

Attachment 'B'

RESOLUTION NO. 24-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KERMAN APPROVING A PROFESSIONAL SERVICE AGREEMENT FOR THE CREATION AND INSTALLATION OF A MURAL WITH JOSE ELIAS, IN THE AMOUNT OF \$29,500 AND AUTHORIZE THE CITY MANAGER TO SIGN THE AGREEMENT

WHEREAS, on October 26, 2023, a Request for Qualifications was released in accordance with the City's Purchasing System calling for qualified artists for the creation and installation of a mural; and

WHEREAS, the Request for Qualifications was advertised on the City website and sent to various artists and community members with a deadline of November 30, 2023; and

WHEREAS, only two Request for Qualification submittal packages were received, opened, and evaluated at City Hall on November 30, 2023, from the following artists:

1. Veyna Design Studios, Inc.
2. Jose Elias

NOW, THEREFORE, the City Council of the City of Kerman does hereby resolve as follows:

1. The above recitals are true and correct and are incorporated herein.
2. The internal review committee determined that the submittal package from Jose Elias demonstrated the necessary and desired qualifications to serve the City's needs.
3. The City Manager or designee is hereby directed to execute the Professional Services Agreement attached as Exhibit 'A' for the creation and installation of mural.

The foregoing resolution was approved by the City Council to the City of Kerman at a regular meeting held on the 13th day of March 2024, and was fully adopted at said meeting by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

The foregoing resolution is hereby approved.

Maria Pacheco
Mayor

ATTEST:

Josie Camacho
Interim City Clerk

Exhibit 'A'

PROFESSIONAL SERVICE AGREEMENT FOR THE COMPLETION AND INSTALLATION OF A MURAL BETWEEN THE CITY OF KERMAN AND JOSE ELIAS

This PROFESSIONAL SERVICE AGREEMENT FOR THE COMPLETION AND INSTALLATION OF A MURAL AGREEMENT (hereinafter referred to as "AGREEMENT") is made and entered into effect on March _____, 2024, by and between the City of Kerman, a California municipal corporation, (hereinafter referred to as a "the CITY") and Jose Elias (hereinafter referred to as "the ARTIST").

RECITALS

WHEREAS, CITY issued a Request for Qualifications ("RFQ") seeking artists to design and paint a mural or set of murals on two (2) private properties located in the downtown area of the City as identified in the Request for Qualifications.

WHEREAS, ARTIST submitted an application ("APPLICATION") to the CITY in accordance with the provisions in the Request for Qualifications. The APPLICATION was reviewed and accepted by the CITY. A copy of the RFQ and APPLICATION are attached hereto as **Exhibits 'A-1'** and **'A-2'** and made a part hereof.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing recitals which are part of this AGREEMENT and the terms and conditions hereinafter contained, the CITY and ARTIST mutually agree as follows.

1. SCOPE OF SERVICES.

- A. ARTIST will paint a mural on private property identified by address in this Section 1 (A) in accordance with the provisions of the RFQ. If there is any conflict between the provisions of this AGREEMENT, the RFQ or the APPLICATION, the provisions of this AGREEMENT shall control. ARTIST agrees to provide one (1) painted mural with dimensions no less than fifty percent (50%) of the wall's surface area and no more than eighty percent (80%) of the wall's surface area, in close conformance with the design depicted on **Exhibit 'A-3'** which is attached hereto and made a part hereof ("MURAL"). The MURAL will be an original design painted on portable aluminum panels or other CITY-issued material to be installed upon the south-facing exterior wall of the building located at 681 S. Madera Avenue, Kerman, California as identified on **Exhibit 'A-4'** which is attached hereto and made a part hereof ("BUILDING"). The wood panels or similar material used by ARTIST shall require approval by CITY."
- B. ARTIST shall complete and transport the MURAL at its designated location on or before June 2, 2024.
- C. ARTIST agrees the MURAL will be a specific representation of the submitted and approved mural design as set forth on **Exhibit 'A-3'**. ARTIST shall paint the MURAL with only lightfast, artist/professional-grade mural paint or of other equal material or base paint with drying time of less than 24 hours.
- D. ARTIST acknowledges that the CITY will be the owner of the MURAL.

2. COMPENSATION AND COSTS

CITY agrees to compensate ARTIST the sum of \$29,500 ("MURAL FEE") in consideration of ARTIST's completion of the MURAL in accordance with the provisions of this AGREEMENT. Thirty percent (30%) of the fee will be paid to ARTIST on the Effective Date and the remaining portion of the MURAL FEE will be paid to ARTIST upon the CITY accepting and issuing a Notice of Completion for the MURAL.

3. DEFAULT OF ARTIST

- A. The ARTIST's failure to comply with the provisions of this AGREEMENT shall constitute a default. In the event that ARTIST is in default for cause under the terms of this AGREEMENT, CITY shall have no obligation or duty to continue compensating ARTIST for any work performed after the date of default and can terminate this AGREEMENT immediately by written notice to the ARTIST. If such failure by the ARTIST to make progress in the performance of work hereunder arises out of causes beyond the ARTIST's control, and without fault or negligence of the ARTIST, it shall not be considered a default.
- B. If the CITY determines that the ARTIST is in default in the performance of any of the terms or conditions of this AGREEMENT, the City Manager shall cause to be served upon the ARTIST a written notice of the default. The ARTIST shall have ten (10) days after service upon it of said notice in which to cure the default by rendering a satisfactory performance. In the event that the ARTIST fails to cure its default within such period of time or fails to present the CITY with a written plan for the cure of the default, the CITY shall have the right, notwithstanding any other provision of this AGREEMENT, to terminate this AGREEMENT without further notice and without prejudice to any other remedy to which it may be entitled at law, in equity or under this AGREEMENT.
- C. In the event that it's determined that the ARTIST has defaulted, the ARTIST shall be responsible for reimbursing the City for any payments made by the CITY to the ARTIST.

4. INDEPENDENT CONTRACTOR

It is expressly understood and agreed ARTIST is an independent contractor and is not an employee of CITY. Neither CITY nor its officers, employees, or agents have control over the conduct of ARTIST or any of ARTIST'S officers, employees, or agents except as set forth in this AGREEMENT. No employee benefits shall be available to ARTIST in connection with the performance of this AGREEMENT. Except for the fees paid to ARTIST under Section 2, CITY shall not pay salaries, wages, or other compensation. ARTIST shall be solely liable and responsible to pay all required taxes and other obligations, including but not limited to, withholding and Social Security. It is also expressly understood and agreed that, as an independent contractor, ARTIST shall be solely responsible for City permits, business license, workers' compensation, general liability insurance, and accepts all risks and hazards associated with the painting of the MURAL.

5. MATERIALS AND EQUIPMENT

ARTIST will supply all materials and equipment needed to paint the MURAL in accordance with the provisions of this AGREEMENT. ARTIST shall use only OSHA compliant scaffolds while painting the MURAL.

6. EQUAL OPPORTUNITY

ARTIST represents it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination. ARTIST shall also comply with all relevant provisions of City's programs or guidelines currently in effect or hereinafter enacted regarding equal opportunity employment

7. TERM

The term of this AGREEMENT shall commence on the Effective Date and shall terminate on June 30, 2024, subject to any earlier termination in accordance with this AGREEMENT.

8. TERMINATION

- A. This AGREEMENT and all obligations hereunder may be terminated at any time, with or without cause, by the CITY upon written notice to the ARTIST upon ten (10) day's written notice. ARTIST may terminate this AGREEMENT upon fifteen (15) days' written notice.
- B. If ARTIST fails to perform any of its material obligations under this AGREEMENT, in addition to all other remedies provided by law, City may terminate this AGREEMENT immediately upon written notice.
- C. Upon termination with or without cause, all finished and unfinished documents, project data and reports shall, at the option of the City, become its sole property and shall, at ARTIST's expense, be delivered to the City or to any party it may so designate.
- D. In the event termination is without cause, ARTIST shall be entitled to any compensation owing it hereunder up to the time of such termination, it being understood that any payments are full compensation for services rendered prior to the time of payment; provided, however, that ARTIST shall be entitled to compensation for work in progress at the time of termination. Notice of termination shall be mailed as follows:

To the City:

City of Kerman
Attn: City Manager
850 S. Madera Avenue
Kerman, CA 93630

To the Artist:

Jose Elias
610 El Monte Street
Madera CA, 93637

9. INTELLECTUAL PROPERTY

- A. CITY's Sole and Exclusive Ownership Rights. Subject to Section 7(D) of this AGREEMENT, ARTIST shall not retain ownership of or any right, title or interest in any of the MURAL, including but not limited to any of the designs, drawings, paintings, sketches, models, fabrications, audiovisual materials, computer graphics, renderings, writings, or any other media prepared or provided by ARTIST in the performance of this AGREEMENT. The Parties agree that the MURAL prepared or provided by ARTIST in the performance of this AGREEMENT and all such rights, title and interest in or to the MURAL belong to and are being sold and assigned in their entirety to CITY for whatever use it desires, and that CITY, and its successors and assigns, does and shall at all times own, solely and exclusively, complete and unencumbered, all rights, title and interest in and to all of the MURAL worldwide, any modifications thereto and any derivative works based thereon. Nothing contained herein shall be deemed to constitute a mere license or franchise in the CITY and its successors and assigns. The Parties further agree that CITY, and its successors and assigns, will be free to use, modify, distribute, sell, license or otherwise exploit all such MURAL and any modifications to or derivative works based thereon without any restrictions or limitations or any obligations or payments to ARTIST.

The CITY hereby authorizes ARTIST to make, and to authorize the making of, limited photograph and video reproductions of the MURAL for educational and self-promotional purposes. For purposes of this AGREEMENT, the following are deemed to be photograph and video reproductions for educational and self-promotional purposes: slides, film strips, and video episodes not intended for a mass audience and used solely for educational programs that are hosted by ARTIST in print media, on ARTIST's website and social media sites, and on ARTIST's computers and on any other electronic media, as long as such reproduction is provided to others at no cost. On any and all such reproductions, ARTIST shall place a copyright notice in the form and manner provided by CITY to protect the copyrights in the MURAL under the United States copyright law. In addition, all reproductions shall contain the following credit line unless otherwise requested to the contrary in writing by CITY: "Commissioned by the City of Kerman."

Under no circumstances shall ARTIST use or make any photograph or video reproductions of the MURAL for commercial purposes and any photograph or video reproductions used or made by ARTIST shall not compete with any CITY endeavor to sell or promote reproductions of the Works. CITY has sole discretion to determine whether a photograph or video reproduction is utilized for educational and self-promotional purposes or whether the reproduction competes with CITY's endeavors to sell or promote its reproductions. If the CITY determines that the photograph or video reproduction does not meet the terms of this section, the CITY shall provide written notice to ARTIST and ARTIST shall immediately cease and desist the use of the reproduction.

- B. Transfer of Rights of Reproduction. ARTIST hereby transfers to CITY, and its successors and assigns, all rights of reproduction, as that term is defined in California Civil Code Section 982, in the MURAL prepared or provided by ARTIST in the performance of this AGREEMENT, including, but not limited to, the right to reproduce the MURAL in any manner whatsoever for commercial and non-commercial purposes. Hereinafter, ARTIST shall not acquire or claim any rights in or to the MURAL, any uses, reproductions or derivatives thereof or any proceeds therefrom.
- C. Waiver of Moral Rights. ARTIST hereby waives, releases and disclaims any rights, demands or claims as may arise at any time and under any circumstances against CITY, its elected officials, officers, agents, employees, attorneys, servants, volunteers, successors and assigns arising under the federal Visual Artists Rights Act (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 *et seq.*), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. § 106A, California Civil Code § 987 *et seq.*, or any other type of moral right protecting the integrity of works of art. ARTIST acknowledges and agrees that CITY and its successors and assigns, in their sole and exclusive discretion, may, among other acts, temporarily or permanently modify, alter, change or destroy the MURAL. CITY agrees that prior to any proposed destruction of the MURAL, ARTIST shall be provided with a reasonable opportunity to reclaim possession of the MURAL, at no cost to the CITY and its successors and assigns; ARTIST shall be responsible for all costs associated with removal of the MURAL.
- D. Copyrights. ARTIST shall retain the copyright and all other rights in and to the MURAL under the Copyright Act of 1976, 17 U.S.C. § 101 *et seq.*, and all other rights in and to the MURAL except ownership and possession. Artist hereby grants to the CITY an irrevocable license to reproduce the MURAL in any non-commercial manner whatsoever. Use will be governed by generally accepted fair-use doctrine in relation to copyrighted works of art: criticism, comment, news reporting, teaching, scholarship or research. The graphic depiction of the work in materials designed for promotional purposes by CITY and its successors and assigns shall be deemed to be a non-commercial use. Upon final acceptance of the MURAL by CITY all original studies, drawings and designs shall become property of CITY. ARTIST shall deliver to CITY a copy of the registered copyright.
- E. Originality of Works. ARTIST represents and warrants that (i) the Works prepared or provided by ARTIST in the performance of this AGREEMENT are and will be original; (ii) at the time of transfer hereunder, ARTIST is the sole owner of the MURAL and of all rights therein including copyright, trademark and other proprietary rights therein; (iii) ARTIST is and will be the sole creator of the MURAL; (iv) ARTIST has and will have full and sufficient right to assign all rights granted herein and to waive all rights relinquished herein; (v) ARTIST is not under any obligation to transfer or sell any of the MURAL to any third party; (vi) all MURAL has not been and will not be published under circumstances which have or will cause a loss of any copyright, trademark or other proprietary rights therein; and (vii) the MURAL does not and will not infringe any patent, copyright, trademark or other proprietary rights, privacy rights or other rights of any third party, nor has any claim (whether or not embodied in a legal action, past or present) of such infringement been threatened or asserted, nor is such a claim pending, against ARTIST (or, insofar as ARTIST is aware, against any entity from which ARTIST has obtained any rights).
- F. Patent, Copyright and Trademark Infringement. ARTIST shall defend any action or proceeding brought against CITY or its successors and assigns based on any claim

that the MURAL prepared or provided by ARTIST in the performance of this AGREEMENT, or any portion thereof, or the use of the MURAL, or any part thereof, constitutes infringement on any United States patent, copyright or trademark, now or hereafter issued. CITY or its successors and assigns shall give prompt written notice to ARTIST of any such claim or proceeding and will reasonably provide authority, information and assistance in the defense of the same. ARTIST shall indemnify and hold harmless CITY and its successors and assigns from and against all liabilities in any such action or proceeding. ARTIST shall keep CITY and its successors and assigns informed of all new developments in the defense of such actions or proceedings.

10. ASSIGNMENT

ARTIST shall not assign this AGREEMENT or its rights or obligations hereunder to any other person or entity without the prior written consent of the CITY, which consent may be withheld in the sole discretion of the CITY.

11. MURAL WARRANTY AND MAINTENANCE

- A. Warranty. The ARTIST shall guarantee the MURAL to be free from faults of material and workmanship for a period of one (1) year after installation and final acceptance by the CITY. The ARTIST shall deliver the MURAL to the CITY free and clear of any liens from any source whatever. These guarantees shall apply only to those aspects of the MURAL which is entirely that of the ARTIST or persons responsible to the ARTIST, as installed, and shall not apply to materials or workmanship of projects in which the ARTIST's work is integrated or combined, or to materials purchased, acquired, or installed by a person or entity not responsible to the ARTIST.

The ARTIST shall faithfully perform the services required under this AGREEMENT in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the MURAL described in this AGREEMENT.

- B. Maintenance. ARTIST will be granted a first right to perform maintenance of MURAL for a period of five (5) years. Whether maintenance is needed and when maintenance is needed will be determined by the CITY. Maintenance fees, if maintenance is required, will be determined by the CITY with input by the ARTIST.

12. INDEMNIFICATION

ARTIST agrees to indemnify, defend and hold harmless the CITY and its officials, officers, employees, agents and volunteers from and against all claims, demands, actions, injuries, liabilities, losses, costs or damages, direct or indirect, and any and all attorney's fees and other expenses which City or its officials, officers, employees, agents or volunteers may sustain or incur as a consequence of or anyway related to ARTIST's or its employees, agents and subcontractor's creation and painting of the Mural and ARTIST's responsibilities and obligations to be performed under this AGREEMENT or its failure to perform or comply with any of its obligations or responsibilities contained in this AGREEMENT. This indemnification shall survive the termination of this AGREEMENT. ARTIST agrees that concurrently with the execution of this AGREEMENT, ARTIST will execute the ARTIST Waiver Form attached hereto as **Exhibit "A-5"** and made a part hereof.

13. COMPLIANCE WITH LAWS

ARTIST shall use the proper standard of care professional expertise in painting the MURAL and shall comply with all applicable federal, state and local laws, codes, ordinances and regulations.

14. INSURANCE

A. Throughout the life of this AGREEMENT, ARTIST shall pay for and maintain in full force and effect all insurance as required in Exhibit "A-6" or as may be authorized, and any additional insurance as may be required, in writing by City Manager or his or her designee at any time and in her sole discretion.

B. If at any time during the life of the AGREEMENT or any extension, ARTIST or any of its subcontractors fail to maintain any required insurance in full force and effect, all services and work under this AGREEMENT shall be discontinued immediately, and all payments due or that become due to ARTIST shall be withheld until notice is received by CITY that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to CITY. Any failure to maintain the required insurance shall be sufficient cause for CITY to terminate this AGREEMENT. No action taken by CITY pursuant to this section shall in any way relieve ARTIST of its responsibilities under this AGREEMENT. This phrase "fail to maintain any required insurance" shall include, without limitation, notification received by CITY that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

15. SOLE AND ONLY AGREEMENT

This AGREEMENT supersedes any and all other agreements, either oral or in writing between the parties hereto with respect to the matters set forth herein and contains all of the covenants and agreements between the parties regarding said matters.

16. SUCCESSORS AND ASSIGNS

Except as otherwise set forth in Section 8 of this AGREEMENT, this AGREEMENT and the provisions of this AGREEMENT shall be binding on the successors and assigns of the parties.

17. INVALIDITY

If any provision of this AGREEMENT is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way.

18. NOTICE

Any notice, consent, authorization, or other communication to be given hereunder shall be in writing and shall be deemed duly given and received when delivered personally, when transmitted by facsimile or e-mail if receipt is verified, one (1) business day after being deposited for next-day delivery with a nationally recognized overnight delivery service, or three (3) business days after being mailed by first class mail, charges and postage prepaid, properly addressed to the party to receive such notice at the last

address furnished for such purpose by the party to whom notice is directed and addressed as follows:

CITY: City of Kerman
850 S. Madera Ave
Kerman, CA. 93630

ARTIST: Jose Elias
610 El Monte Street
Madera, CA 93637
E-mail: Jjelias69@yahoo.com

The parties hereto may change their address as set forth in this paragraph by providing the other party with written notice thereof.

19. ATTORNEY FEES

If an action at law or in equity is necessary to enforce or interpret the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other reasonable relief to which he may be entitled. With respect to any suit, action or proceeding arising out of or related to this AGREEMENT, or the documentation related hereto, the parties hereby submit to the jurisdiction and venue, in the County of Fresno, State of California for any proceeding arising hereunder.

20. COUNTERPARTS

This AGREEMENT may be executed in multiple counterparts, (including copies sent to a party by facsimile transmission or email transmission in PDF form), each of which shall be deemed an original, but all of which together, shall constitute one and the same instrument.

21. AMENDMENTS

No change, amendment or modification of this AGREEMENT shall be valid unless the same be in writing and signed by the parties hereto.

22. GOVERNING LAW

This AGREEMENT and the provisions of this AGREEMENT shall be governed by the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT effective on the Effective Date set forth above.

CITY OF KERMAN
A municipal corporation

ARTIST
Jose Elias
610 El Monte Street
Madera Ca, 93637

John Jansons, City Manager
Date: _____, 2024

Jose Elias

Signature:

Jose Elias
Print: Jose Elias, Principal Artist
Date: 3-8-2024, 2024

ATTEST:

Josie Camacho, Interim City Clerk
Date: _____, 2024

APPROVED AS TO FORM:

Hilda Cantú Montoy, City Attorney
Date: _____, 2024



EXHIBIT 'A-1'
REQUEST FOR QUALIFICATIONS

City of Kerman

Community Comes First

REQUEST FOR QUALIFICATIONS

Released Date: October 26, 2023

1. OPPORTUNITY

The City of Kerman is seeking a qualified artist or group of artists to design and create murals in the downtown corridor of Kerman.

The purpose of this Request for Qualifications (RFQ) is to select an artist or group of artists to transform two pre-selected walls in downtown Kerman through the creation of an original design. The mural design must depict the City's roots and historic features. The goal of the murals is to bring about a new sense of energy to the City's downtown.

The City and its community members believe a focus on this type of public art will generate significant interest in downtown and will draw local residents and tourists alike to this important part of the City. This will have positive social and economic spinoffs for the entire community. To that end, murals not only have the ability to create a sense of energy, but they also can enable a safe community that in an otherwise dark and dilapidated alley or on a blank canvas wall may attract graffiti and vandalism.

2. MURAL LOCATIONS

The following sites have been approved to receive a mural. The exact size of the mural and location on the building will be determined in collaboration with the City, artist, and property owner.

Mural Location 1 – 602 S Madera Ave; surface - masonry block wall



Mural Location 2 – 681 S Madera Ave; surface – CMU wall



3. MURAL CONTENT

The murals should depict Kerman through a historical or community lense. The murals may include relevant historical events such as the train robbery. Murals may also illustrate community events such as the Harvest Festival and Almond Festival. Mural messaging should clearly communicate “community pride” with emphasis on the demographic make-up e.g. Punjabi, Mexican, El Salvadorian, Russian. When possible and practical, murals should be interactive or engaging as to invite individuals to stop and view the mural. Murals may use vibrant colors, however, should not create a visual nuisance or be distracting to pass-through traffic.

4. MURAL PARAMETERS

Artist(s) are expected to create an original mural based off community input related to theme, design, colors, material, etc. The mural size will vary depending on the site's available surface area. Artist' should be prepared to design a mural between 50% and 80% of the surface areas, as shown in Section 2 of this RFQ. One of the mural locations must take inspiration from the following two example murals, to include "KERMAN", in an original art form.



5. SELECTION PROCESS

A panel consisting of City of Kerman staff will engage in the selection process to review all artist submissions. The panel will review for; (i) completeness of submission material, (ii) artist's costs of creating the mural, and (iii) past mural experience. The lowest bidder(s) will be interviewed by City of Kerman staff and mural site property owners. The selected artist(s) will be required to enter into an agreement with the City.

6. ARTIST SELECTION CRITERIA

The artist may submit qualifications for one or both mural locations. Submissions to the call will be reviewed and decisions made based on:

- Demonstrated skills and previous experience working with this medium.
- Alignment of the RFQ to the City of Kerman Downtown Revitalization mural programs vision for these murals.
- Ability to meet project timeline.
- Cost of creating or producing murals

The City of Kerman reserves the right to accept or reject, in whole or in part (one or both), any and all bids received in response to this RFQ; to waive or permit cure of minor irregularities; and to conduct discussions with any or all qualified companies or artists in any manner necessary to serve the best interests of the City. This RFQ creates no obligation on the part of the City to award a contract.

7. SUBMISSION REQUIREMENTS

- **Submit the following documentation:**
 - Bid Form: Complete the form attached to this document.
 - Biography or Resume
 - Work Samples: Submit up to three (3) supporting image examples of previous work. One image per page. Include artist name(s), title, year, location and medium information on each page.
 - Website (if available)
 - Separate Written Bid/Budget for each mural
 - Maintenance Plan: Wall Preparation/Method/Materials; Paint Type/Brand/Application; Post Material Product;
 - A draft sketch with the dimensions of the mural per the mural location(s).

- **Artist's Responsibilities:**
 - Performing all services and furnishing all of the supplies, materials, and/or equipment necessary for the fabrication of the provided mural renderings. This performance must be in accordance with specified project schedule.
 - Creation of work that utilizes durable materials resistant to vandalism and requires minimal maintenance. A high quality exterior varnish will be applied to secure the longevity of the mural.
 - Company policy as to when extra costs apply to proposal.

- **Planned Project Timeline:**
 - Submission Deadline - November 30, 2023
 - Artist Award Announced - January 2024
 - Mural Completion Deadline - May 31, 2024
 - Schedule may change subject to muralist readiness

8. ADDITIONAL INFORMATION

The selected artist or artist team will be required to carry a minimum of \$1,000,000 liability insurance.

The following options are available:

1. Artists may purchase liability coverage from a local broker and provide the City of Kerman with a copy of the certificate of insurance.
2. Artists may already have coverage in force (either under homeowners' insurance or an individual policy). If this is the case, we would ask that they provide the City of Kerman with a copy of the certificate of liability insurance.

9. INQUIRIES CONCERNING THIS RFQ

Please direct any questions or comments to the following by 4:00 PM on November 17, 2023 to: Theresa Johnson, Community Services Director, by email tjohnson@cityofkerman.org or by phone at 559-846-9328.

10. ARTIST MAINTENANCE PLAN

This is a sample only. Some elements may not apply to your qualifications. An original maintenance plan must be submitted with each mural location.

Accomplishment of Public Art Mural Project (*italics indicate details to be completed by the artist*)

This (*include unique dimension and size*) mural is to be on a concrete and block wall.

The wall will be prepared by (*Indicate actual preparation plans, what materials will be used, name brands where applicable, make up of those materials, and how they are applied.*)

A high-quality exterior varnish or equal will be applied to secure the longevity of the mural, done by the artist according to the manufacturer's instructions if appropriate to the materials used.

Recommended future maintenance plan. (*For example, routine surface inspections, surface cleaning, additional coats of protective paint, etc.*)

Applicant signature: _____ Date: _____

11. City of Kerman Bid Form

Name: _____

Team Name (if applicable): _____

Address: _____

Phone: _____ Email: _____

Website (if applicable): _____

Explain why you are interested in this opportunity and why you feel you are qualified to undertake a project of this nature:

Describe how your qualifications align with the desired vision and how your design will suit the downtown Kerman streetscape:

Signature: _____ Date: _____

Your signature will guarantee the proposed production quote will be effective for 120 days.

To be considered, please submit sealed qualifications by 4:00 PM November 30, 2023, and deliver to:

Marci Reyes, City Clerk
Kerman City Hall
850 S. Madera Ave
Kerman, CA 93630

EXHIBIT 'A-2'

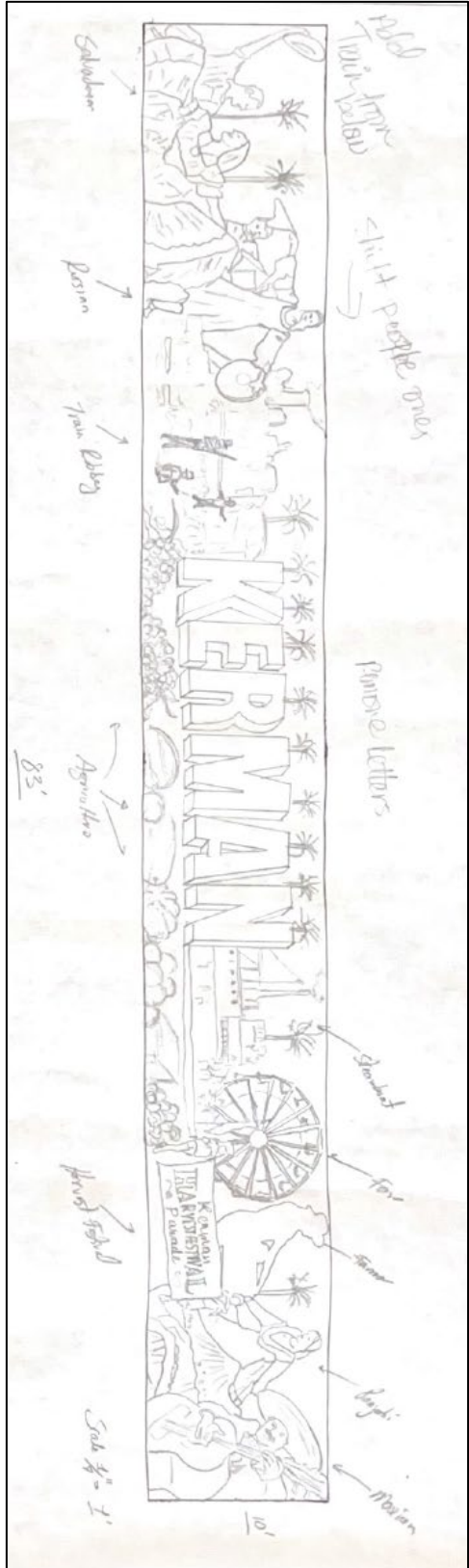
APPLICATION

Paper Copy On File

EXHIBIT 'A-3'

Mural Concept

Concept 1



Concept 2

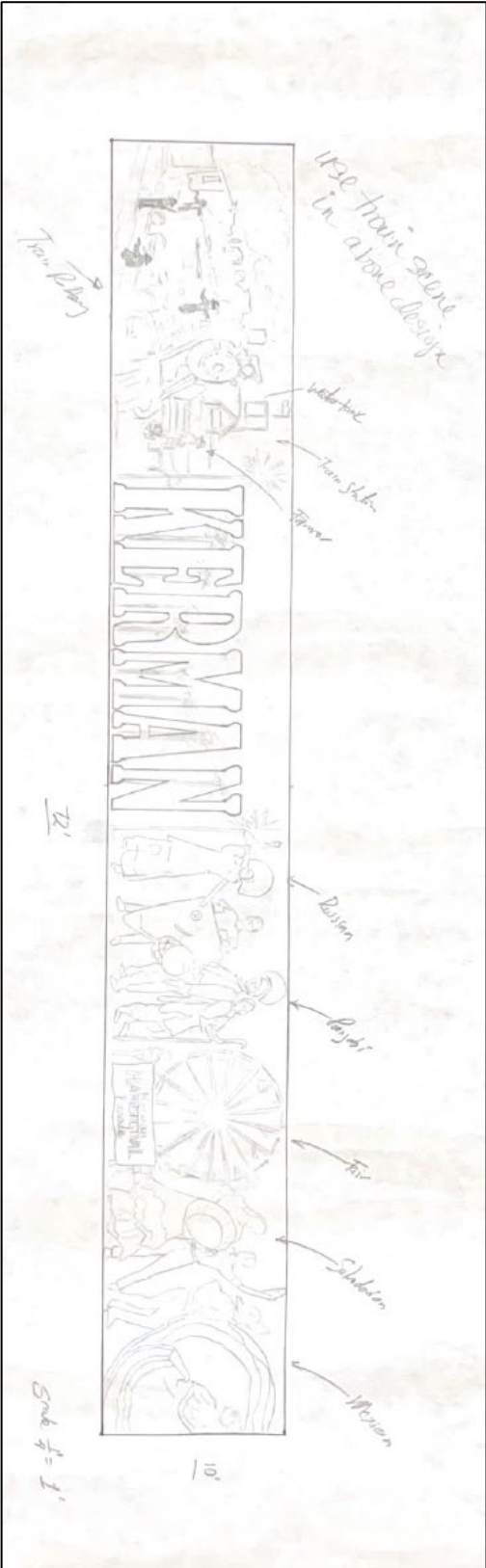


EXHIBIT 'A-4'

BUILDING INFORMATION

Address: 681 South Madera Avenue

APN: 023-148-807S

Mural Location: south-facing building wall, accessible from West E Street

Wall Dimensions: approximately 13' in height by 85' in length



EXHIBIT 'A-5'

ARTIST WAIVER FORM

**RELEASE OF LIABILITY, WAIVER OF RIGHT TO SUE,
ASSUMPTION OF RISK AND AGREEMENT TO PAY CLAIMS**

Regarding the display of the Artist's artwork in the City of Kerman as set forth in the Professional Services Mural Agreement of even date herewith ("AGREEMENT"):

In consideration for the opportunity to be selected and allowed to display my original works of art in the form of a mural as identified in the AGREEMENT, on behalf of myself and my next of kin, heirs and representatives, I release from all liability and promise not to sue the City, its employees, officers, directors, agents and volunteers (collectively "City") from any and all claims, including, but not limited to, violations of Freedom of Speech, Due Process, negligence, or any other claim under California or constitutional law, resulting in any injury, damages, economic or emotional loss I may suffer by submitting artwork for the opportunity to be selected, and the display of my artwork in the City.

I am voluntarily submitting my original artwork that I alone claim ownership thereof. I understand that my artwork may not be selected for display in the City. I understand if my artwork is on display in the City it may be removed at any time with or without notice to me, at the sole discretion of the City. I understand that my artwork may be relocated to another part of the City with or without notice. I am aware of and assume the risk that my artwork may be damaged or destroyed while in the City. Nonetheless, I assume the risks, both known or unknown to me, and waive all rights to sue the City by submitting my artwork for selection and display in the City.

I agree to hold the City harmless from any and all claims, including attorney's fees and any damages to my rights or artwork that may occur as a result of my submission of artwork for display in the City.

I understand the legal consequences of signing this document, including (a) releasing the City from all liability, (b) promising not to sue the City, (c) and assuming all risks associated with displaying, handling, or storing my artwork in the City.

I understand that this document is written to be as broad and inclusive as legally permitted in the State of California. I agree that if any portion is held invalid or unenforceable, I will continue to be bound by the remaining terms.

I have read this document, and I am signing it freely. No other representations concerning the legal effect of this document have been made to me.

Artist Signature: _____

Artist Name (print): _____ Date: _____

EXHIBIT 'A-6'

INSURANCE REQUIREMENTS

ARTIST shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the ARTIST, its agents, representatives, or employees.

MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis for bodily injury and property damage, including products-completed operations, personal injury and advertising injury, with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: Insurance Services Office Form Number CA 0001 covering, Code 1 (any auto), or if ARTIST has no owned autos, Code 8 (hired) and 9 (non-owned), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

(Not required if ARTIST provides written verification it has no employees)

- 4 Professional Liability (Errors and Omissions) Insurance appropriate to the ARTIST's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate. If the ARTIST maintains higher limits than the minimums shown above, the Entity requires and shall be entitled to coverage for the higher limits maintained by the contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Entity.

Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

Additional Insured Status The CITY, its officers, officials, employees, and volunteers are to be covered as additional insureds on the auto policy with respect to liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the ARTIST; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the ARTIST including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the ARTIST's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Primary Coverage For any claims related to this contract, the ARTIST's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, or volunteers shall be excess of the ARTIST's insurance and shall not contribute with it.

Notice of Cancellation Each insurance policy required above shall state that coverage shall not be canceled, except with notice to the Entity.

Waiver of Subrogation ARTIST hereby grants to CITY a waiver of any right to subrogation which any insurer of said ARTIST may acquire against the CITY by virtue of the payment of any loss under such insurance. ARTIST agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the CITY has received a waiver of subrogation endorsement from the insurer.

Deductibles and Self-Insured Retentions Any deductibles or self-insured retentions must be declared to and approved by the CITY. The CITY may require the ARTIST to provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

Acceptability of Insurers Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the CITY.

Claims Made Policies If any of the required policies provide coverage on a claims-made basis:

1. The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the ARTIST must purchase "extended reporting" coverage for a minimum of five (5) years after completion of contract work.

Verification of Coverage ARTIST shall furnish the CITY with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the CITY before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the ARTIST's obligation to provide them. The CITY reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

Subcontractors ARTIST shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and ARTIST shall ensure that CITY is an additional insured on insurance required from subcontractors.

Special Risks or Circumstances CITY reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.