

# WYLAND FOUNDATION

## 31079

### CONTRACT FOR MURAL OR OTHER PUBLIC ART BETWEEN THE CITY OF LONG BEACH AND MARINE LIFE ARTIST WYLAND AND THE WYLAND FOUNDATION

---

THIS AGREEMENT, entered into this the 7<sup>th</sup> day of April, 2009, by and between the City of Long Beach (CITY) and the Wyland Foundation (FOUNDATION), a 501c3 non-profit organization. For and in consideration of the mutual promises and benefits of the parties, they do hereby agree to organize and underwrite the retouching of the marine life mural at the Long Beach Convention Center from April 8-19, 2009 (WYLAND MURAL) with marine life artist Wyland (ARTIST) and the Wyland Foundation. This program will consist of:

#### Recitals

WHEREAS, the City agrees to the services of an artist to retouch the original mural (the Mural) on a wall at the Long Beach Convention Center; and WHEREAS, the Artist is best qualified to retouch the Mural desired based upon the skill, reputation and creativity of Artist; and WHEREAS, Artist is an artist know to paint Murals of recognized quality and is able and willing to perform under the terms and conditions of this Agreement; NOW, THEREFORE, in consideration of the foregoing promises and covenants set forth below and other valuable consideration, the parties hereto agree as follows.

#### 1. Creation and Installation

- a. Artist represents and warrants that the mural to be retouched is an original work of art by the artist himself and that the mural shall be a faithful rendition with the theme of marine life.
- b. Artist shall be responsible for re-touching of the Mural. Artist agrees to have the mural re-touched by April 19, 2009.
- c. If work on the mural is delayed by adverse weather conditions, or any other cause beyond the artist's reasonable control, the completion date may be extended for such reasonable time as the parties may agree.
- d. If work on the mural is delayed by any fault, neglect, act or failure of the artist, then artist shall take all necessary steps to complete the mural within the agreed upon time.
- e. If work on the mural is delayed by any fault, neglect, act or failure of the City, then the City shall take all steps necessary to enable the artist to complete the mural on time. However, the City may elect to accept delayed delivery and avoid additional costs.

#### 2. Permits

- a. City agrees to procure permits and any necessary alley, street, or train closing permits if necessary. City agrees to obtain easements, encroachment permits, signage permits, and any of the required permits. City agrees to procure valid unconditional permits as may be required by any public authority as necessary for the installation and maintenance of the mural.

#### 3. Compliance with all laws

- a. Wyland Foundation agrees to comply with all local, state and federal laws and ordinances that pertain to the creation and installation of the mural.

# WYLAND FOUNDATION

4. Equipment
  - a. The Wyland Foundation will provide:
    - i. One (1) air compressor (at least 4 horsepower) with a moisture catcher
    - ii. 100+ feet of airlines for each compressor
    - iii. (2) Airless Spray Pumps
    - iv. 100+ feet of hose for each airless spray pump
    - v. Heavy duty extension cords for pumps / compressor
    - vi. Spray guns (if needed by the artist)
    - vii. The Wyland Foundation may request additional equipment that the City has available should the need arise.
5. Paint, Protective Coatings or Anti-graffiti Coatings and Paint Supplies
  - a. Artist shall arrange for paint and paint supplies to be provided as needed. Artist will specify specific colors and quantities.
6. Event
  - a. City partners may host a brief "Retouching Announcement" Press Conference held at the mural site at a time to be determined.
  - b. City partners may host a brief re-dedication Ceremony at the mural site at a time to be determined.
7. Publicity
  - a. As much publicity as possible is needed to give the maximum public exposure to the Mural project, and ensure the Wyland Foundation's message about clean oceans and water habitats is delivered. All publicity should be coordinated with Steve Creech, Wyland Foundation, at [stevec@wylanddesign.com](mailto:stevec@wylanddesign.com) or 949-643-7070 x 283.
8. Volunteers
  - a. Volunteers are welcome and will be recruited by City and Wyland Foundation to procure as many volunteers as necessary to assist with Wyland's creation of the mural.
  - b. Volunteers are volunteers to Wyland Foundation.
  - c. Volunteers are not allowed to paint, to operate or ride in or on boom trucks, scissor lifts, or any other mechanical lift devices, and / or to work above ground, including, but not limited to, on ladders or scaffolding as part of their tasks under this Contract.
  - d. Volunteers must execute the Wyland Foundation Release and Waiver of All Liability and Assumption of Risk Agreement (Exhibit A).
9. Security
  - a. City will provide for a safe and secure location throughout the duration of the event, providing regular and routine police patrols and security monitoring.
10. Mural Maintenance
  - a. City recognizes that the maintenance of the mural on a regular basis is essential to the integrity of the Mural. Therefore, for the length of time that the Mural is on the site, City shall be responsible for maintaining and repairing the Mural under the Artist's supervision, pursuant to the conservation and maintenance standards presented by Artist to City, which such standards shall be in conformance with recognized principles of conservation. If Artist fails or refuses to supervise such maintenance

# WYLAND FOUNDATION

and repairs, City shall have the right to do so. All maintenance, repairs and restorations shall be made in accordance with recognized principles of conservation for mural art.

## 11. Independent Contractor

- a. Artist is an independent contractor and not an employee, agent or other representative of City. Artist shall have the right to select the means, manner and method of performing the services described herein and has complete artistic discretion and control over the subject matter and execution of the Mural. The artist understands and agrees that he is not authorized to incur any expenses or any liability whatsoever on behalf of the City and has no authority, expressed or implied, to obligate or make representations on behalf of the City.

## 12. Insurance

- a. Artist shall provide insurance to protect himself and his crew. The artist shall save and hold harmless and indemnify the City and its facility manager (SMG) against any and all liability, claim, judgments or costs of whatsoever kind and nature for injury to, or death of any person or persons and for loss or damage to any property resulting from the use, service operation or performance of work under the terms of this contract, resulting in whole or part from the negligent acts of omissions or commission by the Artist. City and SMG shall be furnished proof of coverage by Certificate of Insurance.
- b. Artist agrees to provide an additional insured endorsement to its general liability insurance naming the City of Long Beach, SMG, and their officials, officers, employees, volunteers, and agents additional insureds with respect to Contract.
- c. During the painting of the mural, City and SMG shall be responsible for their own employees and / or volunteers negligent acts or omissions during the execution of this mural project.
- d. Artist will minimize any damages to the resources and any minor, unintentional damage will be corrected by the artist.

## 13. Amount of payment

- a. Equipment and supplies will be provided by the sponsor and / or the Foundation. The mission of the Wyland Foundation is to promote and protect the world's oceanic and freshwater habitats, ecosystems, and the life within, through life size public art, education, and awareness. The Artist will donate his time to paint the Mural on site. The Artist will pay for the wages of his crew.

## 14. Copyright Ownership

- a. City shall own the Mural, and shall have all rights normally inherent in such ownership. Artist retains the copyright in the image embodied in the Mural, and all other intellectual property rights associated with the Mural. The parties acknowledge their belief that the agreement entitled "Agreement 22220" executed on December 10, 1991, was not intended to, and did not serve to, assign the copyright in the image to City, or to waive any copyright owned by Artist. Artist hereby grants to City a perpetual, royalty-free license to copy the image embodied in the Mural in promoting the Long Beach community, or for any social or educational

# WYLAND FOUNDATION

purpose, including the advancement of conservation of the local waters and marine life. Artist waives any right under VARA (Visual Artists Rights Act of 1990), California Civil Code sections 987 et seq, and other laws to similar effect, to prevent the destruction, distortion, mutilation, or other modification of the Mural by reason of the redevelopment, expansion or demolition of the building to which it is fixed.

15. Art Preservation Building

- a. City agrees to take reasonable measures to preserve the integrity of the Mural and agrees not to materially alter or damage the Mural in any manner or move or remove the Mural, except as otherwise permitted in this Agreement.

16. Entire Agreement

- a. This agreement represents the entire agreement of the parties and may not be amended unless agreed to in writing by the parties.
- b. Undersigned agrees that if any provision of this agreement shall be determined to be void by a court of competent jurisdiction, that such determination shall not affect any other provision of this Agreement, and all such other provisions shall remain in full force and effect.

For Wyland Foundation and ARTIST  
Wyland

Signature: Wyland

Name: Wyland

Title: Artist

Date: 4/5/09

City of Long Beach

Signature: [Signature] Assistant City Manager

Name: Patrick H. West TO SECTION 301 OF

Title: City Manager THE CITY CHARTER.

Date: 4/7/09

APPROVED AS TO FORM

4-7, 2009

ROBERT E. SHANNON, City Attorney

By Charles Perkins

PRINCIPAL DEPUTY CITY ATTORNEY

# WYLAND FOUNDATION

## EXHIBIT A

### WYLAND FOUNDATION

#### Release and Waiver of All Liability and Assumption of Risk Agreement

**FOR GOOD AND VALUABLE CONSIDERATION**, including permission to participate in the retouching of the marine life mural at the Long Beach Convention center from April 1 until 19, 2009, inclusive, (“WYLAND MURAL”) with marine life artist Wyland (“ARTIST”) and the Wyland Foundation and related activities (“EVENT”), I, for myself, my successors, heirs, assigns, executors, administrators, spouse, and next of kin:

1. Agree that, prior to participating I will inspect the facilities, equipment, and areas to be used, and, if I believe that any of them are unsafe, I will immediately advise the person supervising the EVENT, facility, activity, or area;
2. Acknowledge that I fully understand that *my participation may involve risk of serious injury or death*, including economic losses, which may result not only from my own actions, inaction, or negligence, but also from the actions, inaction, or negligence of others, the condition of the facilities, equipment, or areas where the EVENT or activity is being conducted, or this type of EVENT or activity;
3. **Assume any and all risk** of bodily injuries to myself, including medical or hospital bills, permanent or partial disability, death, and damages to my property, caused by or arising from my participation in the EVENT or activity;
4. **Covenant not to sue or present any claim** for personal injury, property damage, or wrongful death against Wyland Foundation, ARTIST, the City of Long Beach, their officers, employees, volunteers, and agents for damages attributable to my participation in the EVENT or activity;
5. **Release, waive, discharge, and relinquish to the extent allowable by California law**, Wyland Foundation, ARTIST, the City of Long Beach, their officers, employees, volunteers, and agents from any liability, loss, damage, claim, demand, or cause of action against them arising from or attributable to my participation in the EVENT or activity, whether same shall arise by their negligence or otherwise;
6. Agree that photographs, pictures, slides, movies, or videos of me may be taken in connection with my participation in the EVENT or activity without compensation from the Wyland Foundation, ARTIST, or City of Long Beach and consent to the use of these photographs, pictures, slides, movies, or videos for any legal purpose.
7. Warrant that I am in good health, aged 18 or over, and have no physical condition that would prevent me from participating in this event or activity; and
8. Acknowledge that the Wyland Foundation, ARTIST, the City of Long Beach, are not joint sponsors, joint venturers, partners, or otherwise jointly engaged in the above-named EVENT or activity.
9. Acknowledge that volunteers are not allowed to paint, to operate or ride in or on boom trucks, scissor lifts, or any other mechanical lift devices, and/or to work above ground, including, but not limited to, on ladders or scaffolding while engaged in the above-named EVENT or activity.

THIS DOCUMENT RELIEVES THE WYLAND FOUNDATION AND OTHERS FROM LIABILITY FOR BODILY INJURY, WRONGFUL DEATH, AND PROPERTY DAMAGE BY NEGLIGENCE. I HAVE READ THIS DOCUMENT, UNDERSTAND THAT I GIVE UP SUBSTANTIAL RIGHTS AND ASSUME ALL RISKS BY SIGNING IT, AND SIGN VOLUNTARILY.

\_\_\_\_\_  
PRINTED NAME

\_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
DATE