

SERVICE AGREEMENT

Artist Agreement for Caltrans Mural Art Installations on Caltrans Undercrossings Located in and around the City of Merced

THIS SERVICE AGREEMENT (hereinafter "Agreement") is made and entered into by and between the City of Merced, a California Charter Municipal Corporation (hereinafter "City"), and **[Kristen Concepcion]** (hereinafter "Artist"). City and Artist may be collectively referred to herein as the "parties."

RECITALS

A. City requested proposals from artists to install public artwork on California Department of Transportation ("Caltrans") owned property and structures as set forth in the City's Request for Qualifications released on or about April 6, 2022 attached hereto as Exhibit "A".

B. In response to the City's request, Artist submitted a proposal, as set forth in Exhibit "B," and on May 6, 2022, the Arts and Culture Advisory Commission reviewed and unanimously approved the Artist's final Artwork design proposal.

C. On June 15, 2022, the Merced City Council approved the Artist's final Artwork (hereinafter "Artwork").

D. The Artist will perform the services more particularly described in Exhibit "A". **The Artist will install the artwork design [Bountiful Merced] on [East Wall] located in the vertical abutment of the undercrossing structure at [O Street] and State Route 99 in Merced, CA (the "Site"). The project dimensions will not exceed 36' wide x 15'1" high in the vertical abutment, or center of the [East] Wall of the [O Street] undercrossing.**

E. In reliance upon Artist's documentation of its qualifications, as set forth in Exhibit "B," the City finds that Artist has demonstrated the requisite qualifications, experience, training, and expertise to perform the requested services. The Arts and Culture Advisory Commission Public Art Policy shall apply to this Project except as modified herein.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS IDENTIFIED HEREIN, THE PARTIES HEREBY AGREE AS FOLLOWS:

1. **SCOPE OF SERVICES.** Artist shall perform the services and install the approved final Artwork in accordance with Exhibits "A" and "B" and at the Site described in Exhibit "C," all attached hereto and incorporated herein by reference, in accordance with the terms and conditions contained in this Agreement.

CITY OF MERCED - SERVICE AGREEMENT
ARTIST AGREEMENT FOR PUBLIC ART PROJECT

KRISTEN CONCEPCION, BOUNTIFUL MERCED, EAST WALL OF THE O STREET AND STATE ROUTE 99 UNDERCROSSING

2. **TIME FOR PERFORMANCE.** Time is of the essence in the performance of services under this Agreement and the timing requirements set forth herein shall be strictly adhered to unless otherwise modified in writing in accordance with this Agreement. Artist shall commence performance beginning _____ and shall complete all required services no later than **three months after the identified project start date listed above.** Any services for which times for performance are not specified in this Agreement shall be commenced and completed by Agreement in a reasonably prompt and timely manner based upon the circumstances and direction communicated to the Artist. Artist shall submit all requests for extensions of time to the City in writing no later than ten (10) days after the start of the condition which purportedly caused the delay, and not later than the date on which performance is due.

3. **PAYMENT.**

A. **Artist Commission.** Artist's commission for all supplies, materials, services needed to fabricate and install the Artwork shall not exceed **(\$33,000.00)** and will be paid by the City of Merced after acceptance of the Artwork by the City (hereinafter "Commission Amount"). City will not be responsible for any costs, compensation, or commission related directly or indirectly to the performance of the services agreed to herein. The Commission Amount constitutes full and complete payment for work performed and services rendered by Artist in connection with this Agreement, including, but not limited to: furnishing all labor (including supervision), materials and supplies (including the costs of any and all applicable taxes, patent rights, royalties, licenses, and permits), equipment, tools, transportation, services necessary to complete the Artwork (including costs to protect the Artwork and all damages to the Artwork prior to acceptance of the Artwork by the City), and all other incidentals unless otherwise specifically provided in this Agreement. If applicable, Artist shall pay prevailing wage rates in effect on the effective date of this Agreement, pursuant to California law.

B. **Artist's Failure to Perform.** In the event Artist performs services which do not comply with the requirements of this Agreement, Artist shall, upon receipt of written notice from the City, re-perform the services (without additional compensation to the Artist). If Artist's failure to perform in accordance with this Agreement causes damages to the City, including but not limited to, any additional costs incurred or expended to complete or correct the Artwork, Artist shall reimburse the City for the damages incurred (which may be charged as an offset to Artist's Commission Amount paid by the City).

4. LIMITATIONS ON ARTIST'S USE OF SITE FOR INSTALLATION.

A. Access to Sites. In order to permit the City to inspect the Artwork, the Artist shall, at all times, provide to the City (including agencies and entities designated by the City) proper and safe access to the Site, and all portions of the Artwork, and to all shops wherein portions of the Artwork are in preparation.

B. Artist's Rights. The Artist's rights under this Agreement shall be a revocable non-exclusive right to use the Site ("as is"), for the sole purpose identified in Exhibit "A" of this Agreement. The City's permission to Artist to use the Site in accordance with this Agreement shall not create any right, title, or interest in the Site. The Artist's rights under this Agreement shall be subordinate to the rights of the City to use the Site for any legitimate public purpose. The Artist's rights to use the Site in accordance with this Agreement shall be subject to any other property rights held by other parties. The City makes no representation or guaranty to the Artist regarding the extent of the City's property interest in the Site, relative to the rights of other parties to use the same Site, and relative to the Artist's proposed uses of the Site. In determining the Artist's rights and responsibilities under this Agreement, the Artist shall take direction from the City Manager, the City's Authorized Representative, and any of their authorized designees.

C. Site Damage. The Artist shall, at its sole cost and expense, repair any damage arising out of Artist's entry on, and use of, the Site, and Artist shall restore the Site to a condition equal to or better than the condition which existed prior to Artist's entry on, and use of, the Site. After installation, the Artist shall, at its sole cost and expense, repair any damage arising out of Artist's entry on, and use of, the Site. Artist shall reimburse the City for any costs incurred to cure a breach of Artist's obligations under this paragraph.

D. Artist Waiver for Public Art Project.

a. Waiver of Proprietary Rights for Artwork. 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 and its agents.

5. **CITY'S AUTHORIZED REPRESENTATIVE.** For the performance of services under this Agreement, the City's Authorized Representative, Stephanie Dietz, City Manager, shall administer the Agreement unless otherwise designated in writing by the City's Authorized Representative.

6. **INFORMATION AND DOCUMENTATION.**

A. **Information from City.** City has made an effort to provide Artist with all information necessary for Artist's performance of services under this Agreement. If Artist believes additional information is required, Artist shall promptly notify the City, and the City will provide to Artist all relevant non-privileged information in City's possession.

B. **Ownership of Work Product.** Caltrans shall own the completed Artwork, or any portion of it created and installed by Artist. All other documents prepared by Artist (including its employees and subconsultants) for this Agreement ("work product"), whether complete or in progress, are the property of the Artist.

7. **RELATIONSHIP BETWEEN THE PARTIES.** Artist is, and at all times shall remain, an independent contractor solely responsible for all acts of its employees, agents, or subconsultants, including any negligent acts or omissions. Artist is not City's agent and shall have no authority to act on behalf of the City, or to bind the City to any obligation whatsoever, unless the City provides prior written authorization to Artist. Artist is not an officer or employee of City, and Artist shall not be entitled to any benefit, right, or compensation other than that provided in this Agreement.

8. **CONFLICTS OF INTEREST PROHIBITED.** Artist (including its employees, agents, and subconsultants) shall not maintain or acquire any direct or indirect interest that conflicts with the performance of this Agreement. Artist shall comply with all requirements of California Government Code Section 1090 and the Political Reform Act (California Government Code Sections 81000, *et seq.*) and other state and local laws relating to conflicts of interest, including: (a) Artist shall not make or participate in a decision made by the City if it is reasonably foreseeable that the decision may have a material effect on Artist's economic interest, and (b) if required by law, Artist shall file financial disclosure forms with the City Clerk. If Artist maintains or acquires a conflicting interest, any contract with the City (including this Agreement) involving Artist's conflicting interest may be terminated by the City.

9. **NONDISCRIMINATION.** Artist shall not discriminate against any person related to the performance under this Agreement (including any employee or applicant) because of race, color, religious creed, national origin, physical disability, mental disability, medical condition, marital status, sexual orientation, gender or other legally protected status. Artist will include this requirement in any subcontract.

10. **COMPLIANCE WITH LAW AND STANDARD OF CARE.** Artist shall comply with all applicable legal requirements including all federal, state, and local laws (including ordinances and resolutions), whether or not said laws are expressly stated in this Agreement. Artist shall perform services under this Agreement using a standard of care equal to, or greater than, the degree of skill and diligence ordinarily used by reputable professionals, with a level of experience and training similar to Artist, performing under circumstances similar to those required by this Agreement.

11. **LICENSES.** Artist represents and warrants to City that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required of Artist to practice its profession. Artist represents and warrants to City that Artist shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Artist to practice its profession.

12. **REPORTING DAMAGES.** If any damage (including death, personal injury or property damage) occurs in connection with the performance of this Agreement, Artist shall immediately notify the City Risk Manager's office by telephone at 209-385-6979, and Artist shall promptly submit to the City's Risk Manager and the City's Authorized Representative, a written report (in a form acceptable to the City) with the following information: (a) name and address of the injured or deceased person(s), (b) name and address of witnesses, (c) name and address of Artist's insurance company, and (d) a detailed description of the damage and whether any City property was involved.

13. **INDEMNIFICATION.** Artist shall indemnify, hold harmless, and defend the City (including its elected officials, officers, agents and employees) from and against any and all claims, litigation, demands, damages, liabilities, costs, and expenses, including court costs, attorney's fees, experts fees and other costs and fees of litigation or other dispute resolution proceedings ("Claims") resulting or arising from Artist's performance, or failure to perform, under this Agreement, except Claims arising out of the City's sole negligence or willful conduct.

14. **RISK OF LOSS; LIABILITY FOR DAMAGE.** Prior to acceptance of the Artwork by the City, the Artist shall be solely responsible for maintaining the

Artwork. Artist shall bear the risk of loss or damage to the Artwork until the City's final acceptance of the Artwork. Prior to final acceptance, the City shall bear no responsibility, nor incur any liability, for loss or damage to the Artwork. City shall not be responsible for, nor incur any liability for loss or damage to any Artist owned equipment involved in Artist's performance under this Agreement.

A. **Insurance.** During the term of this Agreement, Artist shall maintain in full force and effect at its own cost and expense, the following insurance coverage:

(1) **Workers' Compensation Insurance.** If applicable, full workers' compensation insurance shall be provided with a limit of at least One Hundred Thousand Dollars (\$100,000) for any one person and as required by law, including Employer's Liability limits of \$1,000,000.00 per accident. The policy shall be endorsed to waive the insurer's subrogation rights against the City.

(2) **General Liability.**

(i) Artist shall obtain and keep in full force and effect general liability coverage at least as broad as ISO commercial general liability coverage occurrence Form CG 0001.

(ii) Artist shall maintain limits of no less than One Million Dollars (\$1,000,000) per occurrence for bodily injury, personal injury, and property damage.

(iii) The City, its officers, employees, volunteers, and agents are to be named as additional insureds under the policy with respect to liability arising out of work or operations performed by or on behalf of the Artist.

(iv) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Artist and its sub-contractors and that any other insurance or self-insurance maintained by City or other named insureds shall be excess and non-contributory.

(3) **Automobile Insurance.**

(i) Artist shall obtain and keep in full force and effect an automobile policy of at least One Million Dollars (\$1,000,000) per accident for bodily injury and property damage.

(ii) The City, its officers, employees, volunteers, and agents are to be named as additional insureds under the policy regarding automobiles owned, leased, hired, or borrowed by the Artist.

(iii) The policy shall stipulate that this insurance will operate as primary insurance for work performed by Artist and its sub-contractors and that any other insurance or self-insurance maintained by City or other named insureds shall be excess and non-contributory.

- B. Qualifications of Insurer.** The specified insurance shall be provided by an acceptable insurance provider, as determined by the City, which satisfies all of the following minimum requirements:
- (i) An insurance carrier admitted to doing business in California and maintaining an agent for service of process within this State; and,
 - (ii) An insurance carrier with a current A.M. Best Rating of A: VII or better (except for workers' compensation provided through the California State Compensation Fund).

- C. Certificate of Insurance.** Artist shall complete and file with the City before engaging in any operation or activity set forth in this Agreement certificates of insurance evidencing coverage as set forth above and which shall provide that no cancellation or expiration by the insurance company will be made during the term of this Agreement, without thirty (30) days written notice to City prior to the effective date of such cancellation-including cancellation for nonpayment of premium. In addition to any other remedies City may have, City reserves the right to withhold payment if the Artist's insurance policies are not current.

15. ACCEPTANCE OF ARTWORK. The Artist's obligation to perform the Artwork shall not be satisfied until after the City has made a written determination that all obligations of the Agreement have been satisfied and all outstanding fees and charges have been paid, and the Artwork is accepted as complete. Artist shall notify the City's Authorized Representative that the Artwork has been installed at the Site ("Completion Notice"). Within thirty (30) days of the Completion Notice, City shall notify Artist in writing that the Artwork as completed and installed meets the requirements of this Agreement ("Acceptance Notice") or if the Artwork does not meet this Agreement's requirements, City shall notify Artist of the defects ("Defects Notice"). Artist shall remedy, at Artist's own cost, any defects noted in City's Defects Notice, by the completion date therein specified, to the satisfaction of the City's Authorized Representative. Upon remedy of all defects noted in the Defect's Notice, Artist will submit a new Completion Notice. Parties shall continue the above-described process until an Acceptance Notice is issued by the City. The Artist's obligations to perform the Artwork are satisfied upon receipt of the Acceptance Notice.

16. INSPECTION. The Artwork shall be subject to inspection by the City from the beginning of fabrication until the final completion and final acceptance. An inspection by the City of any work or material shall not be deemed a waiver of any future right of inspection or any right to demand correction of any subsequently discovered defect. Any work or material found to be unsatisfactory or defective before final acceptance of the Artwork shall be corrected or replaced by the Artist within a reasonable

time. Inspection shall not relieve the Artist of the Artist's obligation to furnish material and workmanship in accordance with this Agreement.

17. ARTWORK MAINTENANCE. Artist shall provide the City a General Maintenance Plan for the Artwork, generally describing anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement of any part of the Artwork and associated moving parts or equipment; and written instructions and specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork. The Artwork must be durable, taking into consideration that the Site may be an unsecured public space that may be exposed to elements, including but not limited to, weather, temperature variation, and movement of people, vehicles and equipment. All maintenance requirements must be reasonable in term of and time and expense.

Although City strives to maintain its public art collection in good repair and condition, City is not required by this Agreement to maintain the Artwork to any particular standard. City may determine to allow the Artwork to deteriorate in accordance with the Artwork's temporary life span. If the Artwork suffers deterioration, City shall have the sole discretion to determine whether to remove the Artwork from display as a result of deterioration or whether to maintain the Artwork on display despite its deteriorated condition.

18. ARTIST'S WARRANTIES.

A. Warranty of Title. Artist represents and warrants that Artist is the sole author of the Artwork and that Artist is the sole owner of any and all copyrights pertaining to the Artwork and all the rights associated or relating to it, except to the extent that the Artist has transferred a license related to the Artwork to Caltrans. Artist further represents that the Artwork is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights or any other rights in the Artwork or any parts of the Artwork.

B. Warranty of Workmanship and Quality of Materials. Artist represents and warrants to the City that all materials and equipment used in or incorporated into the Artwork will be of good quality, new, and free of liens, claims, and security interests of third parties; that the Artwork will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at the Site; and that the Artwork will conform with the Drawings (as defined in Exhibit "B") and the requirements of this Agreement. If required by the Authorized Representative, Artist shall furnish satisfactory evidence as to the kind and quality of materials and equipment. Artist represents and warrants that,

for a period of three (3) years after final acceptance, the Artwork will be free of defects in workmanship or materials, including Inherent Defects (as defined below). "Inherent Defect" refers to a quality within the material or materials which comprise the Artwork which, either alone or in combination, results in the tendency of the Artwork to destroy itself. "Inherent Defect" does not include any tendency to deteriorate that is specifically identified in the Drawings approved by the City. Artist shall, at Artist's sole cost and expense, remedy any defects, in workmanship or materials that appear within a period of three (3) years from the date of final acceptance of the Artwork by City.

C. Warranty of Public Safety. Artist represents and warrants that the Artist will not create Artwork that is subject to misuse, and Artwork will not pose a danger to the safety of persons or property. Artist agrees to cooperate with City in making or permitting adjustment(s) to the Artwork if necessary to eliminate hazards that become apparent after the Artwork is accepted by City.

The Artist's representations and warranties set forth above shall survive the expiration or other termination of this Agreement.

19. INTELLECTUAL PROPERTY RIGHTS.

A. City's Right to Display, Reproduce. Artist grants to City and to City's agents, authorized contractors, and assigns, an unlimited, nonexclusive and irrevocable license to do the following with respect to the Artwork and any original works of authorship created under this Agreement, whether in whole or in part, in all media:

(1) **Implementation, Use and Display.** City may use and display the Artwork.

(2) **Reproduction and Distribution.** City may make, display and distribute, and authorize the making, display and distribution of, photographs and other two-dimensional reproductions. City may use such reproductions for any City-related non-commercial purpose including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, documentation of City's public art collection, and catalogues or similar publications. City shall ensure that such reproductions are made in a professional tasteful manner. City shall credit Artist for the Artwork upon publication of any two-dimensional reproductions of the Artwork.

(3) **Public Record Requests.** Any documents provided by Artist to City are public records and City may authorize third parties to review and

reproduce such documents pursuant to public records laws, including the California Public Records Act.

B. Third Party Infringement. The City is not responsible for any third-party infringement of Artist's copyright and is not responsible for protecting the intellectual property rights of Artist.

20. ARTIST'S MORAL RIGHTS; CALTRANS' OWNERSHIP RIGHTS CITY'S RIGHTS.

A. Assignment and Transfer of Copyright License and Waiver of Moral Rights in Artwork. Artist hereby agrees that title to the Artwork shall be owned by Caltrans and Caltrans shall have a license to make certain noncommercial uses of the Artwork. Artist acknowledges that by signing, executing and notarizing Caltrans Copyright License and Waiver of Moral Rights in Artwork agreement, which is hereby incorporated by reference, made part of this Agreement and attached as Exhibit "D", Artist has conveyed title in the Artwork to Caltrans and has granted Caltrans a nonexclusive, perpetual, irrevocable, royalty-free, world-wide, sublicensable license, as further described in Exhibit "D", to the Artwork.

B. Display, Removal and Modification. The City intends to display the Artwork at the Site as originally created by Artist and to maintain the Artwork in good condition. Artist understands and agrees that the Artwork when installed will be incorporated within and made a part of the Site in such a way that removing the Artwork from the Site or the destruction or modification of the Site may cause the destruction, distortion, mutilation or other modification of the Artwork. Accordingly, Artist agrees that City, in connection with its power and duty to operate and manage City property in the public's interest, shall have the right: to remove the Artwork from the Site; to transport and install the Artwork at an alternate location that City chooses in its sole discretion; and to the extent any element of the Artwork constitutes a public safety hazard, the right to remove or modify the element posing the hazard. To the extent that Caltrans approval is required prior to removal or alternation of Artwork, the City will obtain the necessary approval.

City shall not physically modify, destroy, or remove (hereinafter "Alter") the Artwork (except routine cleaning and maintenance) without providing prior notification to the Artist at the address identified in this Agreement of its intent to Alter the Artwork. Failure of Artist to respond within fifteen (15) calendar days of receipt of such notice shall constitute the Artist's consent for the City to proceed. Where time does not permit prior notice (for example, in cases of public hazard, accident or unauthorized alteration), the City shall notify Artist within 30 calendar

days after such alteration. Upon receiving notice, Artist shall within fifteen (15) calendar days notify City of his/her election to consult with City to determine whether the Artwork can be restored or relocated, to develop a plan for restoration and, if the Artwork is to be relocated, to determine methods that will minimize or repair any damage to the Artwork. Upon receipt of such notice City shall in good faith consult with Artist for a reasonable period not to exceed thirty (30) days or such other time period as the parties may agree. However, City shall have no obligation to restore the Artwork to its original condition, to compensate Artist for any consultation or restoration work, or to maintain the Artwork on display.

To the extent this Agreement is inconsistent with VARA (17 U.S.C. §§106A and 113(d)), CAPA (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art (the "Laws"), this Agreement shall control. With respect to the Artwork produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist waives any rights to preservation of the Artwork provided by the Laws and City, its officers, agents, employees, successors and assigns, shall have no liability to Artist or any other person arising under the Laws. If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without alteration of the Artwork, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees.

If City alters the Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

21. TERM OF THE AGREEMENT. The term of this Agreement shall commence on the date last signed by the parties and shall continue until completion of all services in accordance with the timing requirements set forth in Exhibit "A". This Agreement may be terminated by the City without cause ("termination for convenience") upon fifteen (15) days written notice to Artist. In the event the City elects to terminate the Agreement for convenience, City shall pay Artist for the proportionate amount of the Artwork completed through the date of termination.

22. DEFAULT; TERMINATION. If either party ("demanding party") has a good faith belief that the other party ("defaulting party") is not complying with the terms

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UNDERCROSSING**

of this Agreement, the demanding party shall give written notice of the default (with reasonable specificity) to the defaulting party, and demand the default be cured within ten (10) days of the notice. If: (a) the defaulting party fails to cure the default within ten (10) days of the notice, or, (b) if more than ten (10) days are reasonably required to cure the default and the defaulting party fails to give adequate written assurance of due performance within ten days of the notice, then (c) the demanding party may terminate this Agreement upon written notice to the defaulting party.

If the Artist is in default of this Agreement, as defined in this section, the City may, in the discretion of the City Manager or their designee, take any or all of the following actions: issue a notice of suspension of work, by which the Artist shall suspend all Artwork except for that portion of the Artwork authorized by the Notice, and for which the Artist shall not be entitled to any adjustment of the Contract Amount or Contract Time; cure the default and charge the Artist for all costs resulting therefrom, including administrative costs (including City staff costs, City consultant costs, and attorney's fees) and interest in an amount equal to seven percent (7%) per annum from the date of default, which charge may be deducted by the City from amounts otherwise payable to the Artist; demand the Artist to complete performance of the Artwork (including repair, or removal and replacement, of nonconforming Artwork); and terminate the contract. Artist shall reimburse the City for any costs incurred to cure a breach of Artist's obligations under this Agreement.

Upon termination of the Agreement, the City may remove the Artist from the Site and take possession of the Project Site. The City may also elect to accept the assignment of any or all of the subcontracts (if applicable) hired for purposes of completing the Artwork. Additionally, the City may complete the Artwork by any method that the City may deem expedient. Upon termination of the Agreement, Artist shall remove all of materials, supplies, equipment, tools, construction equipment and machinery owned by Artist (collectively referred to as "Supplies") from the Project site within seven (7) days of notice of termination. If more than seven (7) days are reasonably required to complete the removal of Supplies, Artist must provide Notice to the City, in accordance with the requirements of Paragraph 23, along with adequate written assurance of due performance, within the seven (7) days provided for removal. The Parties will then work together to determine an appropriate amended due date for the removal of Artist's Supplies. If Artist fails to remove their Supplies within the required timeframe, the City may remove or store the Supplies, and after ninety (90) days sell, any of the same at Artist's expense.

No termination, or action taken by the City after termination, shall prejudice any other rights or remedies of the City provided by law or by the Agreement upon such termination. Additionally, the event of termination the City may proceed against Artist to

recover all losses suffered by the City that exceed the amount of the Artist's commission.

23. NOTICES. All notices required or contemplated by this Agreement shall be in writing and shall be delivered to the respective party as set forth in this section. Communications shall be deemed to be effective upon the first to occur of: (a) actual receipt by a party's Authorized Representative, or (b) actual receipt at the address designated below, or (c) three working days following deposit in the United States Mail of registered or certified mail sent to the address designated below. The Authorized Representative of either party may modify their respective contact information identified in this section by providing notice to the other party.

CITY:

City of Merced
City Manager's Office
Attn: Stephanie Dietz
678 W. 18th Street
Merced, CA 95340
(209) 385-6834
dietzs@cityofmerced.org

ARTIST:

Kristen Concepcion



24. HEADINGS. The heading titles for each paragraph of this Agreement are included only as a guide to the contents and are not to be considered as controlling, enlarging, or restricting the interpretation of the Agreement.

25. SEVERABILITY. If any term of this Agreement (including any phrase, provision, covenant, or condition) is held by a court of competent jurisdiction to be invalid or unenforceable, the Agreement shall be construed as not containing that term, and the remainder of this Agreement shall remain in full force and effect; provided, however, this paragraph shall not be applied to the extent that it would result in a frustration of the parties' intent under this Agreement.

26. GOVERNING LAW, JURISDICTION, AND VENUE. The interpretation, validity, and enforcement of this Agreement shall be governed by and interpreted in accordance with the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in the County of Merced.

27. ASSIGNMENT AND DELEGATION. This Agreement, and any portion thereof, shall not be assigned or transferred, nor shall any of the Artist's duties be delegated, without the written consent of the City. Any attempt to assign or delegate this Agreement without the written consent of the City shall be void and of no force or effect. A consent by the City to one assignment shall not be deemed to be a consent to any subsequent assignment.

28. **MODIFICATIONS.** This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.

29. **WAIVERS.** Waiver of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

30. **CONFLICTS.** If any conflicts arise between the terms and conditions of this Agreement and the terms and conditions of the attached exhibits or any documents expressly incorporated, the terms and conditions of this Agreement shall control.

31. **NO THIRD PARTY BENEFICIARIES.** This Agreement is not intended to and shall not be construed to give any third party any interest or rights (including, any third party beneficiary rights), except as otherwise expressly provided for in this Agreement.

32. **NEUTRAL INTERPRETATION.** This Agreement represents the contributions of both parties, each of whom has had the opportunity to be represented by competent counsel. Accordingly, the rule stated in California Civil Code Section 1654, that a contract be construed against its drafter, shall have no application to the interpretation of this Agreement.

33. **ENTIRE AGREEMENT.** This Agreement, including all documents incorporated herein by reference, comprises the entire integrated understanding between the parties concerning the services described herein. This Agreement supersedes all prior negotiations, agreements, and understandings regarding this matter, whether written or oral. The documents incorporated by reference into this Agreement are complementary; what is called for in one is binding as if called for in all.

34. **SIGNATURES.** The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the Artist and the City. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

35. **COUNTERPARTS.** This Agreement may be signed in counterparts, each of which shall be deemed to be an original.

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ARTIST AGREEMENT FOR PUBLIC ART PROJECT

**KRISTEN CONCEPCION, BOUNTIFUL MERCED, EAST WALL OF THE O STREET AND STATE ROUTE 99
UNDERCROSSING**

IN WITNESS WHEREOF, the City and Artist do hereby agree to the terms set forth herein.

CITY OF MERCED
A California Charter Municipal
Corporation

BY: _____

City Manager

ATTEST:

STEPHANIE R. DIETZ, CITY CLERK

BY: _____

Assistant/Deputy City Clerk

APPROVED AS TO FORM:

BY:  3/1/23

City Attorney

Date

ACCOUNT DATA:

BY: _____

Verified by Finance Officer

ARTIST

BY: _____

(Signature)

Kristen Concepcion

(Typed Name)

Taxpayer I.D. No. _____

ADDRESS: _____

TELEPHONE: _____

FAX: _____

E-MAIL: _____

EXHIBIT

A



CITY OF MERCED

REQUEST FOR PROPOSALS

Call for Artists

Merced Mural Project

RFP Released 04/06/2022

Deadline for Submissions 05/06/2022



678 W. 18th Street, Merced, CA 95340

www.cityofmerced.org



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CITY OF MERCED

Request for Proposals – Call for Artists for Merced Mural Project

ABOUT THE CITY OF MERCED

Merced is a dynamic community of more than 90,000 people, with a friendly small-town living in a mid-size city. The University of California Merced campus, opened in 2005, provides new educational and economic opportunities, adding to the already-established growth of the region. As a result, Merced's population is youthful and diverse. Located in the heart of California's agricultural Central Valley, Merced is the region's hub for education, culture, and business. The community offers abundant shopping, pleasant neighborhoods, and tree-lined streets. Bicycle paths along creeks link major City parks. Even with recent increases in prices, Merced's housing remains affordable compared to many other California locations. In addition, Merced's revitalized downtown is emerging as the area's entertainment center. Annual events and festivals bring regional and even national recognition.

The City's many amenities include the Applegate Zoo, Art Kamangar Center at the Merced Theatre, The Mainzer Theatre and Restaurant, The Merced Multicultural Arts Center, Playhouse Merced, The Senior Community Center, The Historic Tioga Apartments, Merced College, University of California, Merced, a wide array of restaurants, various sports facilities, Lake Yosemite, plentiful public transportations, and more.

ABOUT MERCED'S ARTS & CULTURE ADVISORY COMMISSION

The Arts and Culture Advisory Commission (ACAC) was established in 2018 to advise the City Council on matters about public art, art projects, cultural programs, and activities, and the promotion of art within the City of Merced (M.M.C. section 2.54.010). The ACAC's mission is to encourage and promote programs and events that enhance the art and cultural development in Merced while engaging community members and local businesses; promote the role of art and culture in contributing to the beautification and quality of life in Merced; recognize art and cultural events and activities that enhance vitality and innovation in Merced; promote inclusion of artistic endeavors and cultural activities reflective of the Merced community; and preserve the community's artistic works and cultural identities.



CITY OF MERCED

Request for Proposals – Call for Artists for Merced Mural Project

1. PROJECT DESCRIPTION

As part of Governor Gavin Newsom's landmark \$1.1 billion Clean California initiative, Caltrans has awarded \$312 million for 126 beautification projects along the state highway system – including ten projects in District 10, which includes Merced County.

Designed to foster cultural connections and civic pride, the projects are expected to generate 3,600 jobs as part of the multiyear initiative led by Caltrans to remove trash and beautify community gateways and public areas along highways, streets, and roads while creating thousands of jobs for Californians. 98 percent of the projects will benefit historically underserved or excluded communities.

Developed in close collaboration with tribal and local governments, non-profits and businesses, the 126 state beautification projects include art installations, green space, and proposals that improve safety and promote community connections. Construction begins in April 2022.

The Merced Mural project will include the design and installation of murals by local artists on State Routes 99 undercrossings in Merced County.

The application submittal deadline is 5 p.m. (PST) Friday, May 6, 2022.

2. SELECTION PROCESS

- Once a project has been funded as part of the Annual Work Plan and a Public Art Project Plan adopted, a Selection Panel may be assembled. The ACAC may serve as the Panel or opt to form a separate Panel, taking recommendations from internal and external stakeholders into account. The Panel will advise the ACAC on the selection of artists and approval of concept designs. The ACAC will make a recommendation to the City Council. The City Council will have final approval authority.
- A Selection Panel may establish an eligible list based on their qualifications alone to submit a proposal or interview. The Selection Panel may recommend selecting one of the finalists based on qualifications and interviews or not selecting any of the artists and going back to review the qualifications of other artists.



3. EVALUATION CRITERIA

Selection Criteria. The Selection Panel shall use the following criteria to select an artist and artist concept:

- Meets the definition of artist, as defined by the ACAC policy;
- Demonstrates artistic excellence, innovation, and originality as represented in past work and supporting materials;
- Demonstrates capacity for working in media and with concepts that are appropriate to the project goals and site;
- Demonstrates interest and capability in creating Public Art in collaboration with the City, design teams, and other project partners;
- Demonstrates interest and capability in engaging community representatives in a project;
- Demonstrates experience in completing works of similar scope, scale, budget, and complexity, or articulates how s/he will bring the necessary artistic and technical skills to the project;
- Demonstrates interest in and understanding of the project as outlined in the Project Plan;
- Is available to perform the scope of work in a timely and professional manner;
- Demonstrates artistic merit, including excellence in aesthetic quality, artistry, innovation, and creativity;
- Demonstrates appropriateness in scale and form and is of materials/media suitable for the site;
- Ability to reduce cost through economies of scale
- Demonstrates feasibility of construction and installation;
- Demonstrates feasibility in terms of budget, timeline, safety, security, durability, operation, maintenance, conservation, legal and ethical issues;
- Builds the diversity of the Public Art Collection.
- Permanence concerning resistance to theft, graffiti, weathering, and repair costs
- Residency of artist



CITY OF MERCED

Request for Proposals – Call for Artists for Merced Mural Project

4. SUBMISSION REQUIREMENTS

This is an open competitive process for the Merced Mural Project. The RFP outlines the step-by-step process and conditions that apply.

To submit credentials for consideration, please include the following materials:

- 1) Cover sheet with name, phone number, email address, and website (if applicable)
- 2) A statement of interest, including a vision for public artwork
- 3) Proposed artwork sample, description of the artwork, and how the artwork will be applied
- 4) Resume that includes an exhibition history, past projects, and experience with cooperative community-driven projects
- 5) A minimum of three samples of previous original artwork with brief descriptions (photo printouts or flash drive containing samples are preferred)
- 6) Three (3) references the panel may contact for previous artwork and experience
- 7) Artist commission fees for applicable projects

5. INQUIRY CONTACT & SUBMITTING QUALIFICATIONS

Direct all inquiries to City Manager Stephanie Dietz via email, dietzs@cityofmerced.org by 5 pm, Friday, May 6, 2022

APPLICATION PACKAGES ARE DUE BY 5 PM (PST) ON FRIDAY, 05/06/2022. Address proposals to:

**City Manager Stephanie Dietz
City of Merced / Office of the City Manager
678 W. 18th Street
Merced, CA 95340**

Proposals are accepted via mail and hand-delivery if received by the deadline.
Proposals will not be accepted via email, and fax.



CITY OF MERCED

Request for Proposals – Call for Artists for Merced Mural Project

6. TIMELINE

04/06/2022 – Issuance of RFP:

- Allow 31 days for proposals to be received
- Proposals will be initially screened to ensure minimum requirements are met

05/09/2022 through 05/16/2022 – Selection Panel Rates Proposals:

- Review Independently and Score
- Scores compiled for May ACAC Meeting

05/19/2022 – ACAC Meeting:

- Selection Panel makes recommendation to ACAC
- ACAC adopts recommendation to City Council

07/05/2022 – City Council Meeting (subject to Artist Agreement decision):

- ACAC recommendation to City Council for consideration.

08/01/2022 – Issue Notice to Proceed (subject to Artist Agreement decision):

- Letter sent to artist granting authority to perform work on City property

7. ARTIST AGREEMENT

Upon recommendation of the ACAC, the City Manager or designee shall coordinate agreements with selected artists, curators, and cultural organizations. The agreement may include the scope of work, fee, schedule, and relevant terms and conditions. The scope of work will generally include the final design, engineering, fabrication, and installation of the artwork. All such agreements will be presented to the City Council to approve Artist Services Agreements, Artwork License Agreements, Talent Services Agreements, Artwork Loan Agreements, and Artwork Gift Agreements. Approval for other agreement types shall follow the current Award Authority for Contracts.

Kristen Concepcion, Bountiful Merced, South Wall, O Street Undercrossing and State Route 99
Caltrans Approved



EXHIBIT

B

Kristen Concepcion
Atwater, Ca



Conception: Statement of Intent

The short version of my statement of intent is that I want to use my skill set to influence positive change in our community. As a transplant to Merced County, I have appreciated the abundance of benefits of living here and I'd like to participate in opportunities of beautification and community building. The *About the City of Merced* and *About Merced's Art + Culture Advisory Commission* sections of the RFP inspired my idea to celebrate the bounty of Merced County with murals that represent what is great about where we live. I hope that my pieces connect with Merced residents and visitors to our area. The theme that I'd like to communicate in a series of large scale art pieces is *Bountiful Merced*. If given the opportunity, I intend to use art to highlight our community's cultural diversity and contribution, access to quality education and living wage earning opportunities, and local skilled trades and industries. The design I included with this application is celebrating local agriculture.

I have included a design that celebrates the bounty of food in Merced County. This piece highlights top commodities in Merced agriculture while putting a contemporary spin on the traditional fruit label. The intention of this design is to highlight Merced's connection to the land. With this piece I hope to communicate appreciation for those who grow and harvest our food while reminding all residents how lucky we are to live where fresh fruit, vegetables, and dairy products are readily available.

The painted sketch is a scaled representation of a 35' by 15' mural. It could be completed entirely with paint, or include custom prints wheat pasted onto the concrete surface. Either option may be applied to the wall with no risk of structural compromise and be sealed against vandalism. If the opportunity to continue this design past 35 ft to include sneak peaks to those entering the underpass, wrapping the design around the corners may be a great way to build excitement for viewers.

Recommended underpasses for this design are Canal, O, M, or MLK.

If the opportunity to complete multiple murals becomes available, I'd like to propose the following design ideas connected to the theme of Bountiful Merced:

Yosemite- More Than a Gateway - Purpose: Merced as a destination

G: Opportunity - Purpose: Build hope

MLK: Abundance - Purpose: Highlight beautiful aspects of Merced and set the tone of excitement and possibility for those traveling to and from downtown

Canal: Bountiful - Purpose: Highlight our ag industry and available healthy food

M: Education for All, Inspiration - Purpose: Highlight accessible education for all

O: Together - Purpose: Tribute to Hmong and Latino communities

R: Hope - Purpose: Demonstrate commitment to uplifting all Merced neighborhoods

V: Industry- Purpose: Celebrate industry and skilled labor

Sketches of the above themes may be made available upon request.

Artist Statement specific to Merced Mural application:

Kristen Concepcion is a multimedia artist and educator who has dedicated her career to impacting positive change to local communities and youth. Concepcion's mural work began with the idea that schools should not look like institutions, but rather should inspire curiosity and creativity. Concepcion completed a full interior transformation of Options For Youth Public Charter School in San Bernardino, Ca trading a beige monochrome design to a vibrant environment that welcomed students and staff to an exciting place to learn and grow. Concepcion has continued to create artwork for and at schools since.

Concepcion had her first opportunity to participate in community revitalization when she was approached to create a large-scale painting and supporting features for a historical location in Pomona, Ca. Arteco Partners had been diligently working to transform the city center of Pomona from a high crime and depleted area to an exciting, innovative and safe environment where art, education, entertainment, and industry could thrive. *Progress* (picture included with application pack) was completed in 2010 in Vive, previously the location of the Daily Progress Newspaper. The completion of *Progress* led to further commercial and residential partnerships with Jerry Tessier, president of Arteco Partners.

Since relocating to the Central Valley, Concepcion has worked with the Atwater Educational Enrichment Foundation, Tree Partners Foundation, and Atwater Rotary in creating work that celebrates and supports the local community.

Resume specific to Merced mural application

Education:

Master of Arts in Teaching

Chopman University, completed 3/2011

Bachelor of Art in Fine Arts, Wood and Furniture Design and Printmaking

Minor: Theater Tech

California State University San Bernardino, 2005

Art Specific Career Experience:

Independent Artist since 2000 working in textiles, wood, paint, sculpture, and printmaking

Secondary Art Teacher: beginning 2009. Courses include Visual Arts, Art History, Arts and Crafts, Art for Community Service, Integrated Art and English, Integrated Art and Geometry

Art and Elective Developer: Courses include Visual Arts A & B, Urban Homesteading A&B, Beginning Construction, Career Exploration (All for grades 9 - 12)

Experiential Learning Program Design:

Urban Homesteading: 13 day immersive program for high school youth, Philo, Ca

Career Exploration: 10 day immersive program for high school youth, Philo, Ca

Public Art on Display:

Progress: Commissioned by Arteco Partners, Pomona Ca. Progress painting 15' x8'; Sidewall details 18"

Blended Memories; English Countryside blended with Atwater scenery, Collaboration to support the revitalization of Downtown Atwater. Work on display in Granny's Pantry, Atwater, Ca. Piece designed and created by Concepcion with the glasswork on the barn and windmill, created by Reese Bigelow.

Concepcion: Description of work on flash drive

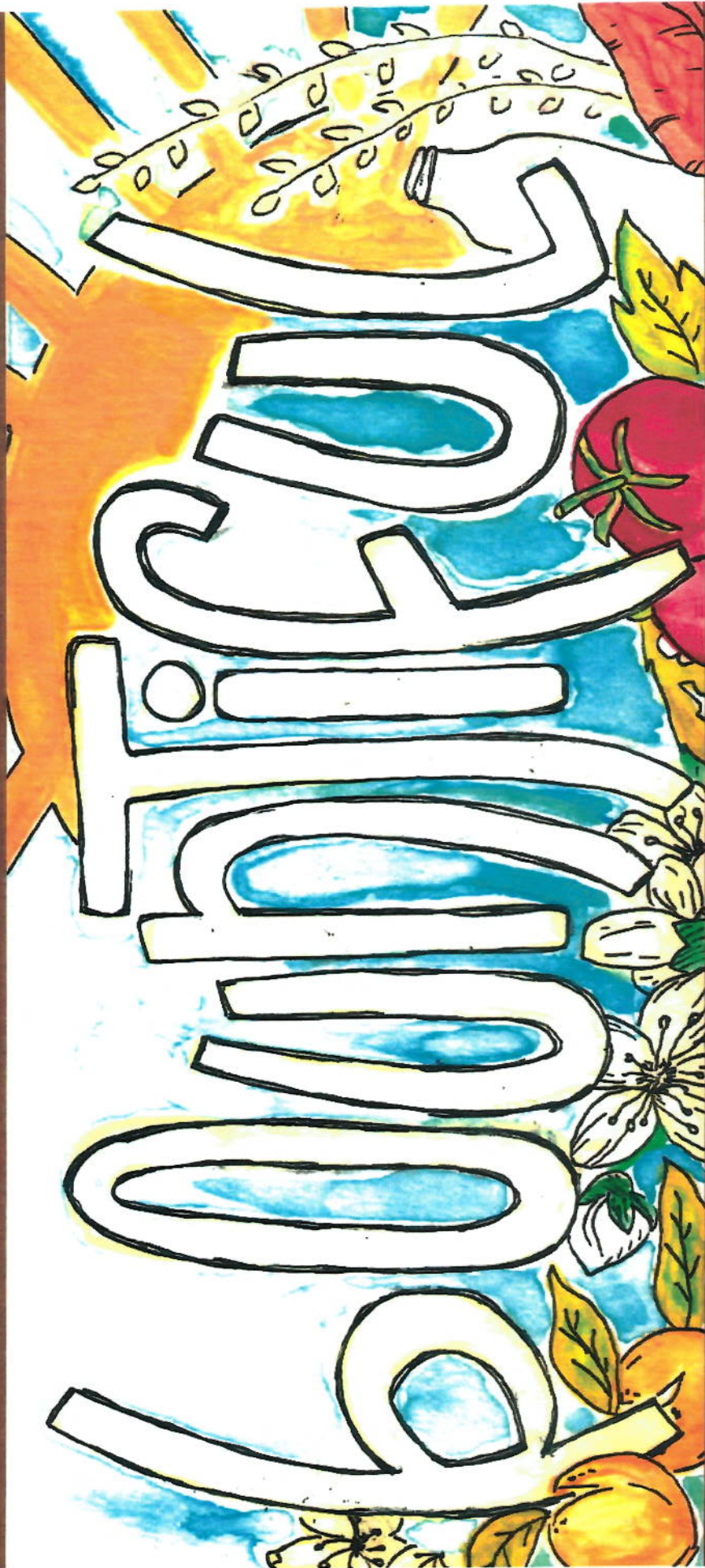
Blended Memories- 12' x8' wood art quilt. Commissions for revitalization of Atwater Downtown. Displayed in Granny's Pantry. Concepcion completed all aspects except for the glasswork on the barn and windmill.

Options For Youth Murals- Commissioned to transform a new school site from plain to vibrant. Full interior.

Progress- 15' x 8' Commissioned by Arteco Partners to help support the revitalization of downtown Pomona

Vive sidewalls accompanied the Progress painting- 18' x 15'

- Technical skills to complete the project within a timely manner
- Demonstrates interest in and understanding of the project as outlined in the Project Plan;
 - Extremely interested in hearing goals of the city not detailed in the Request For Proposals, collaborative and community focused
- Is available to perform the scope of work in a timely and professional manner;
 - Ability to work effectively within timelines to city standards
- Demonstrates artistic merit, including excellence in aesthetic quality, artistry, innovation, and creativity;
 - Skilled artist who appreciates and can produce works of art that demonstrate an excellence in aesthetic quality, artistry, innovation, and creativity
- Demonstrates appropriateness in scale and form and is of materials/media suitable for the site;
 - Strong understanding of use of media that is exposed to the elements.
 - Construction experience
 - Ability to design according to specs and beautification goals of city
- Ability to reduce cost through economies of scale
 - Mindful of costs and experienced in working within a provided budget
 - Committed to use local vendors and residents as needed to complete project
 - Resident of Merced County with close proximity to designated sites
- Demonstrates feasibility of construction and installation;
 - Experience in Construction and ability to operate machinery
 - Ability to construct and install for durability and public safety
- Demonstrates feasibility in terms of budget, timeline, safety, security, durability, operation, maintenance, conservation, legal and ethical issues;
 - Ability and commitment to work within parameters of project
 - Committed to completing long lasting public art which is durable and safe
- Builds the diversity of the Public Art Collection.
 - Committed to completing works of art that celebrate diversity and build positive community relationships between cultures, ages, and socio-economic status.
- Permanence concerning resistance to theft, graffiti, weathering, and repair costs.
 - Ability to seal work for resistance to weather and vandalism
- Residency of artist
 - Proud homeowner and school administrator in Atwater who is excited to supporting community goals and accessibility to art



2022





MURAL LOCATIONS

- V Street & 99 Undercrossing - Karen McComb
 - R Street & 99 Undercrossing - Eddie Rodriguez
 - O Street & 99 Undercrossing - Kristen Concepcion
 - M Street & 99 Undercrossing - Joel Aguilar
 - Canal Street & 99 Undercrossing - Martin Figueroa
 - MLK Jr. Way & 99 Undercrossing - Patricia Pratt
 - G Street & 99 Undercrossing - Richard Gomez
 - Yosemite Parkway & 99 Undercrossing - Jose Sanchez
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