

## ATTACHMENT 2

### AGREEMENT FOR SERVICES *Public Art Sculpture: Napa Senior Center*

This Agreement by and between the City of Napa, a California charter city (the "City"), and Timmo Mang (hereinafter referred to as the "Artist") is effective as of the Effective Date identified on the signature page.

#### RECITALS

- A. The Artist has fabricated the artwork titled Northern Sojourner depicted in Exhibit C attached hereto and incorporated herein by reference ("Artwork").
- B. The City desires to purchase the Artwork and to have the Artist install the Artwork at the City of Napa Senior Activity Center.
- C. The Artist is qualified and experienced to provide such services.

NOW, THEREFORE, the City and the Artist, for the consideration hereinafter set forth, mutually agree as follows:

1. SCOPE OF WORK. The Artist shall install the Artwork and perform those services described as Tasks in the Scope of Work and Schedule of Performance attached hereto as Exhibit "A" and incorporated herein by reference within the time frames stated therein ("Services"). The Artist warrants that the Artwork is original and is solely the product of Artist's own creative efforts and does not infringe on the rights of any person or entity.
2. COORDINATION. Artist shall personally participate in the Services and coordinate the activities of the Artist. The City authorizes Katrina Gregory, Recreation and Cultural Arts Manager or her designee (City Authorized Representative) to act on behalf of the City in accordance with the terms of this Agreement, and to take all actions authorized or required to be taken by the City.
3. COMPENSATION.
  - A. City shall pay Artist as compensation for the Artwork and for the Services the amounts set forth in the "Payment Schedule" attached hereto as Exhibit "B" and incorporated herein by reference. City shall pay Artist the amount identified under the "Payment Amount" column after each corresponding phase of the Services has been completed to the satisfaction of the City's Authorized Representative. Artist shall complete the Services required under this Agreement for a total payment from the City in an amount not to exceed \$15,000.
  - B. Upon completion of each Invoicing Phase as described on Exhibit "B", Artist shall submit itemized statements for the Services performed. City shall make payment within thirty (30) days after approval of the invoice by City.
4. TERM. The term of this Agreement shall be from the Effective Date until the completion of Services contemplated by this Agreement and final acceptance of the Artwork and Services by City unless terminated earlier as provided herein. Provided, however, that the obligations of the parties under Paragraph 12 (Indemnification) and Paragraph 13 (Insurance) shall continue in full force and effect for three years after said completion date or early termination by City for cause due to Artist acts or omissions occurring during the term of this Agreement, and the obligations of Artist to City shall also continue after said completion date or early termination in relation to the obligation prescribed by Paragraph 10 (Records of Performance), and Paragraph 24 (Confidentiality).
5. NOTICES. Any notice (including any demand, request, consent, approval, or communication that any party desires or is required to give to any other party or any other person under this Agreement) shall be in writing and either served personally or sent by prepaid, certified or registered mail, return receipt requested. Any such notice shall be addressed as follows:

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TO CITY: Katrina Gregory  
Recreation and Cultural Arts Manager  
City of Napa  
1850 Soscol Ave Suite 201  
Napa, CA 94559

TO ARTIST: Tiimo Mang  
8805 West 2<sup>nd</sup> Avenue  
Lakewood, CO 80226  
T: 303 883 3810

Any party may change its address by notifying the other parties of the change of address. All notices shall be effective on the date of actual delivery, or the date set forth on the return receipt of a certified or registered mail delivery.

6. AMENDMENT OF SCOPE OF WORK. City may request an amendment to the Scope of Work within the Agreement by written notification to the Artist. In such event, the compensation and time of performance shall be subject to renegotiation upon written demand of either party to the Agreement. The Artist may request an adjustment to the contract price or time for performance only if the Artist establishes to the satisfaction of the City's Authorized Representative that there was an unforeseen and unforeseeable condition that was outside of the responsibility or control of the Artist. Failure of the Artist to secure City's written authorization for extra or changed work shall constitute a waiver of any and all right to adjustment in the contract price or time due.
7. CITY'S RIGHT TO TERMINATE/SUSPEND CONTRACT. At any time and for any or no reason, City shall have the right to terminate this Agreement, and pay the Artist (as full payment for all services satisfactorily rendered and expenses incurred hereunder) a proportionate amount of the total fees specified in this Agreement equal to the ratio that the Services satisfactorily rendered by the Artist at the time of such termination bears to the total Services otherwise required to be performed under the Agreement. Notwithstanding the above, Artist shall not be relieved from liability to City for damages sustained by virtue of any breach of this Agreement by Artist, whether or not the Agreement was terminated for convenience or cause, and City may withhold payments not yet made to Artist for the purpose of setoff until such time as the exact amount of damages due City from Artist is determined. If City terminates without cause, City shall have no right of use to any of Artist's work, e.g. studies, preliminary drawings, computations, specifications, etc., without further agreement with Artist.
8. CORRECTION OF WORK. The performance of services or acceptance of information furnished by Artist shall not relieve the Artist from obligation to correct any defective, inaccurate or incomplete work for which Artist is responsible under this Agreement that is subsequently discovered, and all such work shall be remedied by the Artist on demand without cost to the City.
9. DELAYS AND EXTENSIONS. Time is of the essence concerning performance of this Agreement; however, the Artist will be granted time extensions for delays beyond the Artist's control. Time extensions will be equal to the length of the delay or as otherwise agreed upon between the Artist and the City.
10. RECORDS OF PERFORMANCE. Artist shall maintain adequate records of contract performance costs, expenses, etc., and make these records available for inspection, audit, and copying by the City during the agreement period and for a period of three (3) years from the date of final payment. Such time for retention shall be extended if grant funds are used to fund this project require the same.
11. SUBCONTRACTING. The City shall be an intended beneficiary of any work performed by a subcontractor for purposes of establishing a duty of care between subcontractor and City.
12. INDEMNIFICATION. To the full extent permitted by law, Artist shall indemnify, hold harmless, release and defend City, its officers, employees and agents from and against any and all actions,

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claims, demands, damages, disability, losses, expenses including attorney's fees and other defense costs and liabilities of any nature that may be asserted by any person or entity including Artist, in whole or in part, arising out of Artist's activities hereunder, including the activities of other persons employed or utilized by Artist in the performance of this Agreement (including design defects and regardless of City's approval, use or acceptance of the work or work product hereunder) excepting liabilities due to the admitted or adjudicated sole negligence or willful misconduct of City. If the adjudicated or admitted sole negligence or willful misconduct of City has contributed to a loss, Artist shall not be obligated to indemnify City for the proportionate share of such loss caused by such sole negligence or willful misconduct. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable by or for Artist under Worker's Compensation, disability or other employee benefit acts or the terms, applicability or limitations of any insurance held or provided by Artist.

13. **INSURANCE.** Without limiting Artist's indemnification provided herein, Artist shall take out and maintain, throughout the period of this Agreement, the following policies of insurance placed with insurers (if other than the State Compensation Fund) with a current A.M. Bests rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of Artist, its agents, employees or subcontractors:

- A. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of \$1,000,000.00 per occurrence. If work involves explosive, underground or collapse risks, XCU must be included. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit. Said policy shall contain, or be endorsed with, the following provisions:
  - (1) The City, its officers, employees and agents, are covered as insureds for liability arising out of the operations performed by or on behalf of Artist. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officers, agents and employees.
  - (2) The policy shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice ten (10) days for non-payment of premium to City by certified mail.
- B. Automobile liability insurance with coverage at least as broad as ISO Form numbers CA 0001 06 92, Code 1 (any auto), for vehicles used in the performance of this Agreement with minimum coverage of not less than \$1,000,000 per accident combined single limit (CSL). Such policy shall contain or be endorsed with the provision that coverage shall not be canceled or materially reduced in coverage without thirty (30) days prior written notice ten (10) days for non-payment of premium to City by certified mail.
- C. Worker's Compensation insurance meeting statutory limits of Labor Code which policy shall [contain or be endorsed to contain a waiver of subrogation against City, its officers, agents, and employees and] provide for thirty (30) days prior written notice to City in the event of cancellation. If Artist has no employees, Artist may sign and file the following certification in lieu of insurance:

*"I am aware of the provisions of California Labor Code Section 3700 which requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with the provisions of that code before commencing with and during the performance of the work of this contract."*
- D. Professional liability insurance/errors and omission coverage is not required by Artist for performance under this Agreement.
- E. Artist shall furnish City with certificates and original endorsements affecting the required coverage prior to execution of this Agreement by City. The endorsements shall be on forms provided by City or as approved by City Attorney. Any deductible or self-insured retention over \$100,000.00 shall be disclosed to and approved by City. If Artist does not keep all required insurance policies in full force and effect, City may, in addition to other remedies under this

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Agreement, terminate or suspend this Agreement.

14. STANDARD OF CARE. The City relies upon the professional ability of Artist and representations regarding the type of work to be performed as a material inducement to entering into this Agreement. Artist agrees to use reasonable care and diligence in rendering services under this Agreement. Artist is responsible for the work of all employees, subcontractors, and agents, and the negligence of one of them, if not adequately remedied by Artist, shall be conclusively deemed to be the negligence of Artist. Artist agrees that the acceptance of his work by City shall not operate as a waiver or release of said obligation of Artist. The absence, omission, or failure to include in this Agreement, items which are normally considered to be a part of generally accepted professional procedure or which involve specialized professional judgment appropriate to the type of work to be performed under this Agreement shall not be used as a basis for submission of inadequate work or incomplete performance.
15. COVENANT AGAINST CONTINGENT FEES. The Artist warrants that he has not employed or retained any company or person, other than a bona fide employee working for the Artist, to solicit or secure this Agreement, and that he has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift, or contingent fee.
16. CONFLICT OF INTEREST. Artist covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Artist further covenants that in the performance of this Agreement, no person having any such interest shall be employed.
17. DEFAULT. If Artist fails to perform any obligation under this Agreement, within the time and in the manner herein provided or otherwise violates any term of this Agreement, City may terminate this Agreement by giving Artist written notice of such termination, stating the reason for such termination. In such event, Artist shall be entitled to receive (as full payment for all services satisfactorily rendered and expenses incurred hereunder) a proportionate amount of the total fees specified in this Agreement equal to the ratio that the services satisfactorily rendered by the Artist bear to the total services otherwise required to be performed under the Agreement. Notwithstanding the above, Artist shall not be relieved from liability to City for damages sustained by virtue of any breach of this Agreement by Artist, whether or not the Agreement was terminated for convenience or cause, and City may withhold payments not yet made to Artist for the purpose of setoff until such time as the exact amount of damages due City from Artist is determined.
18. THIRD PARTY BENEFICIARIES. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.
19. INDEPENDENT CONTRACTOR. The parties intend that Artist, in performing the services specified herein, shall act as an independent contractor and shall have control of the work and the manner in which it is performed. Artist is not to be considered an agent or employee of the City and is not entitled to participate in any pension plan, insurance, bonus or similar benefits City provides its employees. In the event City exercises its right to terminate this Agreement, Artist expressly agrees that he/she shall have no recourse or right of appeal under rules, regulations, ordinances or laws applicable to employees.
20. EMPLOYMENT PRACTICES. Artist shall not discriminate in its performance under the Agreement either directly or indirectly on the grounds of race, color, religion, sex, age, national origin, or other prohibited grounds in its employment practices, and shall take affirmative steps to ensure that applicants are employed and employees are treated during employment without regard to race, color, religion, sex, age, national origin, or other prohibited grounds.
21. COMPLIANCE WITH LAW.

- A. Artist shall comply with all applicable federal, state and local laws, rules and regulations affecting the Artist, the Artwork and the Services and shall ensure that all subcontractors do the same. Artist

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represents and warrants to City that Artist has and will keep in effect during the term of this Agreement all licenses (including but not limited to the City of Napa business license), permits, qualifications and approvals of whatsoever nature which are legally required for Artist to practice Artist's profession and to do the work hereunder.

- B. Artist agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of Artist performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. Artist shall make the required documentation available upon request to City for inspection.

### 22. TITLE TO WORK PRODUCT.

- A. Upon Artist's completion of the installation of the Artwork, Artist shall transfer ownership of the Artwork to the City by executing the Bill of Sale attached hereto as Exhibit "D" and incorporated herein by this reference ("Bill of Sale"). Upon execution of the Bill of Sale, the Artwork shall be the property of the City. The City shall have no obligation to display or maintain the Artwork for any particular time and the City reserves the right to remove, relocate or destroy the Artwork at any time after Artist's execution of the Bill of Sale .
- B. As to the City and its agents, employees and contractors, the Artist hereby waives any and all rights he may have to prevent or cause the prevention of the removal, relocation or destruction of the Artwork once Artist executes the Bill of Sale; or to seek other relief in connection with any such removal or destruction, pursuant to Title 17, Section 106A of the United States Code, or pursuant to Section 987 of the California Civil Code as such sections now exist or may hereafter be amended.
- C. The City shall have the right to make photographs, drawings, or other two- dimensional reproductions of the Artwork without prior consent of the Artist if used solely for non- commercial purposes, advertising, descriptive brochures, and similar purposes.

23. RIGHT TO ADEQUATE ASSURANCE OF PERFORMANCE. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arises with respect to the performance of either party, the other may in writing demand adequate assurance of due performance, and until it receives such assurance, may, if reasonable, suspend any performance for which the agreed return has not been received. "Reasonable" includes not only the conduct of a party with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceed fifteen (15) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, service or payment does not prejudice the aggrieved party's right to demand adequate assurance of future performance.

24. CONFIDENTIALITY. Artist shall treat all information obtained from City in the performance of this Agreement as confidential and proprietary to City. Artist shall treat all records and work product prepared or maintained by Artist in the performance of this Agreement as confidential. Artist agrees that it will not use any information obtained as a consequence of the performance of work for any purpose other than fulfillment of Artist's scope of work. Artist will not disclose any information prepared for City, or obtained from City or obtained as a consequence of the performance of work, to any person other than City, or its own employees, agents or subcontractors, who have a need for the information for the performance of work under this Agreement unless such disclosure is specifically authorized in writing by the City. Artist shall advise City of any request for disclosure of information or of any actual or potential disclosure of information. Artist's obligations under this paragraph shall survive the termination of this Agreement.

25. ACCIDENT REPORT. If any damage (including death, personal injury, or property damage) occurs in connection with the performance of this Agreement, Artist shall promptly submit to the City of Napa Clerk's Office a written notice of such accident with the following information:

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- A. Name and address of the injured or deceased person(s);
- B. Name and address of any witness;
- C. Name and address of Artist's insurance company; and
- D. A detailed description of the damage and whether any City property was involved.

26. ELECTRONIC COMMUNICATIONS. During the course of this Agreement, communications may occur through sending, receiving or exchanging electronic versions of documents and e-mails using commercially available computer software and Internet access. Artist and the City acknowledge that the Internet is occasionally victimized by the creation and dissemination of so-called viruses or similar destructive electronic programs. Artist and the City view the issues raised by these viruses seriously and have invested in document and e-mail scanning software that identify and reject files containing known viruses. Artist agrees to update its system with the software vendor's most current releases at regular intervals. Because of the virus scanning software, the respective computer systems of the parties may occasionally reject a communication. The parties acknowledge that this occurrence is to be expected as part of the ordinary course of business. Because the virus protection industry is generally one or two steps behind new viruses, neither party can guarantee that its respective communications and documents will be virus free. Occasionally, a virus will escape and go undetected as it is passed from system to system. Although each party will use all reasonable efforts to assure that its communications are viruses free, neither party warrants that its documents will be virus free. Each party agrees to advise the other if it discovers a virus in its respective system that may have been communicated to the other party.

27. ELECTRONIC OR MAGNETIC DATA. If the Scope of Work requires that Artist provide documents in electronic or magnetic formats, they shall be provided in a manipulative form. City recognizes that electronic or magnetic data and its transmission may be damaged, may develop inaccuracies during use, and may contain viruses or other destructive programs, and that software and hardware operating systems may become obsolete. Artist shall not be liable for any loss of use, profit, or any other damages arising from City's reuse, misuse, modification, or misinterpretation of the data submitted in electronic or magnetic form. Nothing contained in this paragraph shall affect the indemnification or standard of care required hereunder for Artist with respect to Artist's work and work products delivered in hard copy.

### 28. GENERAL PROVISIONS.

- A. 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.
- B. 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.
- C. Governing Law, Jurisdiction, and Venue. The interpretation, validity, and enforcement of this Agreement shall be governed 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 Napa.
- D. Attorney's Fees. In the event any legal action is commenced to enforce or interpret this Agreement, the prevailing party is entitled to reasonable attorney's fees, costs, and expenses incurred, whether or not such action proceeds to judgment.
- E. 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 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. Consent by the City to one assignment shall not be deemed to be consent to any subsequent assignment.

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- F. Modifications. This Agreement may not be modified orally or in any manner other than by an agreement in writing signed by both parties.
- G. 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.
- H. Time. Time is of the essence in carrying out the duties hereunder.
- I. 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.
- J. Each Party's Role in Drafting the Agreement. Each party to this Agreement has had an opportunity to review the Agreement, confer with legal counsel regarding the meaning of the Agreement, and negotiate revisions to the Agreement. Accordingly, neither party shall rely upon Civil Code Section 1654 in order to interpret any uncertainty in the meaning of the Agreement.
- K. 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.

*SIGNATURES ON NEXT PAGE*

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first above written.

**CITY OF NAPA:**

Signed: \_\_\_\_\_  
John Coates, Parks & Recreation Director

**ARTIST:**

Signed: \_\_\_\_\_  
Tiimo Mang

Address: Tiimo Mang  
8805 West 2nd Avenue  
Lakewood, CO 80226  
T: 303 883 3810

**ATTEST:**

Signed: \_\_\_\_\_  
Tiffany Carranza, City Clerk

**DATE:**

\_\_\_\_\_  
( "Effective Date" )

**COUNTERSIGNED:**

Signed: \_\_\_\_\_  
Sasha Payaslian, Deputy City Auditor

**APPROVED AS TO FORM:**

Signed: \_\_\_\_\_  
Michael W. Barrett, City Attorney

**Budget Code: 21701-53201**



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### EXHIBIT A Scope of Work and Schedule of Performance

#### Schedule of Work

1. Delivery of Artwork/installation Between April 1, 2020 to June 30, 2020  
(Specific date within this timeframe will be mutually agreed upon by both parties)

#### Budget

Artist Fee for Sculpture	\$12,000
Transportation & Installation	\$3000
Total:	\$15,000

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### EXHIBIT B Payment Schedule

Payment	Task	Payment Trigger Action	Payment Amount
1	Deposit of sculpture purchase	Execution of this Agreement	\$5,000
2	Transporting & installing sculpture	Completion of installation	\$10,000

**EXHIBIT C**

**Name of artwork “ Northern Sojourner”**



## ATTACHMENT 2

Exhibit "D"

(Sold As-Is)

State of California

County of Napa

KNOW ALL PERSONS BY THESE PRESENTS:

THAT I, Timmo Mang, Seller, of 8805 West 2nd Avenue, Lakewood, CO 80226, in consideration of \$12,000, receipt and sufficiency which is hereby acknowledged, do hereby sell and transfer to the City of Napa, a California charter city, Buyer, of 955 School Street , Napa County, California, its successors and assigns, the following described personal property located in the County of Napa, State of California:

Sculpture titled "Northern Sojourner" made by Timmo Mang.

Seller warrants that he/she is the lawful owner in every respect of all of the described property and that it is free and clear of all liens, security agreements, encumbrances, claims, demands, and charges of every kind whatsoever.

Seller binds Seller, his/her successors and assigns, to warrant and defend the title to all of the described property to Buyer, his/her successors and assigns, forever against every person lawfully claiming the described property or any part of it.

THE DESCRIBED PROPERTY IS SOLD "AS-IS" WITHOUT ANY WARRANTIES, EXPRESS OR IMPLIED, AS TO THE CONDITION OF SUCH PROPERTY. BY ACCEPTING THIS BILL OF SALE, BUYER(S) REPRESENT THAT BUYER(S) HAVE PERSONALLY INSPECTED THE DESCRIBED PROPERTY AND ACCEPTS THE PROPERTY "AS-IS".

This Bill of Sale shall be effective as to the transfer of all property listed in it as of \_\_\_\_\_, 2020.

IN WITNESS WHEREOF, this Bill of Sale is executed on \_\_\_\_\_ [date].

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Seller's Signature

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Seller's Typed or Printed Name