

AGREEMENT BETWEEN  
THE REDEVELOPMENT AGENCY OF THE CITY OF SAN MATEO  
MR. AND MRS. WILL HARRIS, AND  
ROBERT STRAND

THIS AGREEMENT, dated 23 May 1989 is made and entered into between the Redevelopment Agency of the City of San Mateo (hereinafter referred to as "Agency"), Mr. and Mrs. Will Harris (hereinafter referred to as "Donor"), and Robert Strand (hereinafter referred to as "Artist").

WHEREAS, Agency is now implementing an Art in Public Places Program and funds have been allocated for the placement of a sculpture to be located at the northeast corner of 2nd Avenue and Railroad Avenue (hereinafter referred to as "Work").

WHEREAS, Donor wishes to donate the Work as created by Artist, and Agency is willing and grateful to accept the Work, all as pursuant to this Agreement.

IT IS THEREFORE AGREED:

1. DONATION OF SCULPTURE

Donor and Artist shall provide and install the Work, as generally described in Appendix A hereto.

2. MAINTENANCE INFORMATION

Artist shall provide the Agency with a complete and reasonable schedule for the maintenance of the installed Work subsequent to its acceptance by the Agency on the form provided in Appendix B.

3. INSTALLATION

(a) Requirements:

Artist agrees to install the Work in conformance with all applicable laws.

(b) Schedule for Installation:

The Artist shall give the Agency no less than 15 days notice of the day installation of the Work is to begin.

ORIGINAL

(c) Site and Site Preparation:

The Artist shall install the completed Work at the northeast corner of 2nd Avenue and Railroad Avenues as described in Appendix A. All preparation of the site is the responsibility of the Artist; provided, however, that no property of the Agency or the City is modified or altered, including sidewalks, etc., without the written approval of the Agency or the City.

(d) Arrangements for Access:

Arrangements for access to the site for the installation must be made through the Agency. Access shall not be scheduled until the Agency has received a certificate of insurance evidencing responsibility as required by paragraph 5. The Artist shall provide the Agency with a written list of the workers, vehicles, and equipment which will be involved in the installation of the Work at least 15 days in advance of installation so that any necessary permits may be issued. Cost for travel to and from the site and any parking fees incurred by the Artist are the responsibility of the Artist.

(e) Structural Requirements:

The Artist shall determine as early as possible whether a base, a footing, or any other type of structural support is required for installation of the Work. The Artist is responsible for the cost and installation of any structural support required for the Work over \$5,000.

4. INSURANCE

(a) Type, Amount and Duration:

The Artist shall himself or herself and shall require the Artist's subcontractors to:

(i) Procure and maintain throughout the transportation and installation of the Work: Workers' compensation, with employer's liability insurance, with limits of no less than \$500,000 each accident. If the Artist has no employees as defined by the California Labor Code Sections 3350-3371, and the Artist submits a letter so stating, this requirement may be waived in writing by the Agency.

(ii) Procure the following insurance prior to requesting permission for access to the site for installing the Work, whichever occurs earlier, and maintain until the Work is accepted by the Agency:

(A) General liability insurance with limits of not less than \$500,000 each occurrence, combined single limit bodily injury and property damage, including coverage for contractual liability, broad form property damage, completed operations and, for any subcontracted work, independent contractors.

(B) Automobile liability insurance with limits not less than \$1 million each occurrence, combined single limit for bodily injury and property damage, including coverages for owned, non-owned and hired vehicles, as applicable.

(b) Endorsements:

Automobile and general liability insurance shall be endorsed to:

(i) Name as additional insureds the Redevelopment Agency of the City of San Mateo, the City of San Mateo, and their agents, officers and employees, whether elective or appointive.

(ii) Provide that the policies are primary insurance to any other insurance available to the additional insureds, with respect to claims arising out of this Agreement, and that the insurance applies separately to each insured against whom the claim is made or suit brought.

(iii) Provide the Agency 30 days advance written notice of cancellation, non-renewal or reduction in coverage.

(c) Certificates:

Certificates of insurance evidencing worker's compensation and fine arts coverage, and endorsements set forth above shall be furnished to the Agency before commencement of performance under this Agreement. Certificates of insurance evidencing the liability coverages and endorsements set forth above shall be furnished to the Agency at the time of the Artist's request for access to the site for installation of the Work. Upon request, the Artist shall furnish certified copies of all policies and endorsements to the Agency.

INSURANCE ISSUED TO:  
H & H SHIP SERVICE CO., INC.  
220 CHINA BASIN  
SAN FRANCISCO CA. 94107  
WILLIAM HARRIS JR., PRESIDENT  
(415) 543-4835  
ENVIRONMENTAL SERVICES DIVISION

## 5. ARTIST'S REPAIRS

### (a) General Terms

Upon written notification of a defect in materials or workmanship in the Work that is discovered within 3 years of the acceptance of the Work, Artist shall have 60 days to commence repairs and shall conclude them within a reasonable time. If the repairs are not commenced or completed within this time frame, Artist waives any right to repair and the Agency may cause the necessary repairs to be effected.

### (b) Public Safety:

The Artist warrants that the Work will not contain sharp points or edges which the Agency reasonably deems a danger to the public and agrees to cooperate in making or permitting adjustments to the Work if necessary to eliminate other hazards which become apparent within one year of the date the Work is finally accepted by the Agency.

### (c) Title:

The Donor and Artist warrant that the Work is the result of the Artist's artistic efforts and that it will be installed free and clear of any liens, claims or other encumbrances of any type.

## 6. INDEMNIFICATION

The Artist agrees to defend, indemnify and hold harmless the Redevelopment Agency of the City of San Mateo, City of San Mateo, and their members, officers, agents and employees, from and against all claims, costs and damages arising out of the installation of the Work under this Agreement; provided that in no event shall such obligation of the Artist arise if such claims, costs or damages arise solely out of the negligence, recklessness or willful misconduct of the Agency or the City or any of their members, officers, employees or agents.

The Agency and the City agree to defend, indemnify and hold harmless the Artist and the Donor from and against all claims, costs and damages arising out of the City's or the Agency's activities under this Agreement; provided that in no event shall such obligation of the City or the Agency shall arise if such claims, costs or damages arise solely out of the negligence, recklessness or willful misconduct of the Artist or Donor.

## 7. AGENCY CONTRIBUTION

Agency shall provide a total of \$5,000 to Artist to provide a contribution to the costs and expenses of installing the Work. The consideration provided by this Agreement is the sole and full compensation to be paid by the Agency or the City for the Work, including installation, and the performance of the other obligations contained in this Agreement, unless otherwise explicitly provided herein.

## 8. EXCUSE OR SUSPENSION OF CONTRACTUAL OBLIGATIONS

The parties shall be excused from performing an obligation under this Agreement if performance of that obligation is prevented by a condition beyond the control of the parties, such as an act of God, a war, a public emergency, adverse weather conditions, or a strike or other labor disturbance. An obligation affected by a condition beyond the control of the parties shall be suspended only for the duration of the condition. Both parties shall take all reasonable steps to assure performance of their contractual obligations when the condition no longer exists.

## 9. FINAL ACCEPTANCE BY THE AGENCY

### (a) Adoption of Resolution of Acceptance

The Work shall be finally accepted by the Agency when the Agency adopts a resolution finding:

- (i) The Artist transported the Work to and installed the Work at the site; and
- (ii) That the Artist is in substantial compliance with the other terms of this Agreement which the Agency has not expressly waived in writing.

### (b) Waiver of Installation:

If for any reason the Agency waives the Artist's obligation to transport and install the Work at the site, the Agency shall so notify the Artist in writing, and the Agency's obligation to provide \$5,000 shall be fully excused. If the \$5,000 has already been paid to the Artist, the Artist shall immediately return the \$5,000 to the Agency.

10. TITLE AND RISK OF LOSS

Title to the Work passes to the Agency when the Work is accepted by the Agency. The Donor and the Artist bears the risk of damage to or loss of the Work until title passes to the Agency.

Prior to acceptance, Artist shall also provide the Agency with drawings and specifications that will fully inform the Agency of the actual materials and processes used in the fabrication and installation of the Work to enable the Agency to properly repair and maintain the Work. Title to such drawings and specifications shall be considered a part of the Work and shall be transferred upon acceptance by the Agency.

11. COPYRIGHT

(a) General:

The Artist or the Donor may 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, the Artist or the Donor, as applicable, shall provide the Agency with a copy of the application for registration, the registration number, and the effective date of registration. Except as provided in this Agreement, the Artist or Donor, as they may agree, retains all copyrights to the Work.

(b) Display:

The Artist and the Donor hereby grants the Agency the exclusive right to display the Work and to loan the Work to other persons or institutions with authority to display it publicly. The Agency shall ensure that the Artist's name and the Donor's names remain publicly displayed on, at, or near the Work for so long unless the Artist or the Donor requests that his/her name be removed.

(c) Reproductions:

The Artist and the Donor hereby authorize the Agency to have photographs and other two-dimensional reproductions of the Work made for educational, public relations, arts promotional, and other non-commercial purposes. For the purposes of this Agreement, the following are deemed to be reproductions for non-commercial purposes: reproduction in exhibition catalogues, books, slides, photographs, postcards, posters and calendars; in art magazines, art books, and art and news sections of newspapers; in general

(e) Any reproduction, photo, poster etc. whether non-commercial or royalty sale, shall bear a written credit as to the sculptor ROBERT STRAND.

books and magazines not primarily devoted to art but of an educational, historical or critical nature; slides and film strips not intended for a mass audience; and television programs for educational purposes. On any and all such reproductions, the Agency shall place a copyright notice in the form and manner required to protect the copyrights in the works under the United States Copyright Law.

(d) Royalties on Posters:

The Agency shall pay to the Artist 50% of any royalty which the Agency receives from the sale of poster reproductions of the Work in excess of 7,500 copies. If the Agency makes poster reproductions itself, it shall pay to the Artist a royalty of 15% on the net wholesale price from the sale of reproductions in excess of 7,500 copies. For the purposes of this section, the "net wholesale price" is the wholesale billing price to customers or distributors less customary discounts and allowances actually allowed and less any returns and transportation charges allowed on returns. The Artist is responsible for keeping the Agency informed of his or her current address, and the Agency shall mail notice of any amount due hereunder to the Artist annually at his or her last known address. The right to any royalty not claimed within three years from the date of the annual notice to the Artist reverts to the Agency.

(e)  
(F)  
RS

~~to~~ Civil Code:

This Paragraph is intended to comply with the requirements of Civil Code Sections 982 regarding reproduction of the Work, Section 986 regarding royalties on reproductions, and Section 988.

12. MAINTENANCE - REMOVAL - DESTRUCTION

Agency agrees that it will not intentionally destroy, damage, alter, modify or change the Work in any way without complying with this Section of the Agreement. If an alteration should occur, either intentionally or unintentionally, then the Work will no longer be represented as the Work of the Artist without his/her written permission, but the Agency may continue to display the Work without attribution to the Artist. Agency agrees to reasonably assure that the Work is properly maintained and protected. Agency retains the right to relocate the Work or remove it from display in Agency's sole discretion. However, prior to any relocation the Agency shall make a reasonable attempt to meet with the Artist and the Donor to discuss the relocation site.

Insofar as is practical, in the event repair of the Work is required, Agency shall give Artist the opportunity to do that work for a reasonable fee. In the case of disagreement between Agency and Artist as to what constitutes a reasonable fee, the fee determined by an independent appraiser selected by Agency shall be considered a reasonable fee; one-half of the appraiser's cost shall be deducted from the repair fee paid to the Artist. In the event Artist refuses to make the repair for such a fee, Agency may proceed to arrange for such repair by a person qualified to accomplish the restoration. When emergency repairs are necessary in order to prevent the loss of or further damage to the Work, such repairs shall be undertaken or arranged by Agency without advance notice to Artist, and such repairs shall not be deemed to constitute an artistic alteration.

If the Agency determines that it wishes to dispose of the Work, including by transfer of the right and title of the Work to another person pursuant to Section 15 below, the Agency shall first make reasonable attempts to notify the Artist and the Donor. The Artist and the Donor, as they may have agreed, shall then have the first right of refusal for a period of ninety (90) days to re-acquire the Work under the terms and conditions that the Agency and the Artist or Donor agree upon at that time. It is intended that the Donor or the Artist, as they may have agreed, shall be entitled to reacquire the work at no cost to them, and the terms and conditions of such a reacquisition shall be confined to access for removal, transportation, and other issues not related to the value of the Work itself. If the Artist and the Donor decline his/her right to re-acquire the Work or the Agency is unable to locate the Artist and the Donor after reasonable efforts, the Agency may then dispose of the Work as it sees fit.

Artist and Donor agrees to notify the Agency of changes in his/her address and agrees that failure to do so shall constitute a waiver of his/her rights under this paragraph.

### 13. TRANSFER BY AGENCY

At any time, the Agency may transfer its rights under this Agreement and/or title to the Work to the City of San Mateo, or any other person, so long as the transferee expressly agrees to be bound by this Agreement, and notice of the transfer is given to the Artist and the Donor at least 30 days prior to the transfer, subject to the terms and conditions of Paragraph 12 above.

### 14. AMENDMENTS

No modification, waiver, termination, or amendment of this Agreement is effective unless made in writing signed by both the Artist and the Agency.



15. GOVERNING LAW

This Agreement and all matters pertaining thereto shall be construed according to the laws of the State of California.

16. REMEDIES FOR VIOLATION OF TERMS OF AGREEMENT

(a) The remedy described in subparagraph (b) is in addition to all other remedies available to either party under the laws of the State of California should the other party fail to comply with the terms of this Agreement.

(b) The Donor may terminate this Agreement at any time prior to installation of the Work by providing written notice to the Agency. If the Agreement is so terminated, Artist shall return any funds paid by the Agency to him immediately.

17. DEDICATION

The Agency may sponsor a public dedication of the Work, in which the Artist shall be invited to participate.

18. NOTICES

Submittals, requests, notices and reports required under this Agreement shall be delivered as follows:

For the Artist:

Robert Strand  
148 California St  
San Francisco CA 94109

For the Donor:

William J. Harris, Jr.  
111 Bay St. #307  
San Francisco, CA 94123

For the Agency:

Housing & Economic Development Manager  
Art in Public Places Program  
City of San Mateo  
330 West 20th Avenue  
San Mateo, CA 94403

A change in the designation of the person or address to which submittals requests, notices and reports shall be delivered is effective when the other party has received notice of the change by certified mail.

19. WAIVERS

Waivers of a breach or default under this Agreement shall not constitute a continuing waiver or a waiver of a subsequent breach of the same or any other provision of this Agreement.

20. NON-DISCRIMINATION

Artist warrants that he/she is an Equal Opportunity employer and shall comply with applicable regulations governing equal employment opportunity. Neither Artist nor any of his/her subcontractors shall discriminate in the employment of any person because of race, color, national origin, ancestry, physical handicap, medical condition, marital status, sex, or age, unless based upon a bona fide occupational qualification pursuant to the California Fair Employment and Housing Act.

21. SEVERABILITY

If any term of this Agreement is held invalid by a court of competent jurisdiction, the remainder of this Agreement shall remain in effect.

22. ENTIRE AGREEMENT

This Agreement and its Attachments set forth the entire understanding between the parties.

REDEVELOPMENT AGENCY OF THE  
CITY OF SAN MATEO

BY

CHAIRMAN

ATTEST:

*Doris Christen*  
Clerk of the Agency

ARTIST

BY

DONOR

BY

Insert Description of Work Here

PHOTOS AND DESCRIPTION ON FILE  
WITH ART COMMISSION  
WORKING DRAWINGS TO BE SUPPLIED  
TO SAN MATEO DEPARTMENT OF PUBLIC  
WORKS AND STATE OF CALIFORNIA  
DEPT. OF TRANSPORTATION RAIL MANAGEMENT  
BRANCH,

PARALLEL BALANCE  
PAINTED MILD STEEL I BEAM CONSTRUCTION  
CONCRETE PEDESTAL FOUNDATION,

TECHNICAL AND MAINTENANCE RECORD  
3-DIMENSIONALNAME OF ARTIST: ROBERT STRAND ACCESSION NO. \_\_\_\_\_  
TITLE OF WORK PARALLEL BALANCESPECIAL METHODS AND MATERIALS UTILIZED IN EXECUTION OF ARTWORK  
TECHNICAL AND MAINTENANCE RECORD:

Specific technical information is required should repairs be necessary due to vandalism and/or natural causes.

Maintenance is a yearly procedure performed by a contracted agency; therefore it is necessary to be clear and concise with regard to materials and procedure.

- A. MATERIAL: MILD STEEL  
MATERIAL THICKNESS: I BEAM 1/4 1/2 5/8
- B. WELDING OR JOINTING METHOD: WELDED
- C. WELDING ROD ALLOY OR JOINT MATERIAL WELDING ROD
- D. CASTING ALLOY, WAX BODY, GLASS OR FIBER TYPE N/A
- E. TECHNIQUE OR CONSTRUCTION METHOD (attach fabrication drawings) \_\_\_\_\_  
WORKING DRAWINGS TO BE SUPPLIED TO  
SAN MATEO DEPT. OF PUBLIC WORK  
STATE OF CALIFORNIA DEPT. OF TRANSPORTATION
- F. MATERIAL FINISH (glaze, paint color and type, sanding grit, tool pattern, patina, surface sealer) BENJAMIN MOORE IRON CLAD  
INDUSTRIAL ENAMEL INTERNATIONAL RED #23  
(OSHA APPROVED COLOR) SEALER PENETROL  
PENETRATING PRIMER OIL
- G. FOUNDATION INSTALLATION STRUCTURE (cleaning agent and procedure) \_\_\_\_\_  
CONCRETE NORMAL WASHING, CAN BE SANDBLAST  
IN SEVERE CASE
- H. YEARLY MAINTENANCE AND CARE OF ARTWORK (cleaning agent and procedure) \_\_\_\_\_  
WIPED-DOWN WITH PENETROL (FLOOD PRODUCT)  
TOUCHED-UP WITH ABOVE PAINT  
REPAINTED IF NECESSARY DUE TO CHIPPING OR  
EXTREME FADING
- I. PLACEMENT OF ARTWORK (cautions regarding sunlight, heat, etc.)  
NONE
- J. PACKING/SHIPPING INSTRUCTIONS:  
N/A