

**EXHIBIT A**  
**AGREEMENT FOR COMMISSION OF MURAL ART WORK**  
**(SAN PABLO CITY HALL)**

THIS AGREEMENT FOR MURAL ART WORK (hereinafter "Agreement") is made and entered into by and between City of San Pablo ("CITY"), and \_\_\_\_\_ ("ARTIST").

**RECITALS**

- A.** Whereas, CITY sought proposals from qualified professional muralists to design and install two (2) permanent mosaic murals for the new San Pablo City Hall located at 1000 Gateway Avenue, San Pablo, CA 94806 ("Site"), the designs and locations of which are described in the City of San Pablo's Request for Qualification and Request for Proposal ("RFP"), attached hereto as Exhibit "A."
- B.** Whereas, ARTIST is an artist who submitted a proposal to design, execute, fabricate the murals; and
- C.** CITY desires to retain ARTIST to create two murals as described further in this Agreement.

**NOW THEREFORE, THE PARTIES MUTUALLY AGREE AS FOLLOWS:**

**1. Scope of Work.**

Pursuant to the terms and conditions of this Agreement, ARTIST is hereby retained to perform all services and furnish all supplies, materials, and equipment necessary for the design, execution, and fabrication of the two mosaic murals (also called "the Work"), including preliminary sketches, models and drawings, generally described as follows:

- a. The first mosaic mural is to be located on the exterior wall of the building with a theme capturing the fabric of San Pablo by including the local community as its inspiration.
- b. The second mosaic mural will be a rendering of the City of San Pablo logo, to be located inside the lobby main entrance of the building.

The required medium for both mosaics will be mosaic tile (consisting of glass, ceramic or other appropriate material). The Work shall be executed in a manner substantially in conformance with the Proposal (the "Proposal") submitted by ARTIST, attached hereto as Exhibit "B." CITY's Request for Qualification and Request for Proposal, which outlines the scope of services and work under this Agreement, is attached hereto as Exhibit "A". In case of any conflict between these documents, the Request for Qualification and Request for Proposal shall take first precedence over the ARTIST's Proposal.

**2. Execution of the Work.**

- a. This Agreement is expressly contingent upon approval of the Work by the City Council of the City of San Pablo. Within thirty (30) days after such approval, ARTIST shall furnish to CITY a tentative schedule for completion of the Work, which shall not exceed Ninety (90) days from the issuance of a Notice to Proceed. After written approval of the schedule by

CITY, ARTIST shall execute the Work in accordance with such schedule. The schedule may be amended by written agreement between CITY and ARTIST.

- b. Time is of the essence. CITY shall have the right to review the Work at reasonable times during the execution thereof. ARTIST shall submit to CITY requested progress reports in accordance with the approved schedule.
- c. ARTIST must coordinate installation of WORK with CITY architects and contractors at ARTIST's expense. ARTIST must secure all required licenses, permits and similar legal authorizations at the ARTIST'S expense as may be necessary for the installation of the artwork at the SITE.
- d. ARTIST is required to inspect SITE, at its cost, prior to the transportation and installation of the WORK and shall notify the CITY of any adverse SITE conditions that will impact the installation of the WORK. Failure to do so by ARTIST shall be deemed as an acceptance of the SITE conditions.
- e. Field meetings and installation drawings may be required in order to prepare for final installation. Installation drawings shall take into account all municipal and state building codes and will also be reviewed by CITY Project Manager in order to prepare for final installation.
- f. Installation of WORK shall be required to meet all municipal and state building codes and obtain inspection approval from CITY Project Manager. If installation does not meet inspection criteria, ARTIST at its own cost shall continue working until such time as approval is obtained from CITY Project Manager. Final placement of the WORK must be approved by the Project Manager prior to installation.
- g. CITY may grant a reasonable extension of time to ARTIST in the event that there is a delay on the part of CITY in performing its obligations under this Agreement or in preparing the Site for the installation of the murals. Reasonable extensions may also be given if conditions beyond ARTIST's control render timely performance of Work impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond any party's control will not be considered a breach of this Agreement provided that such obligations shall be suspended only for the duration of such conditions. ARTIST shall be entitled to no additional compensation for such delays.
- h. ARTIST shall present to CITY in writing for further review and approval any significant changes to the Work differing from or in substantive nonconformity with the Proposal. A significant change is any modification in the scope, design, color, size, material, texture, or location of the Work which affects installation, scheduling, Site preparation, maintenance, or concept of the Work as presented in the Proposal. If CITY disapproves such changes, it shall provide ARTIST with a written statement of its reasons for such disapproval. In such event, ARTIST may then submit a second submission within thirty (30) days, or the Agreement shall terminate. Within thirty (30) days following any such re-submission by ARTIST, if CITY determines that the second submission is disapproved, it shall notify ARTIST with a statement in writing of its reasons for disapproval, whereupon this Agreement shall terminate and City shall make no further payments to ARTIST.
- i. CITY may, from time to time, desire to make changes to the services under this Agreement or WORK. If ARTIST agrees to the request for such change, this Agreement may be

amended by the CITY, in writing, specifying the changes including, without limitation, a description of services, budget, payment, and schedule which shall be effective upon its execution by the parties. Should ARTIST disagree to the request, CITY may terminate the Agreement.

### **3. Final Acceptance.**

- a. ARTIST shall advise CITY in writing when all required services for execution of the Work have been completed in substantial conformity with the Proposal.
- b. CITY shall notify ARTIST in writing of its final acceptance or non-acceptance of the Work.
- c. Final acceptance is effective on the date of CITY's notification of final acceptance, or 45 days after ARTIST has sent CITY written notice of completion, whichever first occurs; unless CITY upon receipt of ARTIST's notice provides ARTIST, before 45 days have elapsed, with written notice specifying and describing any uncompleted services.

### **4. Risk of Loss.**

The risk of loss or damage to the Work shall be borne by ARTIST until final acceptance, and ARTIST shall take such measures as necessary to protect the Work from loss or damage until final acceptance.

### **5. Indemnity.**

- a. Prior to final acceptance of the Work, and after such acceptance at any and all times ARTIST is actively working at the Site (e.g., while doing repair work or work related to removal of mural), ARTIST shall indemnify, defend, and hold CITY, its officers, employees, and volunteers, harmless against any and all claims, losses, liabilities, and judgments arising out of or caused by the acts or omissions of ARTIST in connection with the performance of this Agreement.
- b. ARTIST shall indemnify, defend, and hold harmless the CITY, and its officers, agents, and employees from and against any and all claims (including all litigation, demands, damages, liabilities, costs, and expenses) resulting from or arising out of any infringement of patent rights, trade dress, trade secret, copyrights or any proprietary right or trademark and all other intellectual property claims of any third party persons concerning the Work. ARTIST's indemnification shall include any and all costs, expenses, court costs, attorneys' fees and liability incurred by CITY in enforcing the provisions of this section, and in defending against such claims, whether the same proceed to judgment or not. ARTIST shall reimburse CITY for any expenditures CITY incurs by reason of such matters. This indemnity provision shall survive the expiration or other termination of this Agreement.

### **6. Insurance.**

- a. ARTIST shall submit and maintain in full force all insurance as described herein. Without altering or limiting ARTIST's duty to indemnify, ARTIST shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance including but not limited to premises, personal injuries, bodily injuries, products, and completed operations, with a combined single limit of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.

Commercial automobile liability insurance covering all automobiles, including owned, leased, non-owned, and hired automobiles, used in providing services under this Agreement, with a combined single limit of not less than \$1,000,000 per occurrence.

Workers' Compensation Insurance. In accordance with California Labor Code section 3700 for employer's liability in an amount not less than \$1,000,000 per occurrence, if ARTIST has employees.

b. Other Insurance Requirements

All insurance required under this Agreement must be written by an insurance company either: admitted to do business in California with a current A.M. Best rating of no less than A:VI; or an insurance company with a current A.M. Best rating of no less than A: VII. Exception may be made for the State Compensation Insurance Fund when not specifically rated.

Each insurance policy required by this Agreement shall be endorsed to state that CITY shall be given notice in writing at least thirty days in advance of any cancellation thereof, except 10-day notice for nonpayment of the premium.

The general liability and auto policies shall provide: an endorsement naming the City of San Pablo, its officers, officials, and employees as additional insureds; that such insurance is primary and non-contributing insurance to any insurance maintained by CITY; and a waiver of any subrogation rights against CITY via an ISO CG 24 01 10 93 or its equivalent.

- c. Prior to the execution of this Agreement, ARTIST shall file certificates of insurance and endorsements evidencing the coverage required by this Agreement with CITY. ARTIST shall file a new or amended certificate of insurance promptly after any change is made in any insurance policy which would alter the information on the certificate then on file.
- d. Neither the insurance requirements hereunder, nor acceptance or approval of ARTIST's insurance, nor whether any claims are covered under any insurance, shall in any way modify or change ARTIST's obligations under the indemnification clause in this Agreement, which shall continue in full force and effect. Notwithstanding the insurance requirements contained herein, ARTIST is financially liable for its indemnity obligations under this Agreement.
- e. Any deductibles or self-insured retentions must be declared to and approved by CITY.

**7. Consideration.**

In addition to the consideration of abiding by the terms of this Agreement, CITY shall pay to ARTIST a fixed fee of \_\_\_\_\_ as full compensation for all services to be performed and materials to be furnished by ARTIST under this Agreement. The fee shall be paid in the following installments; each installment represents full, final, and non-refundable payment for all services and materials provided prior to the due date thereof:

- a. Twenty percent (20%) upon execution of this Agreement for supplies and start-up costs and recognizing ARTIST has already invested time and expense in preliminary design coordination with CITY.
- b. Thirty percent (30%) within ten (10) days after CITY confirms one-half of the Work has been completed. ARTIST shall notify CITY the Work has reached mid-completion and provide any documentation necessary for CITY to make its required confirmation.
- c. Fifty percent (50%) within ten (10) days after final acceptance.

## **8 Artist's Expenses.**

ARTIST shall be solely responsible for payment of all mailing or shipping charges for submissions to CITY, and for costs of all travel by ARTIST and ARTIST's agents and employees necessary for proper performance of the services required under this Agreement.

## **9. Term.**

This Agreement shall commence upon signature of all parties and shall continue until the WORK is accepted by CITY, unless otherwise terminated by CITY at its convenience following thirty (30) days advance written notice to ARTIST.

## **10. Warranties of Title, Quality and Condition.**

ARTIST represents and warrants that:

- (a) the Work is solely the result of ARTIST's artistic effort;
- (b) except as otherwise disclosed in writing to CITY, the Work is unique and original and does not infringe upon any copyright;
- (c) the Work, or a duplicate thereof, has not been accepted for sale elsewhere;
- (d) the Work is free and clear of any liens from any source whatsoever;
- (e) the ARTIST possesses the quality, fitness, financial resources, current workload and capacity to perform the Agreement in a manner satisfactory to CITY;
- (f) execution of the Work will be performed in a workmanlike manner;
- (g) the Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Work;
- (h) reasonable maintenance of the Work will not require procedures substantially exceeding those described in the maintenance recommendations to be submitted by ARTIST to CITY hereunder;
- (i) the Work shall meet an acceptable standard of display, including: (1) general routine cleaning and repair of the Work and any associated working parts and/or equipment will maintain the Work within an acceptable standard of public display; (2) foreseeable exposure to the elements and general wear and tear will cause the Work to experience only minor repairable damages and will not cause the Work to fall below an acceptable standard of public display; and (3) with general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Work will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling; and

- (j) the Work will not pose a danger to the safety of persons or property in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement; and ARTIST agrees to cooperate with CITY in making or permitting adjustment to the Work if necessary to eliminate hazards that become apparent after the Work is accepted by CITY.

The warranties described in this Section 10 shall survive indefinitely with the exception of subsections (g), (h) and (i) shall survive for a period of three years after final acceptance of the Work. CITY shall give reasonably prompt notice to ARTIST of any observed breach. ARTIST shall, at CITY's request and at no cost to CITY, reasonably and promptly cure the breach of any warranty which is curable by ARTIST and which cure is consistent with professional conservation standards (including e.g., cure by means of repair or refabrication of the Work).

#### **11. Ownership of Work; Maintenance.**

- a. Title to the Work shall pass to CITY upon final acceptance. CITY owns the Work and intends to display it as two mosaic murals on its new San Pablo City Hall building located at 1000 Gateway Avenue, San Pablo, CA 94806.
- b. Upon final acceptance, all studies, drawings, designs, maquettes, and models prepared and submitted under this Agreement shall be conveyed to CITY and become the property of CITY. CITY represents such drawings, designs, maquettes, and models will be used by CITY solely for exhibition and reference.
- c. CITY shall have the absolute right to repair, restore, alter, modify, remove, relocate and transport the WORK. CITY shall have no obligation to display or maintain the Work for any particular time and CITY reserves the right to remove or destroy the Work at any time. ARTIST understands and agrees that the Work when installed will be incorporated within and made a part of the Site in such a way that removing the Work from the Site or the destruction or modification of the Site may cause the destruction, distortion, mutilation or other modification of the Work. ARTIST hereby waives any and all rights ARTIST may have to prevent or cause the prevention of the removal or destruction of the Work, or to seek any other relief in connection with any such removal or destruction, pursuant to 17 U.S.C. §106A or pursuant to California Civil Code §987, as such sections now exist or may hereafter be amended.
- d. If CITY intends to modify the Work for continued public display beyond repairs, restoration or relocation, it shall make reasonable efforts to notify and consult with ARTIST at the address provided in this Agreement. Such consultation shall be without charge by ARTIST unless specifically agreed in writing. If CITY modifies the Work without ARTIST's consent in a manner that is prejudicial to ARTIST's reputation, ARTIST retains the right to disclaim authorship of the Work in accordance with California City Code §987(d) and 17 U.S.C. §106A(a)(2).2.
- e. To the extent this Agreement is inconsistent with 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 other type of moral right protecting the integrity of works of art (the "Laws"), this Agreement shall control. With respect to the Work produced under this Agreement, and

in consideration of the procedures and remedies specified in this Agreement, ARTIST waives any rights to preservation of the Work provided by the Laws and CITY, its officers, agents employees, successors and assigns, shall have no liability to ARTIST or any other person arising under the Laws. If the Work is incorporated into CITY's building such that the Artwork cannot be removed from the building without alteration of the Work, ARTIST waives any and all such claims against any future owners of the Site, and its agents, officers and employees.

ARTIST has initialed reading and agreeing to waive any rights provided by the Laws to protect ARTIST and WORK \_\_\_\_\_

## **12. ARTIST's Copyright.**

- a. Subject to usage rights and licenses granted to CITY as set forth in this Agreement, the ARTIST shall retain all copyrights in the Work for the duration of the copyright. ARTIST may sign and place a copyright notice on the Work in the form and manner required to protect copyrights in the Work under the United States copyright law. If the copyright is registered with the U.S. Copyright Office, ARTIST shall provide CITY with a copy of the application for registration, the registration number and the effective date of the registration.
- b. ARTIST agrees to give credit substantially in the following form in any public showing of reproductions of the Work: "Original owned by the City of San Pablo."
- c. ARTIST agrees not to make any duplicate of Work so that it remains unique or to give anyone else permission to make a duplicate of Work. Nothing shall prevent Artist from creating other works in the Artist's manner and style of artistic expression.
- d. ARTIST agrees not to sell or loan any products or design related to the Work without prior written approval of CITY.

## **13. CITY's Right to Display, Reproduce.**

ARTIST grants to CITY and to CITY's agents, authorized representatives and assigns, an unlimited, exclusive and irrevocable license to do the following with respect to the Work and any original works of authorship created under this Agreement, whether in whole or in part, in all media:

- a. Implementation, Use and Display. CITY may use and display the Work.
- b. Reproduction and Distribution. CITY may make, display and distribute, and authorize the making, display and distribution of, photographs and other two-dimensional reproductions of the Work. CITY may also authorize the use of such reproductions for public art-related purposes, including fundraising for CITY's programs, advertising, educational and promotional materials, brochures, books flyers, postcards, print, broadcast, film, electronic and multimedia publicity, documentation of CITY's public art collection, and catalogues and similar publications. CITY shall ensure that such reproductions are made in a professional and tasteful manner. CITY shall credit ARTIST for the Work upon publication of any two dimensional reproductions of the Work.

- c. CITY is not responsible for any third party infringement of ARTIST's copyright and is not responsible for protecting the intellectual property rights of ARTIST.

**14. Jurisdiction and Venue.**

The interpretation, validity, and enforcement of the Agreement shall be governed by and construed under the laws of the State of California. Any suit, claim, or legal proceeding of any kind related to this Agreement shall be filed and heard in a court of competent jurisdiction in Contra Costa County.

**15. Entire Agreement.**

This Agreement comprises the entire integrated understanding between the parties. This Agreement supersedes all prior negotiations, representations, or agreements between the parties.

**16. Signatures.**

The individuals executing this Agreement represent and warrant that they have the right, power, legal capacity, and authority to enter into and to execute this Agreement on behalf of the respective legal entities of the ARTIST and CITY. This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**17. Independent Contractor.**

ARTIST shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of CITY.

**18. Assignment, Transfer, Subcontracting.**

- a. Neither CITY nor ARTIST shall assign or transfer an interest in this Agreement without the prior written consent of the other; provided, however, that claims for money due or to become due from CITY under this Agreement may be assigned to a financial institution without approval.
- b. ARTIST may subcontract portions of the services to be provided hereunder at ARTIST's sole expense; provided, however, that said subcontracting shall be carried out under ARTIST's personal supervision and shall not affect the design, appearance, or visual and physical quality of the Work.

**19. Termination.**

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner or otherwise violate any of the covenants, agreements, or stipulations material to this Agreement, then the other party shall have the right thereupon to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate and specifying the grounds for termination. The defaulting party shall have thirty days after receipt of the notice to cure the default. If default is not cured, this Agreement shall terminate.



In the event of CITY's default, CITY shall promptly compensate ARTIST for all services performed by ARTIST prior to termination. In the event of ARTIST's default, all finished and unfinished drawings, sketches, photographs, and other products prepared and submitted or prepared for submission by ARTIST under this Agreement shall at CITY's option become CITY's property; provided, however, that no right to fabricate or execute the Work shall pass to CITY and ARTIST shall not be relieved of liability to CITY for damages sustained by CITY by virtue of ARTIST's breach of this Agreement. In such event, CITY may reasonably withhold payments to ARTIST until the exact amount of damages due CITY from ARTIST is determined.

All rights of ARTIST pursuant to this Agreement shall be personal to ARTIST and shall terminate upon either the legal disability or incompetence of ARTIST or upon the death of ARTIST, except as provided ARTIST under the Copyright Laws and not inconsistent with this Agreement.

**20. Modification.**

No alteration, change, amendment, or modification of the terms of this Agreement shall be valid unless made in writing, signed by both parties hereto.

**21. Waiver.**

No waiver of performance by either party shall be construed or operate as a waiver of any subsequent default in the performance of any term, covenant, or condition of this Agreement. The payment or acceptance of fees for any period after a default shall not be deemed a waiver of any right or acceptance of defective performance.

**22. Successors and Assigns.**

This Agreement shall be binding upon and inure to the benefit of CITY and of ARTIST and of their respective heirs, personal representatives, successors, and permitted assigns.

**23. Compliance with Law.**

ARTIST warrants that it will comply with all federal, state, and local laws, ordinances, rules and regulations applicable to its performance under this Agreement. ARTIST shall obtain and maintain throughout the life of the Agreement all permits or licenses required in connection with the manufacture, sale, and shipment of the products ordered under this Agreement.

**24. Dispute.**

Should any dispute arise out of this Agreement, ARTIST may request that the City Manager or designee consider the matter and make a determination. If ARTIST object's to the City's determination, then the matter may be appealed to a court of law in Contra Costa County, unless the parties mutually agree to mediation.

**25. Audit and Inspection of Records.**

ARTIST, including his subcontractors, shall maintain records and other evidence of all expenses incurred in the performance of this Agreement for a period of three (3) years after

completion. CITY or any of its duly authorized representatives shall, for the purpose of audit and examination, have access to and be permitted to inspect such records and other evidence of expenses and costs charged to CITY related to ART WORK. For purposes of audit, the date of completion of the Agreement shall be the date of CITY'S payment for ARTIST's final billing (so noted on invoice) under this Agreement.

**25. Notices.**

Any notice necessary for performance of this Agreement, or regarding this Agreement, including remittance of payment, shall be given in writing by personal delivery or by prepaid first-class mail addressed as follows:

CITY  
City of San Pablo  
Attn: \_\_\_\_\_  
13831 San Pablo Avenue  
San Pablo, CA 94806

ARTIST  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ARTIST shall notify CITY in writing of any change of address and failure to do so shall constitute a waiver of ARTIST'S rights pursuant to this Agreement during the time such omission prevails. Any waiver of right pursuant to this Agreement for failure to maintain ARTIST's current address may be cured prospectively only by notifying the City of ARTIST's current address.

IN WITNESS WHEREOF the parties do hereby agree to the full performance of the terms set forth herein.

CITY

ARTIST

\_\_\_\_\_  
By: Matt Rodriguez, City Manager

\_\_\_\_\_

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

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

Approved as to form by:

\_\_\_\_\_  
Lynn Tracy Nerland, City Attorney

Attest:

\_\_\_\_\_  
Patricia Ponce, City Clerk