

COUNCIL AGENDA: MAY 21, 2013

SUBJECT: WILDPLACES MURAL MAINTENANCE AGREEMENT

SOURCE: PARKS AND LEISURE SERVICES DEPARTMENT

COMMENT: City Council gave direction to the Library and Literacy Commission and staff to develop a mural maintenance agreement when the mural project with WildPlaces was approved.

The City Attorney has reviewed and prepared the document for official endorsement.

RECOMMENDATION: That the City Council approve the mural maintenance agreement with WildPlaces, and authorize and direct the Mayor to execute the same.

ATTACHMENT: Mural maintenance agreement

MS Director

NB Appropriated/Funded

[Signature] City Manager

ITEM NO.: 9

WildPlaces Mural Maintenance Agreement

Recognizing the value to the community, the following agreement has been adopted by the City of Porterville ("City") and the WildPlaces Organization ("WP"). This Agreement establishes policies regarding the construction, maintenance and repairs of the "Wildplaces" mural located on the north/west side of the Library Facility at 41 West Thurman Avenue, Porterville California.

A. Term.

This Agreement shall be in effect for five (5) years beginning _____, 2013, and ending _____ day, 2018. At the completion of five (5) years, the Agreement shall be reviewed by both parties, and may be extended or amended upon mutual consent and in writing.

B. Indemnification and Insurance

1. To the fullest extent permitted by law, WP agrees to indemnify, defend and hold the City of Porterville, and all employees, officers and its representatives free and harmless from any liability arising from or related to WP participation in carrying out the Agreement or its maintenance activities. The City acknowledges that WP is responsible for, among other things, the quality of work and/or any claim related to the work by any third party including but not limited to the artist. WP acknowledges that the mural once completed shall be owned by the City, and therefore the City shall release and hold WP harmless for any claims by third parties for damages related to the completed mural, so long as and to the extent said claims are not related to WP maintenance or other activities per this Agreement.
2. Once the construction of the mural is completed and has been accepted by the City, the City shall provide insurance coverage, in an amount and form it deems sufficient, for WP for its maintenance activities.

C. Rights and Responsibilities of the Committee

1. Upon completion, the mural shall be the property of the City.
2. No conceptual changes are to be made to the approved original image without prior City Council approval.
3. WP agrees that it shall preserve the integrity of the wall and not alter, damage, obstruct or remove the mural. The City agrees to not alter, damage, obstruct or remove the mural without written notification sixty (60) days prior to WP.
4. WP covenants and agrees, for itself, its successors, and its assigns that it will keep the property walls (front and back) free of graffiti. Any repairs, costs and expense shall be the responsibility of WP. WP shall also be responsible for the continued maintenance of the graphic integrity portion (paint) of the mural including periodic coatings to protect against weathering from the elements and vandalism. WP further agrees to immediately initiate any needed repairs within forty eight (48 hours) of notice of the occurrence of graffiti or other damages to the mural, and WP further agrees to

complete the repairs within a reasonable time. Finally, WP agrees to maintain a reasonable maintenance fund for the provision of timely repairs and maintenance.

5. If either party breaches this Agreement, the other party may give written notice of any alleged breach and the party receiving notice shall have ten (10) days from the date of such notice within which to cure the breach, unless the parties agree that a longer time period is necessary. If the breach is not cured within the 10 day period (or a longer period if agreed to by the parties), the party having given notice may terminate the Agreement with written notice of termination. Additionally, either party may terminate this Agreement without cause upon ninety (90) days notice to the other party.
6. This document contains the entire agreement of the parties and shall not be amended except by a writing executed by both parties.
7. This Agreement is entered into and to be performed in Tulare County, California.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement of the day and year first above written.

CITY

Virginia R. Gurrola, Mayor City of Porterville

Date

WILD PLACES

Carlos Gomez, Wild Places Organization
Program Manager

Date

APPROVED AS TO FORM:

Julia Lew, City Attorney

Date