

ATTACHMENT A

Agreement between the City of San José and [Insert Artist Name] for Lenticular Lab Artwork

This Agreement is made on [insert date], 2024 in the City of San José, State of California, by and between [Insert Artist Name], [insert entity type], (hereinafter referred to as “Artist”), and the City of San José, a municipal corporation (hereinafter referred to as “City”), (together referred to as the “Parties”) for the purposes and on the terms and conditions set forth below.

WHEREAS City, through City’s Public Art Program, will manage the development of the Artwork in consultation with the San José Mineta International Airport’s Department of Aviation (“Airport”); and

WHEREAS the Norman Y. Mineta San José International Airport Public Art Master Plan (Art Master Plan) approved by City Council on November 16, 2004, calls for the design of Artwork Platforms (technologically enabled frameworks that accommodate the display of artwork installations including, but not limited to, two- and three-dimensional artworks and traditional and technologically dynamic artworks); and

WHEREAS, the Artwork Platforms are specifically identified locations within the Airport that include technological and mechanical infrastructure to enable an ongoing program of artwork installations to be displayed for time durations as determined by the City; and

WHEREAS the public artwork covered by this Agreement (“Artwork”) will be located upon the Artwork Platform described as the Art Windows, located in Terminal B on the Mezzanine, pre-security (“Art Window”); and

WHEREAS, the City is seeking to create a dynamic program of curated large format Artwork activated with depth and/or movement through lenticular printing technology; and

WHEREAS, the City desires to purchase the right to make a limited-edition reproduction of the following Artwork by the Artist for display in the Art Windows; and

[insert Artwork Name]

WHEREAS, a selection committee has recommended this work as being desirable for reproduction for display, and the selected recommended works were reviewed by the City’s Public Art Committee at its meeting on [insert date]; and

WHEREAS, City agrees to pay Artist a fee of \$10,000 for the image or images that will be reproduced as lenticular prints, and will remit payment upon receipt of a print-ready, high resolution digital file(s) of the selected artworks, as well as final concept statement narrative and lenticular instructions, as agreed to by Artist and City; and upon completion of City's reproduction of the artwork.

Now therefore the Parties agree to the following:

- 1) Copyright. Subject to usage rights and licenses granted to City hereunder, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement.
- 2) City's Intellectual Property License. Artist grants to City, and to City's agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the Artwork(s), in all media throughout the universe:
 - i) Use and Display. City may use and display the Artwork. The City will be responsible for printing artwork, installation of work on-site at the Airport for current and future exhibitions, as well as disseminating via its website and social media channels.
 - ii) Reproduction and Distribution. City may make and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional reproductions for City-related purposes such as advertising, educational and promotional materials, brochures, books, flyers, postcards, prints, broadcast, film, electronic and multimedia publicity, documentation of City's Public Art Collection, and catalogs or similar publications. City shall ensure that such reproductions are made in a professional and tasteful manner in the sole and reasonable judgment of the City.
 - iii) The license granted hereunder does not include the right to create any 3-dimensional reproductions of the artwork or any 2-dimensional reproductions on merchandise such as tote-bags, T-shirts, coffee mugs and similar merchandise. Such reproductions may only be created pursuant to separate license agreements with Artist.
 - iv) The license granted hereunder does include the right to fabricate a replacement reproduction, should the original reproduction undergo damage beyond reasonable repair.
 - v) Artist warrants that Artist owns all rights to the Artwork(s) and has sole authority to grant the use of the Artwork (s) to City.

3) Artist Waivers:

- i) Without limitation of any other provision hereof, Artist expressly agrees to waive any and all rights Artist may have pursuant to Title 17 U.S.C. Section 106A, (commonly known as the “Visual Artists Rights Act of 1990”) as Artist’s rights under the Act apply, if at all, to the Artwork. In addition:
 - i. City shall have the right to reproduce Artwork as provided in this Agreement.
 - ii. City shall have the right to move, relocate or remove Artwork from the intended location and to store or dispose of Artwork as City deems appropriate.
- ii) Without limitation of any other provision hereof, Artist expressly agrees to waive any and all rights Artist might have, including, without limitation, any moral or other rights pursuant to the California Art Preservation Act, California Civil Code Section 987, and California Civil Code Section 989, to the extent that such provisions have any force or effect with respect to Artist’s right to the Artwork.

4) Artist Deliverables: Artist deliverable under this Agreement are as follows:

- a. Artist will prepare written instructions of the lenticular effect (“Lenticular Instruction”). Lenticular Instruction will include confirmation of the specifications for camera ready artwork advised by City. Lenticular Instruction will be reviewed for approval by the City prior to transmittal to City’s Lenticular Printer.
- b. Artist will provide print-ready artwork, in order to produce work for final display, as agreed to as part of the Lenticular Instruction.
- c. Artist understands that City will be responsible for printing the final Artwork, and that dimensions may vary from the Artists’ original.
- d. It is understood that the goal of the parties for the Artwork is a product that represents the creative talents of the Artist as translated into the lenticular format, as specified in the Lenticular Instruction. Artist will be available virtually (e.g., by phone, email, or video conference) to respond to questions and provide clarifications to City and City Printer. That said, Parties also recognize that the shift in media from the artist’s original Artwork to lenticular format may require adjustments. City reserves the right to make minor adjustments to the Lenticular Instruction.

- e. Artist waives their right to inspect or approve the finished version of the lenticular reproduction of the artwork(s), including in any city publication or display, and any written material that may be created in connection therewith.
- 5) The Artist agrees that Artist will not make any claims against City, its officers, agents, and employees arising out of use, reproduction, and disposition of the work under the terms of this Agreement.
 - 6) Use of Electronic Signatures. Unless otherwise prohibited by law or City policy, the parties agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a writing as set forth in Evidence Code Section 1550. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the City.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

<p>City</p> <p>By {{{__signer3}}}</p> <p>Name: [INSERT NAME] Title: [INSERT TITLE, DEPT]</p>	<p>Artist</p> <p>By {{{__signer1}}}</p> <p>Name:</p>		
<p>Approval as to Form (City Attorney):</p> <table border="1" style="width: 100%;"> <tr> <td style="width: 10%;"></td> <td> <p>Approved as to Form: {{{__signer2}}}</p> <p>Name: Title: Deputy City Attorney</p> </td> </tr> </table>			<p>Approved as to Form: {{{__signer2}}}</p> <p>Name: Title: Deputy City Attorney</p>
	<p>Approved as to Form: {{{__signer2}}}</p> <p>Name: Title: Deputy City Attorney</p>		

COMPENSATION

City agrees to pay Artist in installments as set forth in the schedule below and in accordance with the terms of Section 3 of this Agreement.

1. Payment Schedule:

DESIGN	
Upon execution of this Agreement. Payment in advance is contingent upon satisfactory completion of tasks identified in 4a and 4b.	\$4,000
Upon City's satisfactory delivery Print Ready Artwork and final printing by City as identified in Part 4c - 4e. ÷	\$6,000 ÷
TOTAL COMPENSATION ÷	Not to exceed \$10,000 ÷