

AGREEMENT FOR THE COMMUNITY ART PROJECT "RACIAL JUSTICE STREET ART MURAL" TO BE LOCATED  
ON THE PEDESTRIAN MALL BETWEEN 1<sup>ST</sup> AND 3<sup>RD</sup> AVE ON B ST

This Agreement (the "Agreement") for the Racial Justice Street Art Mural ("Art") made and entered into as of \_\_\_\_\_, (the "Effective Date") by and between the CITY OF SAN MATEO, a California chartered municipal corporation existing under the laws of the State of California (the "City"), and Rafael Blanco (the "Artist") (individually, a "Party", and, collectively, the "Parties") in reference to the following facts, circumstances, terms and conditions.

RECITALS

WHEREAS, the City Council requested an art project that would promote racial equity in the community; and

WHEREAS, the location of the Pedestrian Mall between 1<sup>ST</sup> and 3<sup>RD</sup> Avenues on B Street ("Pedestrian Mall" or "Site") in Downtown San Mateo was selected for the project; and

WHEREAS, the street mural is designed to enhance the public use and aesthetics of the Pedestrian Mall while highlighting racial equity; and

WHEREAS, the Art in Public Places program (Municipal Code Chapter 23.60) requires the Civic Arts Committee (CAC) to recommend project approvals and expenditures of the Art in Public Place Fund to the City Council; and

WHEREAS, a Request for Qualifications (RFQ) was released to invite artists to indicate their interest in participating in this project; and

WHEREAS, the CAC reviewed the RFQ submittals and selected artist(s) to develop a proposal that includes design renderings, proposed budget, and the administrative details that describe the process to implement the project; and

WHEREAS, the CAC solicited community feedback on the proposed designs to provide influential input for the Civic Arts Committee to consider in the selection of artist(s) and their designs; and

WHEREAS, the CAC recommended the final artists and the designs to City Council, which approved of the Artist at its meeting on June 20, 2023; and

WHEREAS, the Artist has affirmed their willingness and ability to implement the Art by use of the appropriate paint to display a racial equity theme throughout the art design; and

WHEREAS, the Artist is qualified and able to perform the services, and is willing to accept the terms of this Agreement.

NOW, THEREFORE, in consideration of these recitals and the mutual covenants contained herein, the Parties agree as follows:

1. PROJECT AND PURPOSE

1.1 The Racial Equity Street Art Mural ("Art") is a painted mural within the center, emergency vehicle lane of the Pedestrian Mall on B Street. The mural is intended to reflect and promote racial equity within the community. The Site and description and images of the Art are included in Exhibit A.

1.2 In accordance with Chapter 23.60 of the San Mateo Municipal Code, the City authorizes the Artist to install the Art on the closed Pedestrian Mall between B Street between 1<sup>st</sup> and 3<sup>rd</sup> Avenue (the "Site") in accordance with the proposal for the purpose of highlight and promoting racial equity through the use of public art.

2. TERM

The services to be performed under this Agreement shall commence on October 9, 2023, and be completed on October 28, 2023. The Art will be on the Pedestrian Mall for its useful life. The Art's removal date shall be determined by the City in its sole discretion, which is likely after wear and tear of the Art is noticeable. Notwithstanding the above, the City in its sole discretion has the right to remove the Art at any time for any reason.

3. PAYMENT

Payment shall be made by the City only for services rendered and upon submission of a payment request upon completion and the City approval of the work performed. In consideration for the full performance of the services set forth in Exhibit A, the City agrees to pay Artist a fee in amount not to exceed \$200,000, pursuant to rates stated in Exhibit A, attached and incorporated by reference.

4. INSTALLATION AND REMOVAL

4.1 The Artist will undertake and manage the transportation and delivery of the materials and resources for the Art to and from the Site. During this process, the Artist will ensure that no damage to the street, private property, or other surroundings will occur. If any damage occurs due to the Artist's negligent discharge of services, the Artist will be responsible for paying the costs of repair incurred by the City.

4.2 The City shall have the right, but not the obligation, to supervise in the installation of the Art.

5. MAINTENANCE AND REPAIRS

5.1 The City shall have the right to maintain the Art.

5.2 In the event the Art is damaged or defaced, or otherwise experiences extraordinary wear and tear, whether due to vandalism, force majeure, exposure to the elements, or otherwise, the City shall have the right, but not the obligation, to make, or cause to be made, necessary maintenance and/or repairs to, including the replacement of parts of, the Art. If the City determines that the damage or defacement of the design presents an imminent danger to the public health, safety and welfare, then the City shall take action to immediately address the threat.

6. OWNERSHIP

6.1 Copyrights.

6.1.1 In consideration of the City's selection of the Artist to perform the Services, including designing and creating the Art described in Exhibit A for City, Artist

agrees to transfer and hereby does transfer irrevocably to City for fair consideration, all right, title, and interest, including copyright, in the Art itself and in the design, sketches, drawings, model, maquettes, slides, photographs, and all other related materials used in the design and creation of this Art.

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

6.2 Artist's Moral Rights; City Ownership Rights.

6.2.1 City must preserve complete flexibility to operate and manage City properties. Therefore, City retains the absolute right to alter, repair, modify, remove, relocate, sell, dispose of, or destroy (collectively, "Modify") the Art in its sole judgment. For example, City may modify the Art 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 Art at an alternate location that it chooses in its sole discretion.

6.2.2 With respect to the Art produced under this Agreement, Artist 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 Art is incorporated into a site such that the art cannot be removed from the site without Modifying the Art, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for Modifying the Art. Artist acknowledges that all such decisions concerning the Art shall be made in the sole discretion of City, its officers, employees, agents, contractors, licensees, successors or assigns. Artist further acknowledges that Artist retains no rights in and to the Art itself nor to any design, sketches, drawings, maquettes, models, slides, photographs, or other related materials with regard to attribution and integrity of the Art. In addition to the extent such rights may not be waived, Artist covenants not to assert such rights against City, its officers, employees, agents, contractors, licensees, successors or assigns.

6.2.3 City has no obligation to pursue claims against third parties for modifications or

damage to the Art done without City's authorization. However, City may pursue claims against third parties for modifications or damage or to restore the Art if the Art has been modified without City's authorization. In the event City pursues such a claim, it will make a good faith attempt to notify Artist, and Artist shall cooperate with City's efforts to prosecute such claims.

- 6.2.4 If City modifies the Art without Artists' consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Art in accordance with 17 U.S.C. §106A(a)(2).
- 6.2.5 City shall have no obligation to display or maintain the Art for any particular time and City reserves the right to remove or destroy the Art at any time. Artist hereby waives any and all rights Artist may have to prevent or cause the prevention of the removal or destruction of the Art, 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.
- 6.2.6 City's Right to Display, Reproduce. Artist grants to City and to City's agents, authorized contractors, and assigns, an unlimited, nonexclusive and irrevocable license to do the following with respect to the Art and any original works of authorship created under this Agreement, whether in whole or in part, in all media:
  - 6.2.6.1 Implementation, Use and Display. City may use and display the Art.
  - 6.2.6.2 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 Art. CITY may use such reproductions for any City-related non-commercial purpose including fundraising for City's art 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 or similar publications.
  - 6.2.6.3 Public Record Requests. Any documents provided by Artist to City are public records and City may authorize third parties to review and reproduce such documents pursuant to public records laws, including the California Public Records Act.
- 6.2.7 Artist understands the effect of the waivers in this Agreement and hereby acknowledges that Artist is surrendering the rights described herein with respect to the Art.

## 7. INDEMNIFICATION

Artist agrees to hold harmless and indemnify City, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of Artist's

performance of this Agreement, except for those claims arising out of City's sole negligence or willful misconduct. Artist agrees to defend City, its elected and appointed officials, employees, and agents against any such claims. Artist also agrees to release, indemnify, defend and hold 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 Agreement which infringes upon any patent, trademark or copyright or other right protected by law. The Artist's duty to indemnify shall survive expiration or early termination of this Agreement.

8. INSURANCE

The Artist, at their sole cost and expense, shall obtain and maintain, in full force and effect during the term of this Agreement, the insurance coverage(s) as set forth in Exhibit B.

9. LIMITATION OF LIABILITY

Under no circumstances shall one Party to this Agreement be liable to the other party for any special, consequential, indirect or incidental damages, including lost profits, arising out of or in connection with this agreement or any activities performed in connection with this agreement, regardless of whether a claim made by that party is based on contract or tort.

10. RESERVATION OF RIGHTS

Notwithstanding any other provision of this Agreement, if the City is unable or unwilling to make, or to continue to make, the art project available, due to budgetary constraints, action of the City Council, insufficient and other unavailable staffing, force majeure or for any other reason, or no reason at all, then the Artist or its agents, representatives, heir, successors and assigns will not have any right to file an action or make a claim against the City as a result of such action or inaction.

11. NOTICES

Unless otherwise provided herein, all notices required hereunder shall be given by electronic mail or by delivered by the United States Postal Service, registered or certified mail, or other form of mail which offers proof of mailing, postage prepaid and addressed to the Party at the addresses below:

If to Artist:	Rafael Blanco 1910 Sapphire Ln. Aurora, IL 60506 rafael-blanco@outlook.com
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If to City:	City Manager City of San Mateo 330 West 20 <sup>th</sup> Avenue San Mateo, CA 94403
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Copy to:	Assistant City Manager City Manager's Office City of San Mateo 330 West 20th Avenue
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San Mateo, CA 94403  
ATTN.: Denise Garcia  
[dgarcia@cityofsanmateo.org](mailto:dgarcia@cityofsanmateo.org)  
(650) 522-7277

12. GENERAL PROVISIONS

12.1 The City shall have the right but not the obligation, to use the Artist's name, likeness, and biographical information, along with the title *Racial Equity Art Project* in connection with the publicity of the present project.

12.2 Nothing herein, express or implied, is intended to or shall confer upon any third person, any legal or equitable right, or remedy, nor may any provision hereof be enforced by any third party.

12.3 The formation, interpretation and performance of this Agreement shall be governed by and interpreted in accordance with California law. Any action to enforce or interpret this Agreement shall be brought in a court of competent jurisdiction in County of San Mateo, California.

12.4 Attorney fees in total amount not exceeding \$5,000 shall be recoverable as costs (that is, by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of the contract documents. The above \$5,000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals or actions. It is the intent that neither party to this Agreement shall have to pay the other more than \$5,000 for attorney fees arising out of an action, or actions, to enforce the provisions of the contract documents. The parties expect and hope there will be no litigation and that any differences will be resolved amicably.

12.5 This Agreement may be executed in one of more counterparts, which shall together constitute one and the same Agreement.

12.6 This Agreement constitutes the entire understanding and agreement of the Parties relating to the Art and Pedestrian Mall Art Project and the rights and obligations of the Parties arising under this Agreement. The Exhibits to this Agreement are incorporated by reference and made a part of this Agreement. This Agreement supersedes any prior written or oral communication between the Parties relating to the Art and the Pedestrian Mall Art Project.

12.7 This Agreement may be amended, in writing, and signed by the Parties.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have duly signed this Agreement as of the Effective Date.

**ARTIST:**

**CITY OF SAN MATEO**

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Rafael Blanco                      Date

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Christina Horrisberger                      Date  
Interim City Manager

**APPROVED AS TO FORM:**

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Mazarin Vakharia                      Date  
Assistant City Attorney

## Exhibit "A"

### SCOPE OF SERVICES

#### 1. The Site

For the purposes of this Agreement, the Site shall refer to the Emergency Vehicle (EV) lane of the Pedestrian Mall between 1<sup>st</sup> Avenue and 3<sup>rd</sup> Avenue on B Street in Downtown San Mateo. Each block is approximately 300 feet long. Although the site is limited to the EV lane, artist(s) can decide how much of the space they would like to use within that allotted space.

#### 2. Project Description

Artist(s) shall design, organize, and apply art to one (or multiple) blocks of the Pedestrian Mall within the EV lane. The art entitled "Cultural Pattern" shall hereinafter be referred to as "the Art." The Art should bring the community together and raise awareness surrounding the growing demand for representation of San Mateo's diverse population, commitment to racial and social justice, and bring to light the changes the community desires.

City shall provide all necessary approvals for the installation of the Art, including an encroachment permit, if necessary, for Artists' use of public rights-of-way for installation of the Art, at no cost to the Artist(s). Artist(s) shall not be held responsible for any delay caused by actions or failure to act by City employees.

#### 3. Budget and Timeline

### **"RACIAL JUSTICE STREET ART MURAL"**

**SAN MATEO, CA**

***Rafael Blanco***

#### 1. Budget –

Not to exceed \$200,000.

Item	Estimated
Design fee	2,000
Insurance	2,000
Surface prep	35,000
Labor	65,000
Paint & Supplies	54,000
Travel Expenses	22,000
Contingency	\$ 20,000
<b>Total</b>	<b>\$ 200,000</b>

#### 2. Schedule & scope of work

Timeline, October 9<sup>th</sup> -28<sup>th</sup>

- Block A, 2<sup>nd</sup> to 3<sup>rd</sup> Aves – October 9<sup>th</sup> – 18<sup>th</sup> (10 days of implementation)
- Block B, 1<sup>st</sup> to 2<sup>nd</sup> Aves – October 19<sup>th</sup> – 28<sup>th</sup> (10 days of implementation)



Representative Only: not final design, not to scale – 30' space at each block end, 240' centered

Block 1 = 2<sup>nd</sup> to 3<sup>rd</sup> Avenues



Block 2 = 1<sup>st</sup> to 2<sup>nd</sup> Avenues



Exhibit "B"  
INSURANCE REQUIREMENTS

Coverage shall be at least as broad as:

1. Commercial General Liability (CGL): Insurance Services Office (ISO) Form CG 00 01 12 07 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
2. Automobile Liability: ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.

If the contractor maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the contractor.

#### Other Insurance Provisions

The insurance policies are to contain, or be endorsed to contain, the following provisions:

#### Additional Insured Status

**The City, its elected and appointed officials, employees, and agents are to be covered as insureds** on the auto policy for liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the Contractor; and on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

#### Primary Coverage

For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the City, its elected and appointed officials, employees, and agents. Any insurance or self-insurance maintained by the City, its elected and appointed officials, employees, or agents shall be excess of the Contractor's insurance and shall not contribute with it.

#### Notice of Cancellation

Each insurance policy required above shall provide that coverage shall not be canceled, except after thirty (30) days' prior written notice (10 days for non-payment) has been given to the City.

#### Waiver of Subrogation

Contractor hereby grants to City a waiver of any right to subrogation which any insurer of said Contractor may acquire against the City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

#### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared to and approved by the City. The City may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

#### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.

#### Verification of Coverage

Contractor shall furnish the City with original certificates and amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.