

**MEMORANDUM OF UNDERSTANDING
BETWEEN
LIBERTY UNION HIGH SCHOOL DISTRICT
AND THE CITY OF BRENTWOOD**

This Memorandum of Understanding (“MOU”) is entered this ____ day of _____, 2024 (“Effective Date”), by and between Liberty Union High School District (“District”) and the City of Brentwood, a municipal corporation of the State of California (“City”) (each a “Party” and collectively, the “Parties”).)

RECITALS

A. The City desires to support the District’s Public Art and Design Academy through the available public art acquisition fund.

B. The City desires sculptures in the planter box on the corner of Sand Creek Road and O’Hara Avenue in Brentwood, CA (“Project”) by the students of the Public Art and Design Academy of Liberty High School.

C. The sculptures’ goal is to compliment the Tri-Fish Sculpture installed in June 2024, in a stunning and natural way based on how nature operates.

D. The Parties desire to memorialize their relationship in this MOU and to set forth their respective roles and obligations related to the City’s support of the Project.

NOW, THEREFORE, IT IS HEREBY AGREED by the Parties as follows:

1. Responsibilities of the District. Along with the terms and conditions of this MOU, the District agrees to be responsible for and complete those items set forth in the attached Exhibit B, which is incorporated herein by this reference.

2. Responsibilities of the City. Along with the terms and conditions of this MOU, the City agrees to be responsible for and complete those items set forth in the attached Exhibit C, which is incorporated herein by this reference.

3. Relationship of the Parties. It is understood that this is a MOU by and between independent contractor(s) and is not intended to, and will not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or association, or any other relationship whatsoever other than that of independent contractor.

4. Term. This MOU will commence on the Effective Date and, unless extended or terminated earlier pursuant to this MOU, will terminate August 31, 2025.

5. Indemnity. Except as to the sole negligence or willful misconduct of the District, City will defend, indemnify and hold the District, its officers, agents and employees, harmless from any and all loss, damage, claims, demands, liability, expense or cost, including reasonable attorneys’ fees, which arises out of, or is in any way connected with the performance of, the services by City or any of City’s employees, agents or subcontractors, notwithstanding that the District may have benefited from their services.

Except as to the sole negligence or willful misconduct of City, the District will defend, indemnify and hold City, its officers, agents and employees, harmless from any and all loss, damage, claims, demands, liability, expense or cost, including reasonable attorneys' fees, which arises out of, or is in any way connected with the performance of, the services by the District or any of the District's employees, agents or subcontractors, notwithstanding that City may have benefited from their services.

The duty of the Parties to indemnify and save harmless as set forth herein, will include the duty to defend as set forth in Section 2778 of the California Civil Code. This Section 5 will survive the expiration of this MOU.

6. Insurance. Each Party will maintain comprehensive general liability insurance in the amount of two million dollars (\$2,000,000) combined single limit to protect the Parties, their officers, employees and agents against claims for bodily injury, and property damage arising from the any Party's participation in the activities described herein. The form of such insurance will be satisfactory to each Party and may include self-insurance at levels acceptable to the Parties. Each Party's policy or policies will name the other Party as additional insured. This Section 6 will survive the expiration of this MOU.

7. Ownership Rights.

A. Copyrights.

1) Students and/or their parent or legal guardian ("Students") and District shall retain all copyrights in and to any work(s) created under this MOU, provided that Students grant to City, by separate instrument, an irrevocable license to graphically depict the work for any non-commercial purpose whatsoever. For the purposes of this limitation, the graphic depiction of the work(s) on materials designed to promote City shall be deemed to be a non-commercial use. City shall not be responsible for any third party infringement of Students' or District's copyright. City reserves the right to post the Project art on the City of Brentwood's website and in marketing publications.

2) If for any reason the Project, or any portion thereof, is not implemented, all rights to the proposed work shall be retained by Students and District.

3) District agrees that all work performed under this MOU shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the State of California and the United States. District hereby represents and warrants that the work does not, and District has not and will not, utilize any photographs, patent, trademark or copyright in performance under this MOU unless and until District has obtained proper permission and all releases and other necessary documents. If District specifies any material, equipment, process or procedure which is protected, District shall disclose such patents, trademarks and copyrights in the construction drawings and technical specifications, such listing to be appended to this MOU and shall be incorporated by this reference.

4) District agrees to release, indemnify, defend and save harmless City, its officers and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind resulting from the performance under this MOU which infringes upon any patent, trademark or copyright or other right protected by law.

B. District Moral Rights; City Ownership Rights.

1) City intends to make its best efforts to display the work at the project site as originally created by Students and District and to maintain the work in good condition. However, City must preserve complete flexibility to operate and manage City properties. Therefore, subject to its obligation to make good-faith efforts to consult with Students as set forth in subparagraph (B)(3) below, City retains the absolute right to alter, repair, modify, remove, relocate, sell, dispose of, or destroy (collectively, "Modify") the work in its sole judgment. For example, City may modify the work to eliminate hazards, to comply with the ADA, to otherwise aid in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, City finds the project site to be inappropriate, City has the right to install the work at an alternate location that it chooses in its sole reasonable discretion.

2) With respect to the work produced under this Agreement, except as otherwise set forth herein, District waives any and all claims, arising at any time and under any circumstances, against City its officers, agents, employees, 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, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the work is incorporated into a building such that the work cannot be removed from the building without physical defacement, mutilation, alteration, distortion, destruction, or other modification (collectively, "Modification") of the work, District waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for Modification of the work.

3) Where time permits, prior to and Modification of the work, City shall make reasonable good faith efforts to notify and consult with Students, at the last phone number or address provided by Students to the City, and to come to a mutually agreeable plan for disposition of the work. Such consultation shall be without charge by Students unless otherwise specifically agreed in writing. If the work is modified and City intends to maintain the work on display, City shall make a reasonable good faith effort to engage Students in the restoration of the work and to compensate Students for Students' time and efforts at fair market value, which may be the subject of a future Agreement between Students and City. However, City has no obligation under this Agreement to restore the work or to compensate Students for any restoration work. If City Modifies the work without Students' consent in a manner that is prejudicial to Students' reputation, Students retain the right to disclaim authorship of the work in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

4) Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of City, District retains District's moral rights in the work, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent District from pursuing a claim against a third party who is not an officer, employee, agent, successor or assign of City for Modification of the work. City has no obligation to pursue claims against third parties to remedy or prevent Modification of the work. However, as owner of the work, City may pursue claims against third parties for damages or to restore the work if a Modification of the work has occurred without City's authorization.

8. Non-discrimination. The Parties will comply with all applicable local, state and federal laws and regulations prohibiting discrimination and harassment.

9. Entire Agreement. This MOU and its Exhibits set forth and contain the entire understanding and agreement of the Parties, and all oral or written representations, understandings or agreements are expressly stated in this MOU. No testimony or evidence of any such representations, understandings, or covenants will be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this MOU.

10. Amendments. Changes to the terms and conditions of this MOU will be made only by written amendment signed by the Parties.

11. Notices. All notices with respect to this MOU will be given by first class mail to the parties as follows:

City: City of Brentwood
Attention: Director of Parks and Recreation
150 City Park Way
Brentwood, CA 94513

District: Liberty Union High School District
Attention: Superintendent of Schools
20 Oak Street
Brentwood, CA 94513

Or to such other persons, addresses or telephone numbers as the Parties may designate in writing from time to time.

12. Termination. Either Party may terminate this MOU, by delivery of written notice of election to terminate to the other Party. In the event of termination and in addition to the requirements of Exhibit B, any unexpended funds will be returned to the Party that has contributed them.

13. Assignment. Neither Party will assign any right or obligation pursuant to this MOU without the written consent of the other Party. Any attempted or purported assignment without the written consent of the other Party will be void and of no effect.

14. Jurisdiction and Venue. Any action at law or in equity brought under this MOU for the purpose of enforcing a right or rights provided for by this MOU will be tried in a court of competent jurisdiction in the County of Contra Costa, State of California, and the Parties waive all provisions of law providing for a change of venue in these proceedings to any other county.

15. Paragraph Headings. Paragraph headings as used herein are for convenience only and will not be deemed to be a part of such paragraphs and will not be construed to change the meaning thereof.

16. Waiver. Waiver by either Party of any default, breach or condition precedent will not be construed as a waiver of any other default, breach or condition precedent or of any other right under this MOU.

17. Severability. If any term, provision, covenant, or condition of this MOU is ruled invalid, void, or unenforceable by a court of competent jurisdiction, this MOU will nonetheless remain in full force and effect as to all remaining terms, provisions, covenants, and conditions.

18. Authority. The individuals executing this MOU represent and warrant that they have the right, power, legal capacity and authority to enter into and to execute this MOU on behalf of the respective legal entities of the Parties.

19. Signatures.

19.1 Counterparts. This MOU may be executed in two or more counterparts, each of which together will be deemed an original, but all of which together will constitute the same instrument.

19.2 Digital/Electronic Signatures. Using a City-approved method, this MOU may be executed using digital or electronic signatures in accordance with Government Code Section 16.5. The presence of an electronic signature on this MOU will be construed as the Parties' consent to do business electronically.

Liberty Union High School District:

City of Brentwood:

By: _____
Denise Rugani, Superintendent

By: _____
Tim Y. Ogden, City Manager

ATTEST:

By: _____
Amanda McVey, Interim City Clerk

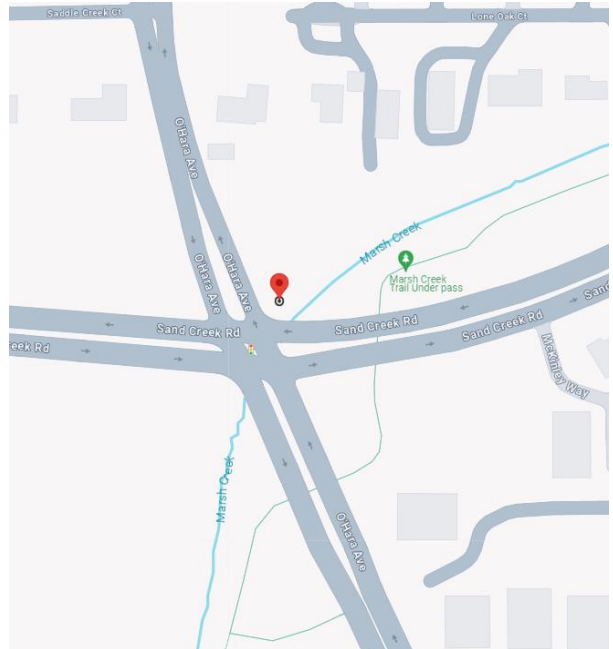
APPROVED AS TO FORM:

By: _____
Katherine Wisinski, City Attorney

Exhibit A Project Description

The sculptures entitled “Birds of Beauty” will be installed in the planter box on the corner of Sand Creek Road and O’Hara Avenue in Brentwood, CA. This year, drawing inspiration from the 2024 Tri-Fish sculpture that was installed in this same location, the goal of PADA is to create a beautiful art piece that complements the Tri-Fish Sculpture in a stunning and natural way based on how nature operates.

Location of Sculptures



Sculptures Rendering



Exhibit B
District Responsibilities

1. Provide students for the Project.
2. The sculptures will be installed in the planter box on the corner of Sand Creek Road and O'Hara Avenue in Brentwood, CA (as described in Exhibit A).
3. Provide adult faculty supervision for the duration of the Project.
4. Purchase supplies and equipment needed for Project in the amount of \$18,630.
5. Ensure that Students and their parents or legal guardians sign an Ownership Rights Form related to the project.

Exhibit C
City Responsibilities

1. Approve safety plan for the sculptures during the Project.
2. Pay \$18,630 for supplies and equipment.
3. The City will contribute up to \$5,000 for City staff to provide the transportation and installation of the art as well as to complete the landscaping in the planter.
4. Transport and install sculptures and complete the landscaping for the Project.
5. Accept long-term maintenance and insurance of the sculpture, but City retains the absolute right to alter, repair, modify, remove or destroy the Project in its sole judgment pursuant to the terms of the MOU.