

OFFICE OF THE CITY ATTORNEY
CHARLES PARKIN, City Attorney
411 West Ocean Boulevard, 9th Floor
Long Beach, CA 90802-4664

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AGREEMENT FOR ACCEPTANCE OF DONATION OF ARTWORK,
RELOCATION OF ARTWORK, INDEMNIFICATION AND RELEASE

35414

THIS AGREEMENT is made and entered, in duplicate, as of 10/30, 2019 for reference purposes only, pursuant to a minute order adopted by the City Council of the City of Long Beach at its meeting on August 13, 2019, by and between KELMAN ART & DESIGN STUDIO, LLC, a California limited liability company ("Kelman"), with a place of business at 522 North Roxbury Drive, Beverly Hills, CA 90210, and the CITY OF LONG BEACH, a municipal corporation ("City").

WHEREAS, Kelman is the creator and owner of the sculpture entitled "Puff of Wind" (the "Artwork"), depicted in Exhibit "A," attached hereto and incorporated herein by this reference, currently located in Manhattan Beach, CA; and

WHEREAS, Kelman has offered to donate the Artwork to the City of Long Beach at no cost to the City; and

WHEREAS, on August 13, 2019, the Long Beach City Council authorized acceptance of the donation from Kelman, and further authorized its relocation from its current location to a new site in Junipero Beach in Long Beach, California (the "Long Beach Site"); and

WHEREAS, due to its familiarity with the size and weight of the Artwork, Kelman has agreed to manage the relocation of the Artwork, and has agreed to provide all services necessary for its relocation, including any permits, releases and rental equipment, and the City has authorized payment to Kelman for those services;

NOW, THEREFORE, in consideration of the mutual terms, covenants, and conditions herein contained, the Parties agree as follows:

1. Kelman shall provide the following services in connection with the relocation of the artwork:

- A. Preparation of the Artwork for relocation;
- B. Obtaining any necessary permissions, releases, and/or permits

- 1 for the relocation and transportation of the Artwork; and
- 2 C. Rental of any necessary equipment for the removal,
- 3 transportation and re-installation of the Artwork in its Long Beach Site.
- 4 2. City shall provide the following in connection with the relocation of the
- 5 Artwork:
- 6 A. Preparation of the Long Beach Site; and
- 7 B. Obtaining any necessary permissions, releases and/or permits
- 8 for the installation of the Artwork in its Long Beach Site.
- 9 3. Upon successful completion of the relocation, transportation and
- 10 installation of the Artwork at its Long Beach Site, the City shall pay Kelman for these
- 11 services an amount not to exceed One Hundred Thousand Dollars (\$100,000), as follows:
- 12 A. \$50,000 to be paid following execution of this Agreement;
- 13 B. \$25,000 to be paid upon installation of the new support column;
- 14 C. \$25,000 to be paid upon completion of installation.
- 15 4. All copyright(s) for the Artwork is retained by the artist, and/or the
- 16 original creator of the Artwork.
- 17 5. The City shall comply with all applicable laws governing the Artwork,
- 18 including, but not limited to the requirements of California Civil Code Sections 986 and 987,
- 19 and to that end, accepts the executed waiver form, attached hereto as Exhibit "B" and
- 20 incorporated herein by this reference.
- 21 6. The City accepts the Artwork in its "as is" condition.
- 22 7. PREVAILING WAGES. Kelman is directed to the prevailing wage
- 23 rates. Kelman shall forfeit, as a penalty to the City, Two Hundred Dollars (\$200) for each
- 24 laborer, worker or mechanic employed for each calendar day, or portion thereof, that
- 25 such laborer, worker or mechanic is paid less than the prevailing wage rates for any work
- 26 done by Kelman, or any subcontractor, under this Contract.
- 27 8. Kelman shall keep and shall cause each subcontractor performing
- 28 any portion of the work under this Contract to keep an accurate payroll record, showing

1 the name, address, social security number, work classification, straight time and overtime
2 hours worked each day and week, and the actual per diem wages paid to each
3 journeyman, apprentice, worker, or other employee employed by Kelman or
4 subcontractor in connection with the work, all in accordance with Division 2, Part 7,
5 Article 2 of the California Labor Code. Such payroll records for Kelman and all
6 subcontractors shall be certified and shall be available for inspection at all reasonable
7 hours at the principal office of Kelman pursuant to the provisions of Section 1776 of the
8 Labor Code. Kelman's failure to furnish such records to City in the manner provided
9 herein for notices shall entitle City to withhold the penalty prescribed by law from
10 progress payments due to Kelman.

11 9. Upon completion of the work, Kelman shall submit to the City
12 certified payroll records for Kelman and all subcontractors performing any portion of the
13 work under this Contract. Certified payroll records for Kelman and all subcontractors
14 shall be maintained during the course of the work and shall be kept by Kelman for up to
15 three (3) years after completion of the work.

16 10. The foregoing is in addition to, and not in lieu of, any other
17 requirements or obligations established and imposed by any department of the City with
18 regard to submission and retention of certified payroll records for Kelman and
19 subcontractors.

20 11. Kelman, on behalf of itself, its officers, employees and agents, shall
21 indemnify, protect, defend, and hold harmless the City, its officials, employees and agents
22 from and against any and all claims, demands, damager, loss, liability, causes of action,
23 costs and expense (including attorneys' fees) arising from or connected with the relocation
24 of the Artwork from its current location to its new location in Long Beach. Further, Kelman,
25 hereby expressly waives any right Kelman may have under Section 1542 of the California
26 Civil Code, which reads as follows:

27 **"A general release does not extend to claims which the creditor does**
28 **not know or suspect to exist in his or her favor at the time of**

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executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

12. GOVERNING LAW. This Contract shall be governed by and construed pursuant to the laws of the State of California (except those provisions of California law pertaining to conflicts of laws).

13. INTEGRATION. This Contract, including the Contract Documents identified in Section 3 hereof, constitutes the entire understanding between the parties and supersedes all other agreements, oral or written, with respect to the subject matter herein.

14. NONDISCRIMINATION. In connection with performance of this Contract and subject to federal laws, rules and regulations, Contractor shall not discriminate in employment or in the performance of this Contract on the basis of race, religion, national origin, color, age, sex, sexual orientation, gender identity, AIDS, HIV status, handicap or disability. It is the policy of the City to encourage the participation of Disadvantaged, Minority and Women-Owned Business Enterprises, and the City encourages Contractor to use its best efforts to carry out this policy in the award of all subcontracts.

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IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

KELMAN ART & DESIGN STUDIO, LLC, a California limited liability company

30th October, 2019

By Asher D. Kelman
Name ASHER D. KELMAN
Title Director

_____, 2019

By _____
Name _____
Title _____

"Kelman"

CITY OF LONG BEACH, a municipal corporation

Nov. 11, 2019

By Rebecca G. Garner
City Manager

**EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER**

Approved as to form on 11-6, 2019.

CHARLES PARKIN, City Attorney

By Charles Parkin
Deputy

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EXHIBIT A

Artist Waiver Form

The provisions of this document shall apply to modify the undersigned Artist's rights of attribution and integrity as set out in the Visual Artists Rights Act, 17 U.S.C §§ 106A and 113(d) ("VARA"), the California Art Preservation Act, Cal. Civil Code §§ 987 and 989 ("CAPA"), and any rights arising under United States federal or state law or under the laws of another country that convey rights of the same nature as those conveyed under VARA and CAPA, as against the City of Long Beach ("City"), its boards and commissions, and their officials, employees and agents.

The City has the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the [describe artwork/project: mural, sculpture, etc. and medium]:

entitled [title of work]:

"Puff of Wind" : The Odyssey

and located at [identify address and/or site, including interior location if applicable],:

City of Manhattan Beach CA

in whole or in part, in City's sole discretion.

Artist's Address for Notice:

522 N. Roxbury Drive Beverly Hills
CA 90210

Artist bears the sole responsibility for providing the City with any changes to the Artist's Address for Notice. Notice of changes must be mailed to:

City of Long Beach
333 West Ocean Boulevard
Long Beach, California 90802
Attn: City Manager

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