

**AGREEMENT BETWEEN THE COUNTY OF SAN MATEO  
AND ARTshare OF SAN MATEO COUNTY**

**THIS AGREEMENT**, entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between the COUNTY OF SAN MATEO, hereinafter called "County," and ARTshare OF SAN MATEO COUNTY, hereinafter called "Contractor";

**WITNESSETH:**

**WHEREAS**, pursuant to Government Code, Section 31000, County may contract with independent contractors for the furnishing of such services to or for County or any Department or Agency thereof; and

**WHEREAS**, it is necessary and desirable that Contractor be retained for the purpose of coordinating countywide arts related services

**NOW, THEREFORE, IT IS HEREBY AGREED BY THE PARTIES HERETO AS FOLLOWS:**

1. **Services to be performed by Contractor.** In consideration of the payments hereinafter set forth, Contractor shall perform services for County in accordance with the terms, conditions and specifications set forth herein and in Exhibit "A," attached hereto and incorporated by reference herein, for the County of San Mateo.
2. **Contract Term.** The term of this Agreement shall commence on the date the agreement is fully executed by both parties, and shall extend through December 31, 2003, unless terminated earlier by the County. The contract term duration will be dependent on Contractor's ability to effectively carry out items listed in Exhibit "A."
3. **Payments.** In consideration of the services rendered in accordance with all terms, conditions and specifications set forth herein and in Exhibit "A", County shall make payment to Contractor in the manner specified herein and in Exhibit "B." The County reserves the right to withhold payment if the County determines that the quantity or quality of the work performed is unacceptable. In no event shall the County's total fiscal obligation under this contract exceed \$110,000.
4. **Relationship of the Parties.** Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent Contractor and not as an employee of the County and that Contractor acquires none of the rights, privileges, powers or advantages of County employees.
5. **Hold Harmless.** Contractor shall indemnify and save harmless County, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind and description, brought for, on account

of: (A) injuries to or death of any person, including Contractor, or (B) damage to any property of any kind whatsoever and to whomever belonging; (C) any other loss or cost, including but not limited to, the concurrent active or passive negligence of County, its officers, agents, employees, or servants resulting from the performance of any work required of Contractor or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which the County has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or misconduct.

The duty of Contractor to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

6. **Non-Assignability.** Contractor shall not assign this Agreement or any portion thereof to a third party without the prior written consent of County, and any attempted assignment without such prior written consent in violation of this Section automatically shall terminate this Agreement.
7. **Termination of Agreement.** The County may, at any time after ten days from execution of Agreement, terminate this Agreement, in whole or in part, for the convenience of the County, by giving written notice specifying the effective date and scope of such termination. In the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and materials (hereafter referred to as materials) prepared by Contractor under this Agreement shall become the property of the County and shall be promptly delivered to the County. Upon termination, the Contractor may make and retain a copy of such materials. Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that portion of the full payment which is determined by comparing the work/services completed to the work/services required by the Agreement.
8. **Insurance.** The Contractor shall be required to obtain all insurance required under this paragraph within thirty (30) days after the execution of this Agreement. The Contractor shall furnish the County Manager with certificates of insurance evidencing the required coverage, and there shall be a specific contractual liability endorsement extending the Contractor's coverage to include the contractual liability assumed by the Contractor pursuant to this Agreement. These certificates shall specify or be endorsed to provide that thirty (30) days' notice must be given, in writing, to the County Manager of any pending change in the limits of liability or of any cancellation or modification of the policy.

(1) **Liability Insurance.** The Contractor shall take out and maintain during the life of this Agreement such Bodily Injury Liability and Property Damage Liability Insurance as shall protect him/her while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from contractor's operations under this Agreement, whether such operations be by himself/herself or by any sub-contractor or by anyone directly or indirectly employed by either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall be not less than the amount specified below.

- |     |                                   |              |
|-----|-----------------------------------|--------------|
| (a) | Comprehensive General Liability   | \$ 1,000,000 |
| (b) | Motor Vehicle Liability Insurance | \$ 1,000,000 |

County and its officers, agents, employees and servants shall be named as additional insured on any such policies of insurance, which shall also contain a provision that the insurance afforded thereby to the County, its officers, agents, employees and servants shall be primary insurance to the full limits of liability of the policy, and that if the County or its officers and employees have other insurance against the loss covered by such a policy, such other insurance shall be excess insurance only.

In the event of the breach of any provision of this section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, the County of San Mateo at its option, may, notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

9. **Compliance with laws; payment of Permits/Licenses.** In performing the services described in Exhibit "A", Contractor will comply with all applicable federal and state laws and regulations, and county ordinances. Contractor shall obtain any license, permit, or approval if necessary from any agency whatsoever for the work/services to be performed, at his/her own expense, prior to commencement of said work/services or forfeit any right to compensation under this Agreement.

10. **Non-Discrimination.**

- A. *Section 504.* Contractor shall comply with §504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this contract (this paragraph needed only if services provided to members of the public).
- B. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this agreement.
- C. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
- D. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
- i) termination of this Agreement;
  - ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii) liquidated damages of \$2,500 per violation;
  - iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine

Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contractor between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

- E. *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.
- 11. **Retention of Records.** Contractor shall maintain all required records for three years after the County makes final payment and all other pending matters are closed, and shall be subject to the examination and/or audit of the County, a Federal grantor agency, and the State of California.
- 12. **Merger Clause.** This Agreement, including Exhibit "A" attached hereto and incorporated herein by reference, constitutes the sole Agreement of the parties hereto and correctly states the rights, duties, and obligations of each party as of this document's date. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this document are not binding. All subsequent modifications shall be in writing and signed by the parties. In the event of a conflict between the terms, conditions, or specifications set forth herein and those in Exhibit "A" attached hereto, the terms, conditions, or specifications set forth herein shall prevail.

IN WITNESS WHEREOF, the parties hereto, by their duly authorized representatives, have affixed their hands.

**COUNTY OF SAN MATEO**

By: \_\_\_\_\_  
*President, Board of Supervisors*

Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_

Clerk of Said Board

**ARTshare OF SAN MATEO COUNTY**

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

**Exhibit A**  
**Services to be Performed by Contractor/Arts Partner**

1. In consideration of the payments set forth in Attachment B, Contractor shall serve as the County's Arts Partner and shall provide the following services in the County of San Mateo:

- A. Promote, support and encourage the arts and cultural activities.
- B. Provide excellent customer service to the residents of the County by ensuring that information about the arts is readily available upon request.
- C. Maintain the County Government Center Gallery with visual works of arts created by citizens of the County. The month of April will be reserved for the County's Child Abuse Awareness Prevention Month and Earth Day Poster Contest activities.
- D. Raise funds to finance arts in education, grants for artists, outreach, public art exhibits and other visual and performing arts programs;
- E. Prepare and distribute a monthly calendar of arts/cultural events. This publication should be distributed to local libraries, newspapers, Convention & Visitors Bureau, city chambers and other appropriate arts organizations.
- F. Maintain a website to include a calendar of events/newsletter, listings of local arts organizations and "places to visit" which should include museums, theaters, musical venues and other cultural events/facilities.
- G. Work closely with all arts organizations in the County of San Mateo, which contractor is aware of or which are designated by County, to ensure communication and collaboration. This will involve hosting, along with the County's Arts Commission, an annual meeting with all arts organizations.
- H. Within the first six months of the contract, begin planning and coordinating an annual Countywide festival to showcase artists and arts organizations for the community. The type of event should be coordinated with the Arts Commission.
- I. Serve in an advisory capacity, provide assistance in all areas of the arts and administer programs and project when requested by the County's Arts Commission and/or the Board of Supervisors.
- J. Continue to provide technical assistance to arts organizations by holding workshops and featured guest speakers.
- K. Partner with the County's Arts Commission to develop, implement and update the County's Arts Strategic/Cultural Plan.
- L. At least one ARTshare Board of Directors representative shall attend all monthly meetings held by the County's Arts Commission.

M. Make recommendations to the Arts Commission regarding the distribution of public funds for the arts.

2. In addition to the service requirements (A-M), Contractor will be required to submit an annual application to the California Arts Council's State Local Partnership Program for state funds. Contractor will be required to meet all CAC FY 2002-03 requirements prior to submitting application to CAC in May 2002. Some of the minimum requirements include: accessible office space, operating during business hours, hiring a paid full-time Executive Director and having a cultural plan (with community input) in place.

ARTshare shall submit its completed State Local Partnership Program application materials to the County Arts Commission prior to submittal to the state.

**Exhibit B**  
**Payment Schedule**

In consideration of the services provided by Contractor in Exhibit A, County shall pay Contractor based on the following fee schedule:

<b>FY 2001-02</b>	\$27,500 (for services provided January 2002 through June 2002)
<b>FY 2002-03</b>	\$27,500 (for services provided July 2002 through December 2002)
	\$27,500 (for services provided January 2003 through June 2003)
<b>FY 2003-04</b>	\$27,500 (for services provided July 2003 through December 2003)

Contractor shall provide the County's Arts Commission with mid-year status and year-end reports outlining performance relating to Exhibit A of this Agreement. The term of this agreement is from January 2002 to December 31, 2003. Total payment of services provided under this agreement shall not exceed \$ ONE HUNDRED TEN THOUSAND (\$110,000).

Based on a semi-annual review of Contractor's ARTshare's performance, the County Arts Commission will make a recommendation to the Environmental Services Agency as to whether to authorize payments. All invoices, with the exception of the first, should be sent to the Environmental Services Agency Director, 4<sup>th</sup> Floor, 455 County Center, Redwood City, CA 94063. The first invoice in the amount of \$27,500 should be sent to the County Manager's Office, 1<sup>st</sup> Floor, 400 County Center, Redwood City, CA 94063.