

FIRST AMENDMENT TO
AGREEMENT FOR DESIGN, FABRICATION,
TRANSPORTATION AND INSTALLATION OF ART WORK
FOR THE SHELLMOUND/POWELL STREET BRIDGE PUBLIC ART PROJECT

THIS FIRST AMENDMENT TO the Agreement for Design, Fabrication, Transportation, and Installation of Art Work at the Shellmound/Powell Street Bridge (**"FIRST AMENDMENT"**), is effective and entered into this ____ day of _____, 2016 by and between the **City of Emeryville** (the "City"), and **R&R Studios** (the "Contractor").

WHEREAS, pursuant to Article 4 of Chapter 2 of Title 3 of the Emeryville Municipal Code ("Public Art Ordinance"), the City has allocated funds for the design, execution, and installation of Art Work for the Shellmound/Powell Street Bridge Public Art Project (the "Project"); and

WHEREAS, the Artist developed a proposal to design, fabricate, transport, and install an original piece of art at Shellmound/Powell Street Bridge ("Project Site") as more particularly set forth in the Art Work Proposal submitted by Contractor pursuant to that certain Agreement for Art Work Proposal dated November 20, 2014 by and between the City and artist (the "Prior Art Work"); and

WHEREAS, on February 24, 2015, the Emeryville City Council approved the Public Art Committee's recommendation to select the Contractor as the artist for the Project and authorized the City Manager to enter into an Agreement with the Contractor to design, fabricate, transport, and install the Project at the Project Site; and

WHEREAS, on April 11, 2015, the City entered into an Agreement with the Contractor to design, fabricate, transport, and install the Shellmound/Powell Street Bridge Art Work at the selected site and prepare the Shellmound District Public Art Plan ("Agreement"); and

WHEREAS, pursuant to Section 9.2 of the Agreement, the City was required to make Payment No. 1 to the Contractor upon execution of the Agreement as an advance payment for final design of the development and contractor fees for production of the Arts Master Plan Research; and

WHEREAS, pursuant to Section 5.2 of the Agreement, Contractor submitted a proposed Final Design for the Prior Art Work and

WHEREAS, the Emeryville Public Art Committee (PAC) recommended to design, fabricate, transport, and install the Project as shown in the Final Design for the Prior Art Work; and

WHEREAS, on April 14, 2016 the PAC recommended the Project be stopped due to infeasibility of regular maintenance, as required by the Final Design for the Prior Art Work; and

WHEREAS, on April 14, 2016, the PAC further recommended Contractor complete the Shellmound District Public Art Plan; and

WHEREAS, at its June 9, 2016, PAC meeting, the PAC recommended to the City Council to enter into a revised contract to design, fabricate, transport, and install an original piece of art at the Project Site based on a submittal from Contractor considered at the meeting (the "Revised Art Work"); and

WHEREAS, the Contractor has substantially completed though not yet sought City Council approval of the Shellmound District Public Art Plan for which they are eligible for payment of \$33,000 under Payment #5 pursuant to Section 9.2 of the Agreement upon the Project Manager's acceptance of the Plan; and

NOW, THEREFORE, the City and the Artist, for the consideration and under the conditions hereinafter set forth, agree as follows:

1. The Parties agree that the foregoing recitals are true and correct and incorporated herein by reference. The City hereby acknowledges that the Artist has satisfied conditions precedent for Payment #1 as set forth in Paragraph 9.2 of the Agreement and Paragraph 6 of this First Amendment. The Artist hereby acknowledges that the City has satisfied its obligations under the Agreement to date by making Payment #1 as set forth in Paragraph 9.2 of the Agreement and Paragraph 6 of this First Amendment.
2. Paragraph 2 of the Agreement, "**Term of the Agreement**", is hereby amended to extend the contract to June 30, 2017. The paragraph shall now read:

"The term ("Term") of this Agreement shall commence upon execution of this Agreement by the City and be completed no later than June 30, 2017, or on the Final Acceptance of the Art Work by the City Council whichever is earlier."
3. Exhibit A the Agreement is hereby replaced in its entirety with Exhibit A-1 attached hereto this First Amendment..
4. Exhibit E of the Agreement is hereby replaced in its entirety with Exhibit E-1 attached hereto this First Amendment.

5. Paragraph 3.3 of the Agreement, "Contractor Responsibilities" is hereby amended to extend the contract to June 30, 2017. The paragraph shall now read:

"The Contractor will be responsible for: (a) providing the City with the final design of the Art Work for approval; (b) a mock-up of the Draft Design indicating colors of tiles, colors and intensity of LED lighting and the interplay between the lights and the tile with a similar backing to the column surface found at the Project site as at minimum of three 12" x 36" samples) (c) fabricating, transporting, and installing the Art Work by June 30, 2017, (d) consulting the City on the Art Work; (e) providing reports, documentation and description of maintenance requirements of Art Work; (f) securing all City permits for installation from the City; and (g) producing the Plan as described in Section 3.1b above.

6. Paragraph 9.2 of the Agreement, "Interim Payment", is hereby amended to adjust payment increments under the Agreement. The paragraph shall now read:

Payment #1: \$ 60,000

Purpose: Advance on final design development (Section 5.2) and contractor fees for production of the Shellmound District Plan Research (Section 3.1.b and as provided in Exhibit D)

Submittals: Fully executed Agreement; Invoice for Payment #1

Approvals: City Council approval of Agreement, City Manager execution of Agreement.

Payment #2: \$20,000

Purpose: Advance on final design development for Revised Work of Art (Section 5.2) and (Section 3.1.b and as provided in Exhibit D)

Submittals: Proposal for Mockup, Invoice for Payment #2

Approvals: City Council approval of First Amendment, City Manager execution of the First Amendment.

Payment #3: \$33,000

Purpose: Contractor fees for production of the Shellmound District Art Plan (Section 3.1.b and as provided in Exhibit D)

Submittals: Final Shellmound District Art Plan; Invoice for Payment #3, Payment #3 is not contingent of Payment #2.

Approvals:	Project Manager acceptance of Plan.
Payment #4:	<u>\$ 100,000</u>
Purpose:	Advance on Cost for Fabrication of Art Work (Section 5.4).
Submittals:	Mock-up submitted, Final Design approved as provided in Section 5.1; Invoice for Payment #3.
Approvals:	Project Manager Approval of Mockup and Final Design; City Issuance of first Mockup approval or request for changes, City Issuance of Final Design Approval – Fabrication Notice to Proceed
Payment #5:	<u>\$ 35,400</u>
Purpose:	Advance on costs of transportation and installation of Revised Art Work (Section 5.5); Contractor travel fees; advance artist fees for production of Project Component #2, Section 3.1, Imaging and Themes Written Document.
Submittals:	Notification to Project Manager of completion of fabrication; Approval of Permits (City Encroachment); Invoice for Payment #4.
Approvals:	Project Manager Approval; City issuance of Fabrication Approval Notice; City issuance of Installation Plan Approval – Installation Notice to Proceed.
Payment #6:	<u>Up to \$10,000</u>
Purpose:	Advance on costs of transportation and installation of Art Work (Section 5.5) in excess of project budget, as in Exhibit A-1.
Submittals:	Notification to Project Manager of documented expenses in excess of proposed budget, Invoice for Payment #4.
Approvals:	Project Manager Approval; City issuance of Contingency Expense Approval

9.3 Final Payment: The City agrees to make the final payment to the Contractor according to the conditions set forth below:

Final Payment:	<u>\$26,600</u>
Purpose:	Final Acceptance of Bridge Art Work (Section 6.4).
Submittals:	Written notification to Contractor of fulfillment of requirements of Section 6.4; Invoice for Final Payment.

Approvals: Project Manager Acceptance, Maintenance Plan
Approval Notice; City Council Approval of Installed Art
Work

7. All other provisions of the original Agreement remain in effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year indicated below, effective as of the day the City Manager executes the Agreement on behalf of the City.

APPROVED AS TO FORM:



City Attorney

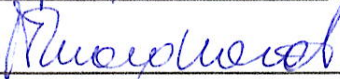
CITY OF EMERYVILLE

Dated: _____, 2016

CAROLYN LEHR, CITY MANAGER

ARTIST

Dated: 8/31/2016, 2016



ROSARIO BEHAR, R&R STUDIOS
MARQUARDT

REVISED EXHIBITS:

EXHIBIT A-1 – Contractor's Proposal
EXHIBIT E-1- Schedule of Deliverables

EXHIBIT A-1: ART WORK

ROBERTO BEHAR & ROSARIO MARQUARDT
R & R STUDIOS

THE SHELLMOUND DISTRICT GATEWAY
EMERVILLE SHELLMOUND/POWEL STREET BRIDGE PUBLIC ART
MAY 7, 2016

CITY OF EMERVILLE PUBLIC ART PROGRAM
EMERVILLE, CALIFORNIA

T H E S H E L L M O U N D D I S T R I C T G A T E W A Y

By Roberto Behar & Rosario Marquardt / R & R Studios

THE SHELLMOUND DISTRICT GATEWAY provides a new identity to the Powell Street Bridge transforming the utilitarian structure into a memorable event. The iconic art project creates an image forever to be associated with the City of Emeryville.

Located at the heart of Emeryville, **THE SHELLMOUND DISTRICT GATEWAY** welcomes pedestrians across the underside of the Powell Street Bridge promoting continuity along Shellmound Street and a visual and psychological connection between the Public Market and Bay Street. The artwork simultaneously celebrates the multicultural character and bright technological future of the City of Emeryville.

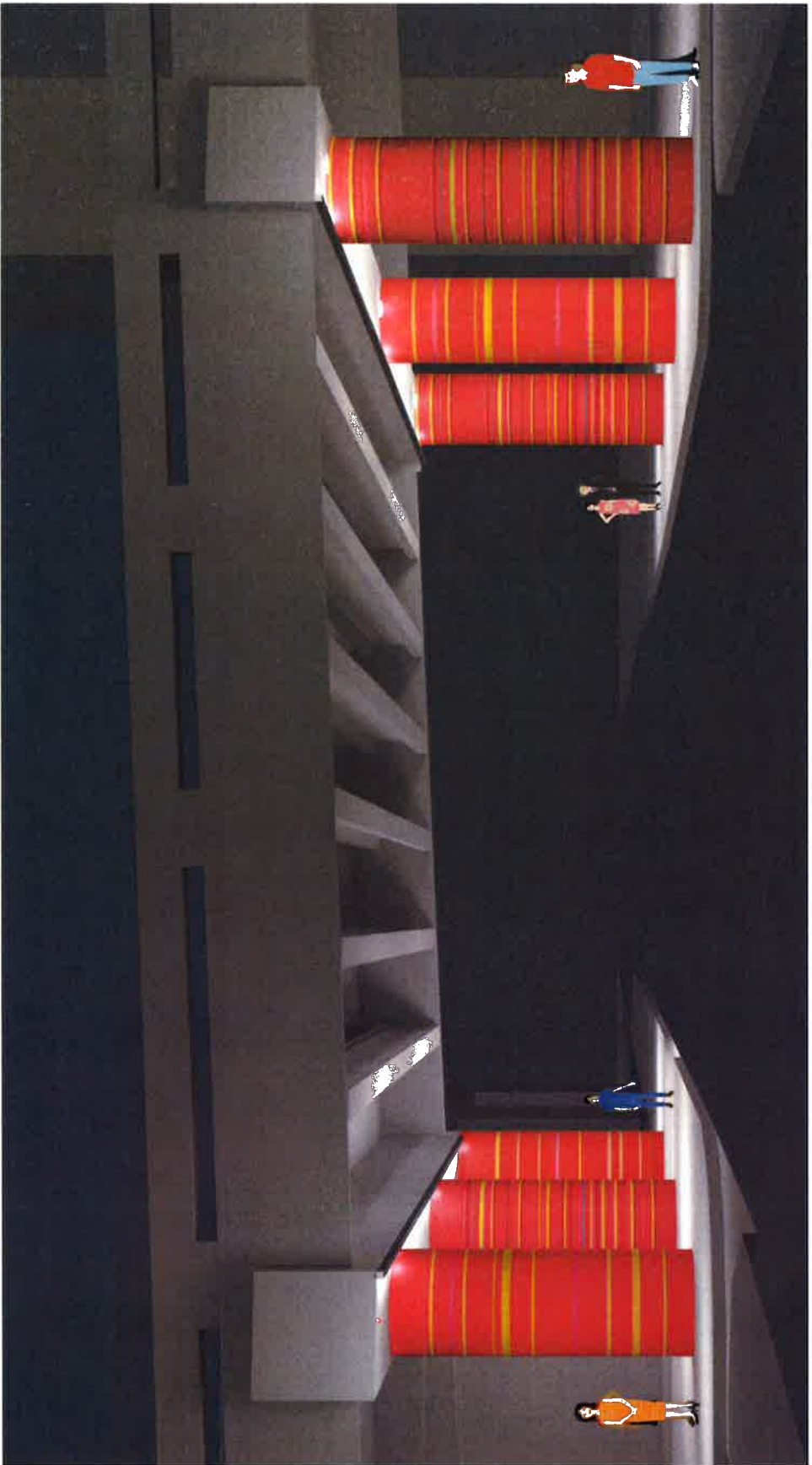
The polychromatic art project introduces an exception in the urban landscape adding a note of color and joy to the bridge passage, **THE SHELLMOUND DISTRICT GATEWAY** transforms the bridge from visual barrier into an amicable space full of light, color and movement. The structural columns of the bridge are covered in multicolor glass mosaic tiles, adding movement and a kinetic effect to accompany and celebrate the bridge underside passage. The future Master Plan and public right away improvements will further enrich and sponsor connectivity between the Public Market and Bay Street.

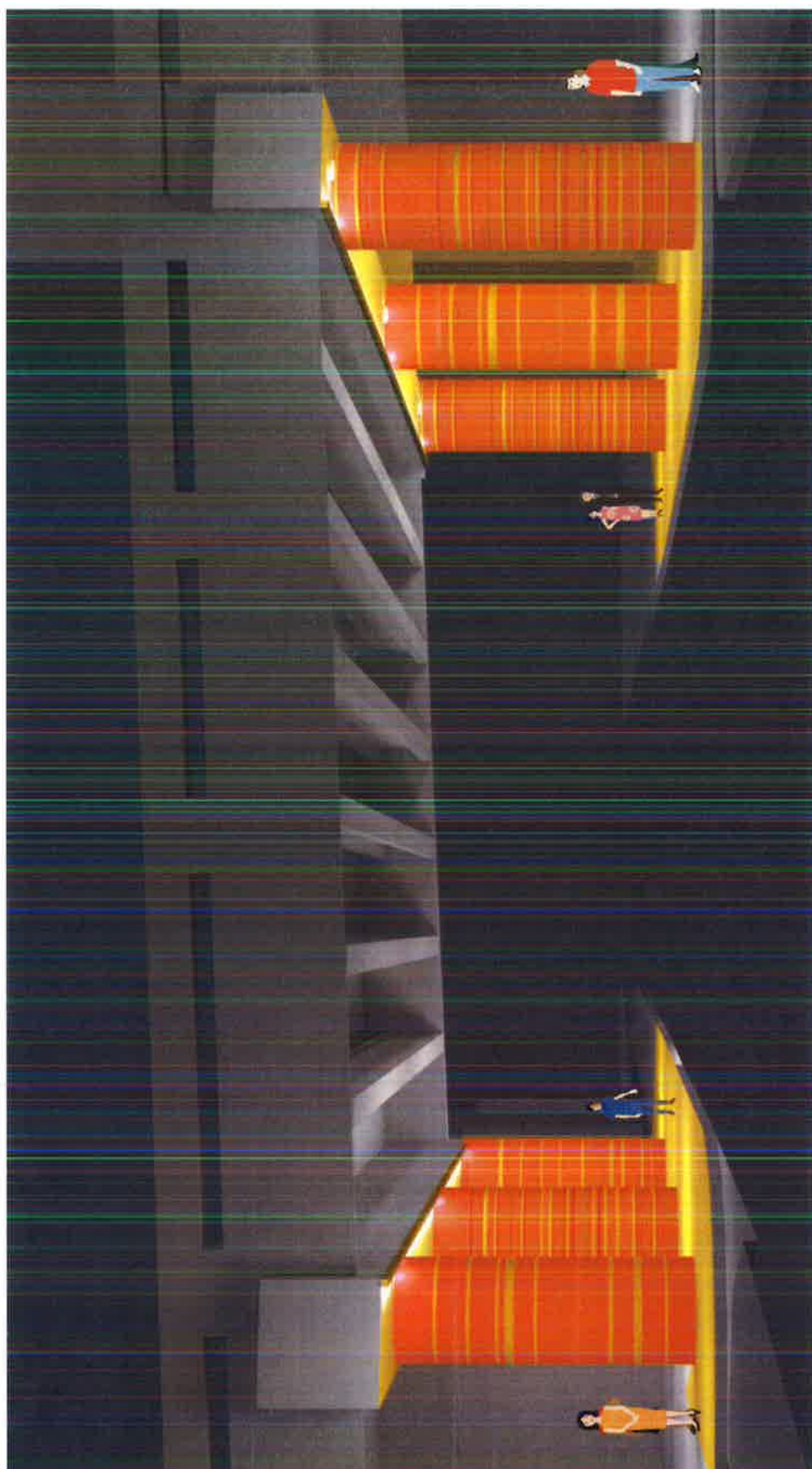
THE SHELLMOUND DISTRICT GATEWAY is realized in multicolor glass mosaic tile to ensure that the art project is maintenance free. In addition, the location of the art project at the bridge columns allows for project installation without traffic interruption in the area. LED lights illuminate the art project at night and develop a kinetic effect that brings life, movement and visual interest to the driver and pedestrian experience going across the bridge.

THE SHELLMOUND DISTRICT GATEWAY brings a symphony of light and color to Shellmound Street and a unique experience for all to the City of Emeryville.









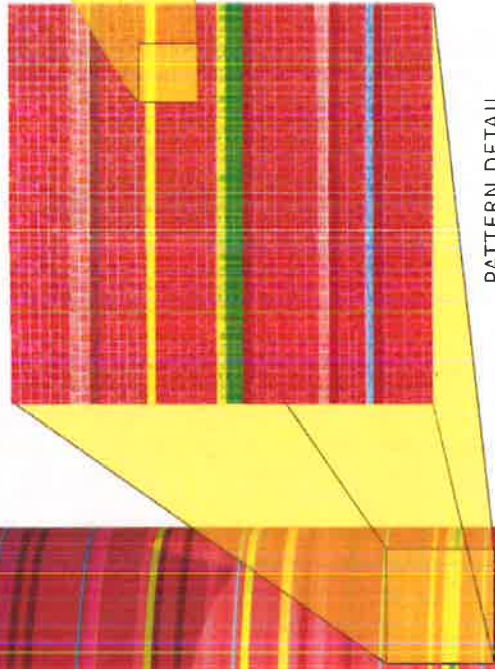








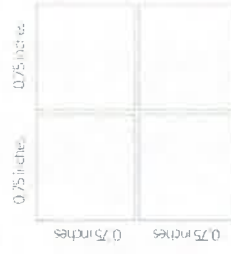
BRIDGE COLUMN



PATTERN DETAIL



GLASS MOSAIC



MOSAIC DIMENSIONS

R & R STUDIOS - SHELLMOUND/POWEL STREET BRIDGE - ESTIMATED BUDGET	
Mosaic Fabrication and Materials	\$75,000.00
Mosaic Installation	\$24,000.00
Lighting	\$45,000.00
Permitting	\$2,000.00
Crating/Shipping/Storage	\$2,000.00
Contingency (10%)	\$14,800.00
Artist Design and Oversight (20%)	\$29,200.00
TOTAL	\$192,000.00

EXHIBIT E-1: SCHEDULE

DELIVERABLE	DURATION	DUE DATE (not later than)
Final Shellmound District Arts Master Plan	CONCURRENT WITH CONTRACT APPROVAL	September 20, 2016
Final Design Documents	2 MONTHS AFTER CONTRACT SIGNED AND PAYMENT RECEIVED	November 1, 2016
Encroachment Permit Obtained	2 MONTHS APROXIMATELY	December 1, 2016
Fabrication of Artwork	4 MONTHS AFTER NOTICE TO PROCEED AND PAYMENT	May 1, 2016
Artwork Transportation	2 WEEKS	May 15, 2017
Artwork Installation	4 WEEKS	June 1, 2017
Artwork Completion	1 WEEK	June 8, 2017
City's Final Inspection and Approval of Artwork	1 WEEK	June 15, 2017