writing. Artist shall, at its sole cost and expense, perform all work required to comply with scheduled inspections and testing, and any requests for corrections City or other inspection authorities make as a result of such inspections or testing.

1.7 Post-Creation Obligations.

a. Artist shall notify the City in writing when the fabrication of the Artwork is complete and ready for delivery and installation at the Site Location.

b. Upon completion of the Artwork, and at all times during creation and installation of the Artwork, the Artist shall comply with all applicable statutes, ordinances, and regulations of any governmental agency having jurisdiction over Artist or the Artwork.

c. Artist shall ensure that the Artwork is installed in a safe manner, and is designed to withstand the forces of nature it is expected to be exposed to during its lifetime, including, but not limited to, wind, rain, and sun, as reasonable for artwork of a similar nature. Artist is not responsible for repair or replacing the Artwork due to vandalism, earthquake, or other casualty.

1.8 Post-Installation Obligations.

a. Artist shall be available at such reasonable time or times as may be agreed between City and Artist to attend any and all inauguration, ground breaking, or presentation ceremonies upon completion of the Artwork.

b. City shall have the right to arrange for publicity for the completed Artwork by local media and publications and as otherwise as may be determined by City, in its sole and absolute discretion, following installation.

c. Upon installation of the Artwork, Artist shall provide City with written instructions for appropriate maintenance and preservation of the Artwork.

1.9 Final Acceptance. Artist shall advise City in writing when Artist believes that the Artwork and the installation of the Artwork at the Site Location are complete. Following receipt of such notice, City shall cause the installed Artwork to be inspected. Within five (5) working days following completion of such inspection(s), City shall either (i) provide Artist with reasonably specific written objections, and a list of necessary corrections to the installed Artwork that Artist must complete, or (ii) notify Artist of its acceptance of the Artwork by issuing a Notice of Completion in the form attached hereto as **Exhibit D**. Said Notice of Completion shall be evidence of the satisfactory completion and installation of the Artwork in conformity with this Agreement, subject to the indemnification, representations, and further performance obligations set forth in this Agreement.

1.10 Risk of Loss. Artist shall bear the risk of loss or damage to the Artwork during fabrication and installation until City issues the Notice of Completion indicating its acceptance of the Artwork as provided in Section 1.9. Upon Artist's receipt of the Notice of Completion, the risk of loss or damage to the Artwork shall be borne by City. Prior to City's issuance of the Notice of Completion, Artist shall take such measures as are necessary to protect the Artwork from loss or damage, through insurance or other adequate security, and to maintain the Artwork until final acceptance by City.

1.11 Compensation to Artist. City agrees to pay Artist for the Artwork the compensation set forth in **Exhibit C**. The total compensation to be paid to Artist shall not exceed \$ eighty-two thousand dollars (\$82,000). The parties agree that said compensation represents full payment to Artist for the design, fabrication and installation of the Artwork, including compensation for all professional services and reimbursement for expenses, and City shall have no additional financial obligations under this Agreement.

## **ARTICLE II. TIME OF PERFORMANCE**

2.1 Time. Artist shall perform his/her obligations under this Agreement in a punctual and diligent manner and in accordance with the Schedule of Performance attached hereto as **Exhibit B**. In the event Artist fails to perform fully any and all of the covenants and obligations under this Agreement, then City may, at its option, after first giving fifteen (15) days written notice to cure to Artist, provide any such labor and materials as may be necessary for the completion of the Artwork. In the event Artist fails to cure within the fifteen (15) day period, City may deduct the cost of said labor and materials and all costs incurred in finishing the work, if applicable, from any money then due or thereafter to become due to Artist under this Agreement until the work undertaken by City is completely finished. Upon completion of the work, if the unpaid balance of the amount to be paid to Artist under this Agreement exceeds the expenses incurred by City in securing labor and materials from other sources and/or in finishing Artist's work, such excess shall be paid to Artist. Conversely, if the expenses incurred by City as described above exceed the unpaid balance due to Artist, then Artist shall promptly pay to City the amount by which such expenses exceed the remaining unpaid balance. The expenses incurred by City, as herein provided, shall be chargeable to and paid by Artist.

## **ARTICLE III. WARRANTIES**

3.1 Artist represents and warrants that: (a) the Artwork is solely the result of the artistic effort of the Artist and Artist is the creator and owner of the Artwork design; (b) the Artwork

is unique and original and does not infringe upon any copyright; (c) the Artwork, or a duplicate thereof, has not been accepted for sale elsewhere; (d) to the best of his/her knowledge, the Artwork is not presently subject to claims of ownership, lien or encumbrance or to common law or statutory copyright claims of any other person, institution, or domestic or foreign government; and (e) that the Artwork is free and clear of any and all encumbrances and/or monetary liens. Artist covenants to defend (with counsel selected by City), indemnify and hold City, and City's elected and appointed officials, officers, employees, servants, attorneys, volunteers, and agents harmless from any loss, claim, or liability in any way related to a claim that the Artwork violates federal, state or local laws, or any contractual provisions, relating to copyrights, trade names, licenses, franchises, patents, or other means of protecting interests in products or inventions. Artist shall bear all costs arising from the use of patented, copyrighted, trade secret or trademarked materials, equipment, devices, or processes used on or incorporated in the Artwork produced under this Agreement. In case such materials, equipment, devices, or processes are held to constitute an infringement and their use is enjoined, Artist shall, at his/her expense, either (a) secure for City the right to continue exhibiting the Artwork by suspension of any injunction or by procuring a license or licenses for City; or (b) modify the Artwork so that it becomes non-infringing. The covenant and warranties set forth in this Section 3.1 shall survive the termination of this Agreement.

3.2 Quality and Condition. Artist represents and warrants, except as otherwise disclosed to City in writing, that: (a) the fabrication of the Artwork will be performed in a workmanlike manner; (b) the Artwork, as fabricated and following installation, will be free of patent and latent defects in material and workmanship, including any defects or qualities which cause or accelerate deterioration of the Artwork; and (c) reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by Artist to City. The warranties described in this Section 3.2 shall survive for a period of one (1) year after acceptance of the Artwork as evidenced by a Notice of Completion issued in accordance with Section 1.9, except the representation and warranty concerning latent defects shall survive for a period of three (3) years from the acceptance of the Artwork. City shall give written notice to Artist of any observed and claimed breach with reasonable promptness. Artist shall, at the request of City, and at no cost to City, cure reasonably and promptly the breach of any such warranty which is curable by Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or refabrication of the Artwork).

#### **ARTICLE IV. LOCATION AND DISPLAY OF ARTWORK**

4.1 Location/Display. Notwithstanding any other provision of this Agreement, Artist hereby acknowledges and agrees that City shall have sole and absolute discretion on the determination of the location and placement of the Artwork at the Site Location.

#### **ARTICLE V. PERFORMANCE BONDS**

5.1 Bonds. Artist shall not be required by City to post any performance bonds or similar undertakings. Nevertheless, Artist shall prevent any lien from attaching to the Artwork or the Site Location by any person or entity claiming under Artist.

## ARTICLE VI. PARTY REPRESENTATIVES

6.1 City Representative. For the purposes of this Agreement, City's representative shall be Bevin Handel, Public Information Officer or such other person as that individual designates in writing (hereinafter the "City Representative"). It shall be Artist's responsibility to assure that the City Representative is kept informed of the progress of the performance of the services and obligations more particularly described in **Exhibit A**, and Artist shall refer any decisions which must be made by City to the City Representative. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the City Representative.

6.2 Artist Representative. For the purposes of this Agreement, Jose Antonio Aguirre ("Artist") is the sole principal and representative of Artist authorized to act in his/her behalf with respect to the services specified herein and make all decisions in connection therewith. It is expressly understood that the experience, knowledge, capability and reputation of Artist were a substantial inducement for City to enter into this Agreement. Therefore, Artist shall be responsible during the term of this Agreement for performing or directing all activities of Artist and devoting sufficient time to personally perform or supervise, as appropriate, the services hereunder. Artist may not assign all or any of his/her obligations under this Agreement without the prior written approval of City.

## ARTICLE VII. OWNERSHIP OF ARTWORK; REPRODUCTION RIGHTS

7.1 Ownership of Artwork and Intellectual Property. All preliminary drawings, models, sketches and work incidental to the production of the Artwork will remain the property of Artist. Upon final acceptance, clear and free title to and ownership of the Artwork shall pass to City. Artist retains (1) all rights expressly granted in this Agreement; and (2) all rights under the Copyright Act of 1976, Chapters 1 through 8 and 10 through 12 of Title 17 of the United States Code, as amended, ("Copyright Act") except the rights granted to City in this Agreement, including the exclusive right of public display of the Artwork, and the right to copy and reproduce the Artwork as set forth below. Artist hereby grants to City an exclusive license for the public display of the Artwork. Artist hereby grants City the exclusive right to make non-three-dimensional copies of the Artwork and the right to reproduce non-three dimensional copies of the Artwork for non-commercial purposes, brochures, media publicity, catalogues, or reproductions of like kind and nature without the necessity of obtaining the permission of Artist and without entitling Artist to royalties or any additional compensation. All reproductions by City shall contain a credit to Artist and a copyright notice. City does not have any right to reproduce the Artwork in three-dimensions for any purpose. Artist shall not make any additional exact duplicate, two- or three-dimensional reproductions of the final Artwork, nor shall Artist grant permission to others to do so except with the written permission of City. This restriction shall not apply to Artist's use of photographic reproductions or three-dimensional maquettes of the Artwork in portfolio or in critical and scholarly writings, or other non-commercial purposes. Thus, Artist may use reproductions of the Artwork for personal or promotional purposes. Furthermore, Artist understands and agrees that the Artwork was selected on the basis that such work would be site-specific and unique to the El Barrio Park. Artist warrants that neither Artist nor anyone authorized by Artist will reproduce or duplicate the Artwork on whatever scale for any other location or client without the express approval of City or its successor public entity.

Artist may at his or her expense cause to be registered, with the United States Register of Copyrights, a copyright of the Artwork in Artist's name. A copy of such registration shall be furnished to City. Any third-party use, duplication, or reproduction, including use for a commercial purpose, shall not be considered or deemed a violation by City of Artist's rights under this Agreement or under the Copyright Act, as amended, even if such third-party use involves a permit other approval by City (e.g., film permit issued to third party by City).

## **ARTICLE VIII. ADDITIONAL ARTIST OBLIGATIONS**

8.1 Artist's Address. Artist shall notify City of any change in address. City shall take reasonable effort(s) to locate Artist when matters arise relating to the Artist's rights under this Agreement.

8.2 Surviving Covenants. The covenants and obligations set forth in this Article VII shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees, and all their successors in interest, and City's covenants do attach and run with the Artwork and shall be binding to and until twenty (20) years after the death of the Artist unless otherwise stated herein. Upon the death of the Artist, the representative of Artist's estate shall assume the surviving covenants and obligations of Artist set forth in this Article VII.

8.3 Independent Contractor. Artist is, and shall at all times remain as to City, a wholly independent contractor. Artist shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise act as an agent of City. Neither City nor any of its agents shall have control over the conduct of Artist or any of Artist's employees (if any), except as set forth in this Agreement. Artist shall not, at any time, or in any manner, represent that it or any of its officers, agents, or employees are in any manner employees of City. Artist agrees to pay all required taxes on amounts paid to Artist under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Artist shall fully comply with the workers' compensation law regarding Artist and its employees (if any). Artist further agrees to indemnify and hold City harmless from any failure of Artist to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any fees due to Artist under this Agreement any amount due to City from Artist as a result of Artist's failure to promptly pay to City any reimbursement or indemnification arising under this Section 7.3.

## **ARTICLE IX. ARTIST'S RIGHTS AND RELATED CITY'S OBLIGATIONS**

9.1 Identification. The Artist shall place his or her signature on sculpture identifying Artist, the title of the Artwork and the year of completion, and shall reasonably maintain such notice in good repair for as long as the Artwork is displayed.

9.2 Maintenance. The parties recognize that maintenance of the Artwork on a regular basis is essential to the integrity of the Artwork. Until such time as City determines it no longer wishes to display the Artwork, City shall maintain the Artwork.

### 9.3 Repairs and Restoration.

a. City shall have the right to determine, after consultation with a professional art conservator, when and if repairs and restoration to the Artwork will be made. At City's option, Artist, during Artist's lifetime, may be given the opportunity to make or personally supervise significant repairs and restorations and shall be paid a reasonable fee for any such services, provided that City and Artist mutually agree in writing, prior to the commencement of any significant repairs or restorations, upon Artist's fee for such services. City shall have no obligation to utilize the services of Artist in this respect if it chooses to have the repairs and restoration done by other professionals. No fees shall be paid to Artist for repair or restoration due to a breach of the representations and warranties set forth herein.

b. All repairs and restorations shall be made in accordance with recognized principles of conservation.

### 9.4 Maintenance, Alteration and Removal of the Artwork.

a. City shall maintain Artwork in a manner that City determines appropriate in its sole discretion. All decisions regarding alterations to, or relocation or removal of, the Artwork are within the sole and absolute discretion of the City.

b. If any alteration is made to the Artwork without the consent of Artist, Artist shall have the right to direct the City to remove Artist's name from the Artwork. In connection herewith, Artist hereby acknowledges and agrees that Artist is familiar with the federal Visual Artists Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 et seq.), and the rights and protection afforded Artist thereunder. Artist, on behalf of him/herself and on behalf of his/her successors, heirs, and assigns, hereby waives, releases and disclaims any rights, demands or claims as may arise at any time and under any circumstances against City, and its elected and appointed officials, officers and employees arising under the federal Visual Artists Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature, or any other type of moral right protecting the integrity of works of art to the fullest extent permitted by law. Without limiting the generality of the foregoing, Artist expressly waives any rights under the federal Visual Artists Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 et seq.), and any other local, state, federal or international laws relating to the location, placement, or removal and disposal of the Artwork.

c. The parties acknowledge and agree that it may not be possible to preserve the Artwork if the City determines that it no longer wishes to have the Artwork on display at that Site Location. By way of example, the parties recognize that it would not be feasible or practical to relocate the Artwork after it is installed. For this reason, the parties agree that City shall have the right at any time and for any reason, to remove, destroy, or otherwise dispose of the Artwork, and Artist shall have no right to notice of such actions. City shall have no obligation to preserve the Artwork if it determines it no longer wishes to display the Artwork. In addition,

should City transfer property containing the Site Location to a third party, all obligations of City under this Agreement shall terminate.

9.5 Permanent Record. The City shall maintain a record of this Agreement and of the location and disposition of the Artwork.

## **ARTICLE X. ASSIGNMENT OR TRANSFER**

10.1 Artist shall not assign or transfer any interest in this Agreement without the prior written consent of City. If the assignment is approved, the parties shall enter an assignment and assumption agreement. Any attempt by Artist to assign, transfer, or subcontract any rights, duties, or obligations arising hereunder without City's prior written consent shall be null, void and of no effect.

## **ARTICLE XI. TERMINATION**

11.1 City may, at its option, by written notice to Artist, terminate this Agreement either upon the failure by Artist to perform any of its obligations hereunder in accordance with the terms hereof or any other breach by Artist of the terms of this Agreement, and such failure or breach continues uncured for fifteen (15) days following notice thereof from City to Artist ("Termination"). Upon Termination, except as provided in this Agreement, all parties shall be released from all further obligations and liability hereunder. Effective upon Termination, the Artwork, or so much thereof as has then been completed, shall be transferred to and shall belong to City. In such event and upon Artist's written request, City shall remove Artist's name from the Artwork.

## **ARTICLE XII. INSURANCE AND INDEMNIFICATION.**

12.1 Insurance. Prior to the commencing any work under this Agreement and throughout the duration of the term of this Agreement, Artist shall procure and maintain, at Artist's sole cost and expense, and submit to City concurrently with its execution of this Agreement, policies of insurance as set forth in **Exhibit E** (the "Insurance Requirements") which is incorporated herein by this reference and expressly made a part hereof.

12.2 Indemnification. To the fullest extent permitted by law, Contractor shall indemnify, protect, defend and hold harmless City and any and all of its officers, employees, agents, and volunteers as set forth in **Exhibit F** ("Indemnification") which is incorporated herein by this reference and expressly made a part hereof.

## **ARTICLE XII. GENERAL PROVISIONS**

12.1 Notices. All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given (a) upon the delivery or receipt thereof, as the case may be, if delivered personally or recognized overnight courier service; or (b) on the third business day following deposit in the United States mail, sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses set forth below, or to such other addresses as the parties may, from time to time, designate in writing pursuant to the provisions of this section. All notices shall be addressed as follows:

CITY:  
City of Claremont  
Attn: Assistant City Manager  
P.O. Box 880  
Claremont, CA 91711

ARTIST:  
Jose Antonio Aguirre  
1060 So. Oak Forest Lane  
Pasadena, CA 91107

12.2 Nondiscrimination. In the performance of the services under this Agreement, neither Artist nor City shall discriminate as to race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, or sexual orientation. Artist shall comply with the equality of employment opportunity provisions of State and local laws and regulations as presently existing or hereafter amended.

12.3 Entire Agreement. This Agreement and all exhibits attached hereto and incorporated herein by reference, embodies the entire integrated agreement and understanding between the parties hereto. There are no other agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby, except as set forth herein above.

12.4 Modification. This Agreement and each of the terms embodied herein may be amended, altered, changed, or modified only by a written instrument signed by each party hereto and approved by appropriate action of City.

12.5 Waiver. No waiver of performance by any party hereto shall be construed as or operate as a waiver of any subsequent default of any terms, covenants, and conditions of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

12.6 Governing Law; Venue. This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of California. In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, any party hereto may institute legal action to seek specific performance of the terms of this Agreement, to recover damages, or to obtain any other remedy, at law or in equity, consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Los Angeles, or in the Federal District Court in the district of California which includes Los Angeles County.

12.7 Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of City and Artist, and their respective heirs, personal representatives, successors, and permitted assigns.

12.8 Severance. If any provision(s) of this Agreement is declared to be invalid, void, or illegal, such provision(s) shall be severed from this Agreement and shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect.

12.9 Substitution. Whenever in the specifications of materials or process the Scope of Design Build Services indicates or specifies materials or processes by patent or

proprietary name or by name of manufacturer, such specification shall be deemed to be used for the purpose of facilitating description of the material and/or process desired, and shall be deemed to be followed by the words "OR EQUAL," and Artist may offer any material or process which shall be equal in every respect to that so indicated or specified. Artist shall not offer any substitute material or process if a substitute so offered by Artist is not found to be equal to that so indicated or specified by name, if one only be so specified or named, or, if more than one be so specified or named, then such one as shall be specified in the proposal, or if none be so specified, then such one as shall be required by City.

12.10 Authority. The persons executing this Agreement on behalf of each of the parties hereto represent and warrant that (i) such party is duly organized and existing or is a natural person, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) that entering into this Agreement does not violate any provision of any other Agreement to which said party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors, and permitted assigns of the parties.

12.11 Force Majeure. In addition to specific provisions of this Agreement, performance by any party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, supernatural causes, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, materials or tools, delays of any contractor, subcontractor or supplies, acts of the other party, acts or failure to act of any public or governmental agency or entity, including, without limitation, unreasonable delays in the processing and issuance of required permits for the installation of the Artwork by Artist (except that any act or failure to act of City shall not excuse performance by City) or any other causes beyond the reasonable control or without the fault of the party claiming an extension of time to perform. Notwithstanding the foregoing, market and economic conditions shall not entitle Artist to an extension of time to perform. An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within ten (10) days of knowledge of the commencement of the cause. In addition, times of performance under this Agreement may be extended by mutual written agreement by City and Artist.

12.12 No Third Party Beneficiaries. With the exception of the specific provisions set forth in this Agreement, there are no intended third-party beneficiaries under this Agreement and no such other third parties shall have any rights or obligations hereunder.

12.13 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Art Purchase Agreement on the day and year first written above.

CITY:

CITY OF CLAREMONT, a California Municipal Corporation

By: \_\_\_\_\_  
Adam Pirrie, City Manager

ATTEST:

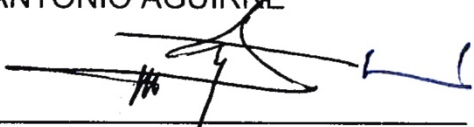
\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Alisha Patterson, City Attorney

ARTIST:

JOSE ANTONIO AGUIRRE

By:   
\_\_\_\_\_

Title: ARTIST  
\_\_\_\_\_

State License No. N/A  
\_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF DESIGN BUILD SERVICES**

I. **SCOPE OF WORK**

Design, fabrication, and installation of a public art project at El Barrio Park. Inclusive of all materials, transportation, delivery, and installation to create nine free standing stiles, one monument mosaic panel, and four restroom building mosaic tile panels. Includes coordination of community workshops to assemble mosaics and presentation of final designs to the Public Art Committee prior to beginning fabrication.

II. **GENERAL ITEMS OF INCLUSION:**

Included is fabrication, delivery, and installation of nine freestanding stile bases and mosaic tops, four mosaic tile panels for the restroom building, and one monument mosaic panel. The stile and all panels will be installed and delivered by artist or artist.

III. **SPECIFIC ITEMS OF INCLUSION**

Mosaic tile and GRC tile sculptures, four mixed media mosaic panels, and one mixed media tile monument panel with backing, delivery costs and coordination, and installation of all stiles and panels. Includes the donation and installation of two donated tile mosaics by the artist.

Includes coordination of community volunteers for mosaic tile setting and presentation of final design for Public Art Committee approval.

**EXHIBIT B**  
**SCHEDULE OF PERFORMANCE**

**SCHEDULING:**

Fabrication of the Artwork will begin following the execution of this Agreement. The installation of the Artwork will be completed before January 1, 2027.

**REVIEWS:**

City staff will review the final Artwork designs prior to fabrication and again after construction of the stiles and panels and before installation of the Artwork. Following the installation of the concrete base and footings, City staff will inspect the base prior to installation of the Artwork.

**EXHIBIT C**  
**SCHEDULE OF COMPENSATION**

**SCHEDULE OF PAYMENT TO ARTIST BY CITY:**

The compensation of \$82,000 will be paid to the Artist in five installments as per the Artist's request. The deposit of \$8,200 shall be paid for upon entering into this Agreement between the Artist and the City. A second payment of \$24,600 will be paid upon approval of final designs and beginning of Fabrication Phase 1. A third payment will be at the midpoint of fabrication for \$24,600. A fourth payment of \$20,500 will be paid following delivery and installation of all Artwork. The balance of \$4,100 shall be paid upon completion and approval of the Artwork. Finally, the compensation for the Artwork shall include fees for transportation and materials. Artist shall deliver the Artwork on or before January 1, 2027.

Payment 1 - 10% Signing of agreement = \$8,200.00

Payment 2 - 30% Production/ Fabrication Phase I= \$ 24,600.00

Payment 3 - 30% Production/ Fabrication Phase II (Midpoint review)= \$ 24,600.00

Payment 4 - 25% Delivery and Installation= \$ 20,500.00

Payment 5 - 5% Completion and approval= \$ 4,100.00

**EXHIBIT D**  
**NOTICE OF COMPLETION FOR ARTWORK**

Piece of Artwork: **El Barrio Mosaic Stiles and Panels**

WHEREAS, by that certain Art Purchase Agreement dated \_\_\_\_\_, \_\_\_\_\_ (“Agreement”), THE CITY OF CLAREMONT, a California municipal corporation (“City”) contracted with Jose Antonio Aguirre (“Artist”) to provide certain “Artwork” (as defined in the Agreement); and,

WHEREAS, as referenced in the Agreement, City shall furnish Artist with a Notice of Completion upon completion of the fabrication and installation of the Artwork; and,

WHEREAS, such certificate shall be conclusive determination of satisfactory completion of the fabrication and installation of the Artwork, as required by the Agreement, has been satisfactorily completed.

NOW, THEREFORE, the City hereto certifies as follows:

1. As provided in the Agreement, City does hereby certify that the fabrication and installation of the Artwork has been fully performed and completed.
2. Nothing contained in this instrument shall modify in any other way any executory portions of the Agreement.

IN WITNESS WHEREOF, City has executed this certificate this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

CITY OF CLAREMONT, a California Municipal Corporation

By: \_\_\_\_\_  
Adam Pirrie, City Manager

## EXHIBIT E

### INSURANCE REQUIREMENTS

E.1 Insurance. Prior to the beginning of and throughout the duration of this Agreement, the following policies shall be maintained and kept in full force and effect providing insurance with minimum limits as indicated below and issued by insurers with A.M. Best ratings of no less than A-VI:

Commercial General Liability (at least as broad as ISO CG 0001)  
\$1,000,000 (per occurrence)  
\$2,000,000 (general aggregate)

Commercial Auto Liability (at least as broad as ISO CA 0001)  
\$1,000,000 (per accident)

Workers' Compensation  
(per statutory requirements)

Artist shall procure and maintain, at its cost, and submit concurrently with its execution of this Agreement, Commercial General Liability insurance against all claims for injuries against persons or damages to property resulting from Artist's acts or omissions rising out of or related to Artist's performance under this Agreement. The insurance policy shall contain a severability of interest clause providing that the coverage shall be primary for losses arising out of Artist's performance hereunder and neither City nor its insurers shall be required to contribute to any such loss. A certificate evidencing the foregoing and naming City and its officers and employees as additional insured (on the Commercial General Liability policy only) shall be delivered to and approved by City prior to commencement of the services hereunder.

Artist shall carry automobile liability insurance of \$1,000,000 per accident against all claims for injuries against persons or damages to property arising out of the use of any automobile by Artist, its officers, any person directly or indirectly employed by Artist, any subcontractor or agent, or anyone for whose acts any of them may be liable, arising directly or indirectly out of or related to Artist's performance under this Agreement. If Artist or Artist's employees will use personal autos in any way on this project, Artist shall provide evidence of personal auto liability coverage for each such person. The term "automobile" includes, but is not limited to, a land motor vehicle, trailer or semi-trailer designed for travel on public roads. The automobile insurance policy shall contain a severability of interest clause providing that coverage shall be primary for losses arising out of Artist's performance hereunder and neither City nor its insurers shall be required to contribute to such loss. Notwithstanding anything in Section E.3 below, Artist and any subcontractors shall provide proof of automobile liability insurance at the stated limits; such proof of coverage is not required to be in the form of a Certificate of Insurance.

If Artist hires any employees, Artist shall carry Workers' Compensation Insurance in accordance with State Worker's Compensation laws with employer's liability limits no less than \$1,000,000 per accident or disease. Artist shall ensure that all subcontractors who have employees obtain and maintain Workers' Compensation Insurance in accordance with State Workers' Compensation laws with employer's liability limits no less than \$1,000,000 per accident or disease.

Artist shall provide written notice to City within ten (10) working days if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased. In the event any of said policies of insurance are cancelled, Artist shall, prior to the cancellation date,

submit new evidence of insurance in conformance with this Exhibit to the Contract Officer. The procuring of such insurance or the delivery of policies or certificates evidencing the same shall not be construed as a limitation of Artist's obligation to indemnify City, its officers, employees, contractors, subcontractors, or agents.

E.2 Remedies. In addition to any other remedies City may have if Artist fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option:

- a. Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under this Agreement.
- b. Order Artist to stop work under this Agreement and/or withhold any payment(s) which become due to Artist hereunder until Artist demonstrates compliance with the requirements hereof.
- c. Terminate this Agreement.

Exercise of any of the above remedies, however, is an alternative to any other remedies City may have. The above remedies are not the exclusive remedies for Artist's failure to maintain or secure appropriate policies or endorsements. Nothing herein contained shall be construed as limiting in any way the extent to which Artist may be held responsible for payments of damages to persons or property resulting from Artist's or its subcontractors' performance of work under this Agreement.

E.3 General Conditions Pertaining to Provisions of Insurance Coverage by Artist. Artist and City agree to the following with respect to insurance provided by Artist:

1. Artist agrees to have its insurer endorse the third party general liability coverage required herein to include as additional insureds City, its officials, employees, and agents, using standard ISO endorsement No. CG 2010 with an edition prior to 1992. Artist also agrees to require all contractors, and subcontractors to do likewise.

2. No liability insurance coverage provided to comply with this Agreement shall prohibit Artist, or Artist's employees, or agents, from waiving the right of subrogation prior to a loss. Artist agrees to waive subrogation rights against City regardless of the applicability of any insurance proceeds, and to require all contractors and subcontractors to do likewise.

3. All insurance coverage and limits provided by Artist and available or applicable to this Agreement are intended to apply to the full extent of the policies. Nothing contained in this Agreement or any other agreement relating to City or its operations limits the application of such insurance coverage.

4. None of the coverages required herein will be in compliance with these requirements if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing.

5. No liability policy shall contain any provision or definition that would serve to eliminate so-called "third party action over" claims, including any exclusion for bodily injury to an employee of the insured or of any contractor or subcontractor.

6. All coverage types and limits required are subject to approval, modification and additional requirements by the City, as the need arises. Artist shall not make any reductions in scope of coverage (e.g. elimination of contractual liability or reduction of discovery period) that may affect City's protection without City's prior

written consent.

7. Proof of compliance with these insurance requirements, consisting of certificates of insurance evidencing all of the coverages required and an additional insured endorsement to Artist's general liability policy, shall be delivered to City at or prior to the execution of this Agreement. In the event such proof of any insurance is not delivered as required, or in the event such insurance is canceled at any time and no replacement coverage is provided, City has the right, but not the duty, to obtain any insurance it deems necessary to protect its interests under this or any other agreement and to pay the premium. Any premium so paid by City shall be charged to and promptly paid by Artist or deducted from sums due Artist, at City option.

8. It is acknowledged by the parties of this agreement that all insurance coverage required to be provided by Artist or any subcontractor, is intended to apply first and on a primary, non-contributing basis in relation to any other insurance or self-insurance available to City.

9. Artist agrees to ensure that subcontractors, and any other party involved with the project that is brought onto or involved in the project by Artist, provide the same minimum insurance coverage required of Artist. Artist agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this section. Artist agrees that upon request, all agreements with subcontractors and others engaged in the project will be submitted to City for review.

10. Artist agrees not to self-insure or to use any self-insured retentions or deductibles on any portion of the insurance required herein (with the exception of professional liability coverage, if required) and further agrees that it will not allow any contractor, subcontractor, Architect, Engineer or other entity or person in any way involved in the performance of work on the project contemplated by this agreement to self-insure its obligations to City. If Artist's existing coverage includes a deductible or self-insured retention, the deductible or self-insured retention must be declared to the City. At that time the City shall review options with the Artist, which may include reduction or elimination of the deductible or self-insured retention, substitution of other coverage, or other solutions.

11. The City reserves the right at any time during the term of this Agreement to change the amounts and types of insurance required by giving the Artist ninety (90) days advance written notice of such change. If such change results in substantial additional cost to the Artist, the City will negotiate additional compensation proportional to the increased benefit to City.

12. For purposes of applying insurance coverage only, this Agreement will be deemed to have been executed immediately upon any party hereto taking any steps that can be deemed to be in furtherance of or towards performance of this Agreement.

13. Artist acknowledges and agrees that any actual or alleged failure on the part of City to inform Artist of non-compliance with any insurance requirement in no way imposes any additional obligations on City nor does it waive any rights hereunder in this or any other regard.

14. Artist will renew the required coverage annually as long as City, or its employees or agents face an exposure from operations of any type pursuant to this agreement. This obligation applies whether or not the agreement is canceled or terminated for any reason. Termination of this obligation is not effective until City executes a written statement to that effect.

15. Artist shall provide proof that policies of insurance required herein expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Proof that such coverage has been ordered shall be submitted prior to expiration. A coverage binder or letter from Artist's insurance agent to this effect is acceptable. A certificate of insurance and/or additional insured endorsement as required in these specifications applicable to the renewing or new coverage must be provided to City within five (5) days of the expiration of coverages.

16. The provisions of any workers' compensation or similar act will not limit the obligations of Artist under this agreement. Artist expressly agrees not to use any statutory immunity defenses under such laws with respect to City, its employees, officials, and agents.

17. Requirements of specific coverage features or limits contained in this section are not intended as limitations on coverage, limits or other requirements nor as a waiver of any coverage normally provided by any given policy. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue, and is not intended by any party or insured to be limiting or all-inclusive.

18. These insurance requirements are intended to be separate and distinct from any other provision in this Agreement and are intended by the parties here to be interpreted as such.

19. The requirements in this Exhibit supersede all other sections and provisions of this Agreement to the extent that any other section or provision conflicts with or impairs the provisions of this Exhibit.

20. Artist agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Artist for the cost of additional insurance coverage required by this agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.

21. Artist agrees to provide immediate notice to City of any claim or loss against Artist arising out of the work performed under this agreement. City assumes no obligation or liability by such notice, but has the right (but not the duty) to monitor the handling of any such claim or claims if they are likely to involve City.

## EXHIBIT F

### INDEMNIFICATION

#### F.1 General Indemnification Provision.

a. Indemnification for Professional Liability. When the law establishes a professional standard of care for Artist's services, to the fullest extent permitted by law, Artist shall indemnify, protect, defend (with counsel selected by City), and hold harmless City and any and all of its officials, employees, and agents ("Indemnified Parties") from and against any and all claims, losses, liabilities of every kind, nature, and description, damages, injury (including, without limitation, injury to or death of an employee of Artist or of any subcontractor), costs and expenses of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses incurred in connection therewith and costs of investigation, to the extent same are cause in whole or in part by any negligent or wrongful act, error or omission of Artist, its officers, agents, employees or subcontractors (or any entity or individual that Artist shall bear the legal liability thereof) in the performance of professional services, including design of the Artwork, under this Agreement. With respect to the design of public improvements, the Artist shall not be liable for any injuries or property damage resulting from the reuse of the design at a location other than that specified in Exhibit A without the written consent of the Artist. Artist's design work shall be performed consistent with the standard of care for the design of artwork for outdoor public display and accessible by members of the public.

b. Indemnification for Other Than Professional Liability. Other than in the performance of professional services and to the full extent permitted by law, Artist shall indemnify, defend (with counsel selected by City), and hold harmless the Indemnified Parties from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including, without limitation, incidental and consequential damages, court costs, attorneys' fees, litigation expenses, and fees of expert consultants or expert witnesses) incurred in connection therewith and costs of investigation, where the same arise out of, are a consequence of, or are in any way attributable to, in whole or in part, the performance of this Agreement by Artist or by any individual or entity for which Artist is legally liable, including but not limited to officers, agents, employees, or subcontractors of Artist, including negligent fabrication and/or installation of the Artwork.

F.2 Standard Indemnification Provisions. Artist agrees to obtain executed indemnity agreements with provisions identical to those set forth herein this section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Artist in the performance of this Agreement. In the event Artist fails to obtain such indemnity obligations from others as required herein, Artist agrees to be fully responsible according to the terms of this Exhibit. Failure of City to monitor compliance with these requirements imposes no additional obligations on City and will in no way act as a waiver of any rights hereunder. This obligation to indemnify and defend City as set forth herein is binding on the successors, assigns or heirs of Artist and shall survive the termination of this agreement or this section.

a. Limitation of Indemnity. Without affecting the rights of City under any provision of this agreement, Artist shall not be required to indemnify and hold harmless City for liability attributable to the active negligence of City, provided such active negligence is determined by agreement between the parties or by the findings of a court of competent jurisdiction. In instances where City is shown to have been actively negligent and where City's active negligence accounts for only a percentage of the liability

involved, the obligation of Artist will be for that entire portion or percentage of liability not attributable to the active negligence of City.