

RESOLUTION NO. 21-102

Resolution Of The City Council Of The City Of Emeryville Adopting The Public Art Committee's Recommendation To Approve The Design Proposal By Nigel Sussman For The Public Art Mural Project At 1451 Sherwin Avenue, Authorizing The City Manager To Execute An Artist Agreement With Nigel Sussman In An Amount Not To Exceed \$80,000 For Final Design And Installation Of The Artwork, And Authorizing The City Manager To Execute A License Agreement With P&H Associates And Nigel Sussman For The Installation Of The Artwork

WHEREAS, Article 4 of Chapter 2 of Title 3 of the Emeryville Municipal Code establishes the Contributions for the Art in Public Places Program; and

WHEREAS, Section 3-2.404 of the Emeryville Municipal Code establishes the Emeryville Public Art Fund to implement the Art in Public Places Program (AiPP); and

WHEREAS, the Public Art Master Plan, adopted by the City Council on December 6, 2016, identifies several conceptual programs and projects, including a Mural Program; and

WHEREAS, the Public Art Mural Program Guidelines, adopted by the City Council by Resolution No. 20-119 on November 17, 2020, identifies goals, selection criteria, and opportunity sites for murals located on private properties; and

WHEREAS, a goal of the Public Art Program is to locate public art in distinct neighborhoods throughout the City and thereby introduce the City's public art to a larger audience; and

WHEREAS, 18 qualifying responses were received by the deadline of March 19, 2021 in response to a Request for Proposals for a mural to be located at 1451 Sherwin Avenue; and

WHEREAS, a Selection Panel, recommended by the Public Art Committee ("PAC") and appointed by the City Manager, met on March 29, 2021 to review the proposals, and recommended the proposal submitted by Nigel Sussman for installation on the 1451 Sherwin Avenue elevation at the corner of Horton Street; and

WHEREAS, May 13, 2021 the PAC voted unanimously to recommend that the City Council approve the proposal by Nigel Sussman for a public art mural at 1451 Sherwin Avenue, authorize the execution of an Artist Agreement with Mr. Sussman for design and installation of the artwork, and authorize the execution of a License Agreement with the property owner and Mr. Sussman for the installation of the artwork; now therefore be it

RESOLVED, that the City Council of the City of Emeryville hereby approves the commission of a mural consistent with the proposal submitted by Nigel Sussman in response to the 1451 Sherwin Avenue Mural Request for Proposals; and be it further

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Sussman Mural Contract
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RESOLVED, that the City Council hereby authorizes the City Manager to execute an Artist Agreement with Nigel Sussman for the installation of a mural at 1451 Sherwin Avenue, in an amount not to exceed \$80,000; and be it further

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to execute a License Agreement by and between the City of Emeryville, Nigel Sussman, and P&H Associates for the installation and maintenance of a mural at 1451 Sherwin Avenue; and be it further

RESOLVED, that the City Council of the City of Emeryville hereby authorizes the City Manager to make minor amendments to the Artist Agreement and License Agreement as necessary to effectuate the completion of a mural at 1451 Sherwin Avenue, provided the amendments do not substantially increase the City's obligations thereunder.

ADOPTED by the City Council of the City of Emeryville at a regular meeting held Monday, September 13, 2021, by the following vote:

AYES:	3	Mayor Martinez, Vice Mayor Donahue, and Council Member and Medina
NOES:	0	
ABSTAIN:	0	
ABSENT:	0	
RECUSE:	1	Council Member Bauters

DocuSigned by:

Dianne Martinez

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MAYOR

ATTEST:

APPROVED AS TO FORM:

DocuSigned by:

Sheri Hartz

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CITY CLERK

DocuSigned by:

Andrea Visveshwara

962663BD5573494...

INTERIM CITY ATTORNEY



City of Emeryville
CALIFORNIA

ARTIST AGREEMENT

AGREEMENT FOR DESIGN AND INSTALLATION OF A MURAL ON PRIVATE PROPERTY AT 1451 SHERWIN AVENUE CONSISTENT WITH THE EMERYVILLE MURAL PROGRAM

THIS AGREEMENT FOR DESIGN AND INSTALLATION OF ART WORK AT 1451 SHERWIN ("Agreement"), is effective and entered into as of _____ ("Effective Date") by and between **THE CITY OF EMERYVILLE** ("City"), and **NIGEL SUSSMAN** ("Artist"), collectively referred to as the "Parties."

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, and installation of an original piece of art for 1451 Sherwin Avenue consistent with the Emeryville Mural Program; and

WHEREAS, the Artist has developed a proposal to design, and install an original piece of art at 1451 Sherwin Avenue ("Project Site") improved with a single story warehouse building and located at Park Street, Horton Street, Sherwin Street, and Hubbard Street in Emeryville (APNs 49-1034-1-4 and 49-1034-1-3), and as more particularly set forth in the Art Work Proposal submitted by Artist pursuant to that certain Art Work Proposal dated March 19, 2021 ("Art Work Proposal"), Artist pursuant to that certain Agreement for Art Work Proposal by and between the City and Artist; and

WHEREAS, the Project Site is owned by P & H Associates, a California limited partnership ("Property Owner"); and

WHEREAS, the Art Work Proposal submitted by the Artist was reviewed by the Emeryville Public Art Committee, and the Committee has recommended to the City Council that it enter into this Agreement with Artist to design and install the Art Work; and

WHEREAS, on September 13, 2021, the Emeryville City Council approved the Public Art Committee's recommendation to select the Artist and authorized the City Manager to enter into this Agreement with the Artist to design and install the Art Work at the Project Site ("Project");

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

FOR CITY USE ONLY			
Contract No.		CIP No.	
Resolution No.		EPW No.	

City of Emeryville | Mural Artist Agreement: Design and Installation of Art Work

1. DEFINITIONS

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement, it shall have the meaning herein set forth:

"Artist" shall mean Nigel Sussman

"Art Work" shall mean the Art Work by the Artist for the Project, as described in Section 3 herein and **EXHIBIT A**, attached hereto and incorporated herein, and as approved by the City Council.

"City" shall mean the City of Emeryville, a municipal corporation.

"City Council" shall mean the City Council of the City of Emeryville, California.

"City Manager" shall mean the City Manager of the City of Emeryville, California.

"Committee" shall mean the Public Art Committee of the City of Emeryville, California.

"Project Manager" shall mean Amber Evans of the City of Emeryville Economic Development and Housing Department, or other designee approved by the City Manager.

"Project Site" shall mean the approved location for the installation of the Art Work, as described in **EXHIBIT B**.

"Services" shall have that meaning described in Section 3.

"Eligible Costs" shall be those costs for supplies and materials that are necessary and required for the execution and provision of Services, as described in **EXHIBIT C**.

"Interim Payment" shall have that meaning described in Section 9.3.

Whenever the words **"as directed"**, **"as required"**, **"as permitted"**, or words of like effect are used, it shall be understood as the direction, requirement, or permission of the City.

The words **"sufficient"**, **"necessary"**, or **"proper"**, and the like, mean sufficient, necessary or proper in the judgment of the City.

The words **"approval"**, **"acceptable"**, **"satisfactory"**, or words of like import, shall mean approved by, or acceptable to, or satisfactory to the City, unless otherwise indicated by the context.

City of Emeryville | Mural Artist Agreement: Design and Installation of Art Work

2. TERMS OF THE AGREEMENT

The term ("Term") of this Agreement shall commence upon the Effective Date and be completed no later than September 13, 2022 or upon the Final Acceptance of the Art Work by the City Council as described in Section 6, whichever is earlier.

3. SERVICES ARTIST AGREES TO PERFORM

The Artist agrees to design and install the Art Work at the Project Site and as more specifically set forth in **EXHIBIT A**, which is attached and incorporated into this Agreement except to the extent inconsistent with the terms of this Agreement.

The Artwork is generally described as a two-part mural described by the Artist as below.

Trying to capture the essence of a location in a piece of art is something I do with my site-specific work, and this piece is a perfect example. Combining the idea of a map with relevant local iconography in a bold and approachable graphic style represents the City of Emeryville's diversity and personality. The heroes of the painting are the local shorebirds, but other elements include the Emeryville Arts Center, City Hall, the Bay Bridge, Emeryville Marina, Bay Trail, Pixar Studios, The Emeryville Shellmound, local flora, the I-80 freeway, the local culinary scene, shopping, biking, shipping, railway, and more.

By utilizing the existing colors of the building, along with a simple, cheerful color palette, the painting will easily integrate with the sites existing architecture. I am proposing to paint over the architectural elements and organically blur the hard edges to balance extreme linear construction. In this spirit, I also have proposed incorporating and keeping the trellis instead of 'fighting' it. The interesting texture and layering effect will be best utilized as a place to install a painting on cut plywood sheets. A puzzle of CNC routed plywood sheets would be cut to spec (by my connection with a local set-building company in Oakland. This accounts for a large portion of the supplies/materials cost.), hand painted and sealed by me, and then installed with appropriate hardware into the existing trellis. The pieces would be light enough not to pose any structural stress. The interesting juxtaposition of the painted panel layered on metal and wall textures would accentuate the art placement.

As with all of my mural work, I have started with a rough sketch that captures my suggested layout, content, and color-scheme. Learned in my advertising and illustration background, I prefer to collaborate with the client, incorporating feedback and suggestions rather than just painting what I 'feel.' I would want to add, change, and refine the illustration based on your collective feedback before redrawing the final illustration with more detail, and then translating the approved image onto the wall by hand using commercial-grade house-paint and brushes. With the aid of a small scissor lift, I will paint the entire surface

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and install the pre-prepared wood panels on my own. Once completed, the entire mural will be painted with a coating of non-sacrificial anti-graffiti coating to make tagging removable with a gentle power-wash.

The Artist will be responsible for all of the following services (collectively, the “Services”):

- providing the City with the final design submittal for approval;
- installing the Art Work in the timeframe described in Section 5 on the east edge of the north wall of the building located on the Project Site facing Sherwin Avenue and visible from Horton Street;
- consulting with the City on the Art Work;
- providing reports, documentation and description of maintenance requirements of Art Work;
- securing all Project Approvals for installation from the City and any other governmental agencies; and
- complying with the terms and conditions of the license between the Property Owner, Artist, and the City, which allows for the installation and maintenance of the Project at the Project Site.

4. PROJECT APPROVALS

Artist, at his expense, shall secure or cause to be secured any and all project approvals and permits (“Project Approvals”), which may be required by City or other governmental agencies, including compliance with the California Environmental Quality Act (Public Resources Code § 21000, et seq.). Staff will work cooperatively with Artist to assist in coordinating the expeditious processing and consideration of all necessary Project Approvals for the Art Work. However, the execution of this Agreement does not constitute the granting of, or a commitment to obtain, any Project Approvals required by City or any other governmental agency.

5. TIMELY PROVISION OF SERVICES

Artist shall commence and complete design, and installation of the Art Work and satisfy all other obligations and conditions of this Agreement with respect thereto within the times established in this Agreement. The Artist agrees to the following schedule of deliverables. Project Manager and Artist may mutually agree in writing to changes in the following schedule.

5.1 Final Design

Artist shall submit the Final Design of the Art Work to the Project Manager by November 1, 2021. Final Design Submittal materials shall include:

- to-scale working drawings for all components of the Art work;
- structural/engineering drawings;

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- samples of materials to be used indicative of color or surface treatment;
- a scaled site plan showing the revised and accurate site placement of the Art Work;
- budget showing current cost estimates on materials;
- written specifications and recommendations for maintenance of the Art Work and its systems.

Within fifteen (15) calendar days of receipt of the Final Design submitted by the Artist, the Project Manager shall either approve or reject the Final Design and provide Artist written notice thereof. If the Final Design is rejected, the Project Manager shall provide the Artist the reasons for such rejection; the Artist shall thereafter correct and resubmit the Final Design to the Project Manager within fifteen (15) calendar days of the rejection. Once the Final Design is accepted, the Project Manager shall provide Artist with written notice of its approval of the Final Design and Notice to Proceed with Installation of the Art Work ("Final Design Approval – Installation Notice to Proceed").

5.2 Installation Encroachment Permit and Permission of Project Site Owner

Within fifteen (15) calendar days of issuance of the Final Design Approval-Installation Notice to Proceed, Artist shall obtain all necessary Project Approvals, including but not limited to an Encroachment Permit from City, for Installation of the Art Work at the Project Site, and consent of the Property Owner.

5.3 This Section Intentionally Deleted**5.4 Art Work Installation Plan**

Within fifteen (15) calendar days from issuance of the Final Design Approval Notice, Artist shall submit to the Project Manager a Final Art Work Installation Plan describing the installation, delivery, and installation of the Art Work at the Project Site ("Art Work Installation Plan"). The Art Work Installation Plan shall include a list of equipment and materials to be used, surveying requirements, details regarding the limit of the work, staging and storage needs, a list of subcontractors and equipment to be used on the Project Site, a detailed schedule of work at the Project Site. Artist shall submit all necessary Project Approvals, including but not limited to an Encroachment Permit from City for installation of the Art Work, concurrent with submittal of the Art Work Installation Plan.

Within fifteen (15) calendar days of receipt of the Art Work Installation Plan, City shall notify Artist in writing of approval or rejection of the Art Work Installation Plan. In the case of rejection, Artist shall make revisions to the Art Work Installation Plan specified by City. Upon approval of the Art Work Installation Plan the Project Manager shall issue the Art Work Installation Plan and Notice to Proceed with Installation and Installation of the Art Work at the Project Site ("Installation Plan Approval – Installation Notice to Proceed").

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Artist will be responsible for the labor, material, and equipment necessary to load and transport the Art Work to the Project Site. Artist will install the Art Work in accordance with the approved Art Work Installation Plan. Artist shall install the Art Work at the Project Site within sixty (60) calendar days of the date of the Installation Plan Approval-Installation Notice to Proceed or as set forth in the project Scope of Work and Schedule (further explained in **EXHIBITS A AND C**). Artist shall coordinate the delivery and installation of the Art Work with the Project Manager, and Property Owner, if necessary.

At least three (3) business days prior to the installation of the Art Work, the Artist shall contact the Project Manager for approval to begin work at the Project Site. The Project Manager or other City staff shall be present at the Project Site on the first day of installation.

Artist shall notify Project Manager upon completion of installation of the Art Work for review and approval of the installed Art Work by the Project Manager.

5.5 Documentation and Final Maintenance Plan

Within fifteen (15) calendar days of the date of the Installation Plan Approval-Installation Notice to Proceed, Artist shall submit to Project Manager a Documentation and Final Maintenance Plan addressing the following elements:

- 1) A written report for the City's files including complete information regarding the intent of the Art Work and the scale, materials, and processes used in the installation of the Art Work.
- 2) Final written specifications and recommendations for maintenance of the Art Work, including an estimate of annual maintenance costs associated with the Art Work.
- 3) One (1) set of digital images provided on CD for program and archival purposes, showing installation, and completed phases of the Art Work.

Project Manager shall review the Documentation and Final Maintenance Plan within fifteen (15) calendar days of receipt. Artist shall make revisions to the Documentation and Final Maintenance Plan as specified by City prior to its approval. Upon approval of the Documentation and Final Maintenance Plan, the Project Manager shall issue written notice of its approval ("Maintenance Plan Approval Notice").

6. APPROVAL PROCESS**6.1 Generally**

If the City in its sole discretion determines to withhold any approval of any element as specified below, the City shall have the right to terminate this Agreement and shall have no further obligations under this Agreement, and the provisions of Section 18 shall apply.

City of Emeryville | Mural Artist Agreement: Design and Installation of Art Work**6.2 Final Design Submittal**

The Artist shall submit the Final Design Submittal to the Project Manager as described in Section 5.1, and receive approval prior to installation.

6.3 Installation of Art Work

The Artist shall consult with the Project Manager prior to and during the installation of the Art Work, as described in Section 5.4. The installed Art Work shall be reviewed by the Project Manager prior to Final Acceptance of the Art Work by the City Council.

6.4 Conditions to Final Acceptance

The completed Art Work shall not be deemed to have been accepted by the City Council until each and every one of the following conditions has been fulfilled, as determined by the City Council:

- All approvals required under Section 5 shall have been obtained by Artist; and
- The installation of the Art Work shall conform to the Final Design specifications for the Art Work approved by Project Manager pursuant to Section 5.1 above; and
- The Art Work shall have been installed on a timely basis;
- The completed Art Work shall have been reviewed and approved by the Project Manager.
- The Art Work shall be in substantial compliance with all other terms and conditions contained in this Agreement and shall not be in default of this Agreement.
- Artist has provided City with a Documentation and Final Maintenance Plan ("Maintenance Plan") addressing the following elements:
 - 1) A written report for the City's files including complete information regarding the intent of the Art Work and the scale, materials, and processes used in the installation of the Art Work.
 - 2) Final written specifications and recommendations for maintenance of the Art Work, including an estimate of annual maintenance costs associated with the Art Work.
 - 3) One (1) set of digital images provided on CD for program and archival purposes, showing installation, and completed phases of Art Work.
 - 4) Maintenance and Materials list as described in Section 15.1. Artist shall advise the Project Manager in writing when these conditions have all been met. The Project Manager shall notify Artist in writing of any deficiencies in meeting the conditions for Final Acceptance.
- The City Council has taken action for Final Acceptance of Art Work ("Final Acceptance").

7. CONSULTATION DURING DESIGN AND INSTALLATION; DEVIATION FROM APPROVED SPECIFICATIONS

7.1 Consultation

Artist hereby acknowledges that the goal of the parties to this Agreement is the installation of a work of art that best represents the creative talents of Artist and conforms to the requirements of the City. To those ends, Artist agrees to be available as reasonably required for consultation with the Project Manager during design and execution of the Art Work, at no additional cost to the City. Artist shall also make good faith efforts to attend any inauguration or presentation ceremonies and/or public relation events.

7.2 Deviations From Approved Specifications

Artist shall install the Art Work in strict conformity with the specifications and designs approved by the City pursuant to Sections 5 and 6 above. However, Artist may at any time make a request of the City Project Manager for his/her approval of a deviation from the approved specifications. All such requests must be made in reasonable specificity and with reasonable advance notice to provide the City Project Manager with sufficient information and time to make an informed and considered decision. City Project Manager reserves the right to bring such requests to the Committee and/or City Council for approval. In no event shall any deviation increase the project scope and/or Contract Amount without prior City Council approval. The City may withhold approval to any such requested deviation in its sole discretion.

8. PREPARATION OF AND ACCESS TO PROJECT SITE/NOTICE OF CONFLICTING CONDITIONS

The preparation of the Project Site shall be the responsibility of the Artist. Artist shall not install the Art Work until access to the Project Site has been approved and scheduled in coordination with the Project Manager and Property Owner. Cost of transportation to and from the Project Site and any parking fees incurred by the Artist are the responsibility of the Artist.

Where the Artist's work is associated with that of any other contractor, the Artist shall examine the adjacent work and report in writing to the Project Manager any visible defect or condition preventing the proper execution of Artist's contract. If Artist proceeds without giving notice, the Artist shall be held to have accepted the work or material and the existing conditions, and shall be responsible for any defects in its own work consequent thereon, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection.

In case of delay in Artist's services through no fault of Artist, including construction delay, Artist shall store related art materials at no additional cost to City for up to 6 months. If Artist's work is delayed due to construction delays at the Project Site or other delays caused by City or its contractors, so that Artist suffers documented direct cost impacts in the form of increased costs of materials and/or labor, Artist may apply to the

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City for reimbursement of those expenses, which City may award in its sole discretion. In no event shall reimbursement of expenses exceed the Contingency Amount.

9. COMPENSATION

9.1 Contract Amount

The total compensation is **EIGHTY THOUSAND DOLLARS AND NO CENTS (\$80,000.00)** ("Contract Amount") for all Services under this Agreement, including payment to all suppliers, subcontractors, fees, taxes, Emeryville business tax certificate, Project Approvals, insurance, transportation to and from meetings, site preparation, restoring site to prior condition, and all other expenses associated with the scope of work specified in this Agreement including 15% for contingencies payable only on documented expenses in excess of the contract budget. The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the costs of installing the Art Work, for transporting and unloading materials and equipment to the Project Site, and for the costs of all travel by the Artist and the Artist's agents, subcontractors, and employees necessary for the proper performance of the Services required under this Agreement.

No charges shall be incurred under this Agreement nor shall any payments become due to Artist until all deliverables and Services required under this Agreement are received from and performed by Artist and approved by the City as being in accordance with this Agreement and the Artist provides invoices for each Interim Payment. The final payment is due and payable upon Final Acceptance of the Art Work and a final invoice is submitted by the Artist.

In no event shall the City be liable for interest or late charges for any late payments.

9.2 Method of Payment

City agrees to pay Artist for the Services performed and Eligible Costs incurred by Artist upon certification by City that the Services were actually performed and Eligible Costs actually incurred in accordance with this Agreement. A schedule of the approved Eligible Costs is included herein as Exhibit C.

9.3 Payment Schedule

City shall make payments to Artist for the amounts specified and Services as described in "Exhibit C: Artist's Payment Schedule". Compensation for Services performed and Eligible Costs incurred shall be paid to Artist upon receipt and approval of invoices by City. Artist shall submit invoices for each Payment Milestone described in **EXHIBIT D**. City shall pay Artist within forty-five (45) days after approval of the invoice by City (each an "Interim Payment"). In no event shall total payment exceed the total Contract Amount described in Section 9.1; provided further that no payment shall include expenditure of any Contingency Amount, unless such expenditure has been approved in writing by City as described in Section 9.1 and invoices for Eligible Costs in **EXHIBIT C** demonstrate costs in excess of total payments made and to be made to the Artist.

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City may withhold any payments to Artist in any instance in which Artist has failed or refused to satisfy any material obligation provided for under this Agreement or is otherwise in default. In no event shall City be responsible for payments to supplier or subcontractor of Artist.

9.4 Effect of Interim Payments

Approval of the work to permit an Interim Payment is solely for the benefit of the Artist. Any Interim Payment does not constitute acceptance or approval of the work by the City; nor shall it be construed as a waiver of the City's right to require that the work conform strictly to the Final Design as approved by the Project Manager, as specified under Section 5.1.

10.METHOD OF PAYMENT; AUDIT AND RECORDS

Invoices furnished by the Artist under this Agreement must be in a form acceptable to the City. Payment shall be made within forty-five (45) days after approval of the invoice by Project Manager.

At any time during normal business hours and as often as the City may deem necessary, there shall be made available to the City for examination all records with respect to all matters covered by this Agreement. The Artist will permit the City to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

11.TAXES

Any taxes levied upon this Agreement, the transaction, or the equipment or services delivered under this Agreement, including sales or use taxes shall be borne by the Artist.

12.LIABILITY FOR DAMAGE TO EQUIPMENT OR ART WORK

The City shall bear no responsibility, nor incur any liability, for loss or damage to the Art Work or any Artist-owned equipment involved in Artist's performance under this Agreement.

13.INDEPENDENT CONTRACTOR

Artist shall be deemed at all times to be an independent contractor and shall be wholly responsible for the manner in which the Artist performs the service required by the terms of this Agreement. Nothing contained herein shall be construed as creating an employment or City relationship between the City and the Artist. Terms in this Agreement referring to direction from the City shall be construed as providing for direction as to policy and result of the Artist's work only and not as to the means by which such a result is obtained.

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Artist is solely responsible for hiring and paying subcontractors and employees, as well as responsible for the acts of these subcontractors and employees.

14. ARTIST WARRANTIES***14.1 Conformance with Plans and Specifications***

Artist hereby expressly warrants to the City that the Art Work, and all services and materials incorporated therein, shall conform to all plans and specifications of the Art Work approved by the City. The Art Work shall be subject to inspection and rejection by the City from the beginning of installation until the completion and Final Acceptance. An inspection by the City of any work or material shall not be deemed to be a waiver of any future right of inspection or of any right to demand correction of any subsequently discovered defect. Any work or material found to be unsatisfactory or defective before final approval of the work shall be corrected or replaced by the Artist within a reasonable time. Inspection shall not relieve the Artist of the Artist's obligation to furnish materials and workmanship reasonably in accordance with the contract.

14.2 Defects in Material and Workmanship

Artist warrants that the work will be fit for the intended purpose; will be safe and will not have any nuisance or harmful effect; and will be free of defects in workmanship or materials, including inherent defects. Artist warrants that it shall, at Artist's cost and expense, remedy such defects in workmanship or materials that appear within twenty-four (24) months of the Final Acceptance of the Art Work.

In the event the Art Work should deteriorate due to an inherent defect during the Installation Period, the Artist will replace the work at Artist's expense. "Inherent defect" refers to a quality within the material or materials which comprise the Art Work which, either alone or in combination, results in the tendency of the work to destroy itself. "Inherent defect" does not include any tendency to deteriorate which is specifically identified in the proposal submitted by the Artist.

14.3 Title

The Artist represents and warrants that 1) the Art Work is solely the result of the artistic effort of the Artist; and 2) the Art Work is unique and original and does not infringe upon any copyright.

15. MAINTENANCE, REPAIRS, ALTERATIONS AND REMOVAL***15.1 Maintenance and Repair***

As a condition to Final Acceptance by the City of the Art Work, the Artist shall provide the City with a materials list, the manufacturer's technical sheets and/or specifications for the materials, and a written description of the regular maintenance needs of the Art Work ("Maintenance and Materials List"). Routine maintenance of the Art Work shall be the responsibility of the City. The City shall maintain the Art Work and/or make minor or emergency repairs without Artist's approval or consultation, provided such work is

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performed in accordance with the maintenance and materials information provided by the Artist. If necessary maintenance and repairs cannot be made in accordance with the Artist's specifications, or if the Artist has provided insufficient information to the City, the City may use its best judgment to effect necessary repairs in a timely fashion.

15.2 Removal or Destruction; Waiver of Proprietary Rights

Artist hereby acknowledges that the Art Work, when installed, will be incorporated within and made a part of the Project Site in such a way that removing the Art Work from the Project Site, or the destruction or modification of the Project Site may cause the destruction, distortion, mutilation or other modification of the Art Work. Artist therefore agrees that the City shall have the absolute right incidental to its ownership of the Art Work to alter, change, modify, destroy, remove, relocate, move, replace, transport, or transfer, in whole or in part (such actions being referred to herein as "Alterations"), the Art Work at such time as the City shall deem necessary in order to exercise its powers and responsibilities with respect to public works and improvements in furtherance of City's operations or upon notice of the Property Owner's intent to revoke the license allowing for installation and maintenance of the Project. The City shall make a good faith effort to provide the Artist with prior written notice of the City's intent to undertake any Alterations to the Art Work. To the extent the provisions of this Section are inconsistent with the provisions of federal or state law, including without limitation the California Art Preservation Act (California Civil Code Sections 980 et seq.) and the 1990 Visual Artists' Rights Act, Artist hereby waives any right to preservation of the Art Work provided by those laws; provided, however, that the Artist shall retain any right to disclaim authorship of the Art Work pursuant to and under the conditions set forth in the California Art Preservation Act and the 1990 Visual Artists' Rights Act.

15.3 Public Hazard

Artist warrants to the City that the Art Work as installed does not contain features, materials or elements that pose a foreseeable danger to the public. In the event that the City determines that the Art Work presents an imminent hazard to the public, the City may authorize the removal of the Art Work without approval of the Artist. The Artist shall be notified within ten (10) days of any such action, and the City shall then consider options for the final disposition, repair, reinstallation, maintenance or de-accession of the Art Work. In the event that the Art Work cannot be removed without being irreparably damaged or destroyed, the Artist hereby agrees to waive any rights the Artist may have under the California Art Preservation Act and the 1990 Visual Artists' Rights Act, provided, however, that the Artist shall retain any right to disclaim authorship of the Art work pursuant to and under the conditions set forth in the California Art Preservation Act and the 1990 Visual Artists' Rights Act.

16. INSURANCE**16.1 Required Insurance**

Artist shall place and maintain for the periods stated below, and pay the cost thereof, the following insurance policies:

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- A. **Worker's Compensation.** If Artist has employees, Artist shall procure and maintain statutory Worker's Compensation Insurance in the jurisdiction where the work is being performed and provide a waiver of subrogation against the City. Artist shall also procure and maintain Employer's Liability Insurance with a limit of no less than **\$1,000,000.00** each accident, covering all employees. If Artist warrants that it is not an employer and has no employees as defined by the California Labor Code Sections 3351-3351.5, then the City waives the requirement for Worker's Compensation and Employer's Liability Insurance under this Agreement.

Artist shall ensure that Artists' subcontractors who do qualify as employers as defined by the California Labor Code Sections 3351-3351.5 procure prior Worker's Compensation, with Employer's Liability insurance, with limits of no less than **\$1,000,000.00** each accident, covering all employees employed by Artist's subcontractor to provide statutory benefits as required by the laws of California, said policy shall be endorsed to provide that the insurer waives all rights of subrogation against the City.

I certify that my business has no employees and that I do not employ anyone. I am exempt from the legal requirement to provide Workers' Compensation Insurance.



— (Artist's Initials)

- B. **General Liability Insurance.** Artist shall procure and maintain Comprehensive General Liability Insurance with limits not less than **\$1,000,000.00** for each occurrence combined single limit for bodily injury and property damage, including coverage for contractual liability, broad form property damage, completed operations, and if any subcontracted work, independent contractors.
- C. **Comprehensive Automobile Insurance.** Artist shall procure and maintain, and cause any subcontractors to procure, Comprehensive Automobile Liability insurance with single limit for bodily injury and property damage of **\$1,000,000.00**, including coverage for owned, non-owned and hired automobiles, as applicable. Any deductible under such policy shall not exceed **\$1,000** for each occurrence.
- D. **Risk of Loss Insurance.** Artist shall procure and maintain Risk of Loss Insurance in an amount not less than **EIGHTY THOUSAND DOLLARS AND NO CENTS (\$80,000)**. Artist shall take such measures as are reasonably necessary to protect the Art Work from loss or damage until Artist has completed the Art Work as specified herein and ownership is transferred to the City. The risk of loss or damage to the Art Work shall be borne by Artist prior to final acceptance of the Art Work by the City.

City of Emeryville | Mural Artist Agreement: Design and Installation of Art Work

16.2 Miscellaneous Insurance Matters

All insurance policies obtained pursuant to Section 16 shall be endorsed to provide:

- 1) That thirty (30) days written notice of cancellation, non-renewal or reduction in coverage or limits shall be given to

City of Emeryville
Attn: Community and Economic Development Coordinator
1333 Park Avenue
Emeryville, CA 94608-3517

; and

- 2) That such insurance is primary to any other insurance available to an additional insured with respect to claims arising out of this Agreement and that insurance applies separately to each insured against whom a claim is made or a suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits of liability.

All insurance policies required under this Agreement shall be issued by insurance companies reasonably acceptable to the City and shall be admitted to do business in the State of California.

The liability insurance policies required above shall be endorsed to name as an additional insured the City and its respective members, officers, directors, agents and employees, and the Property Owner.

Copies of all insurances shall be provided to the City, and complete copies of any insurance policies obtained pursuant to this Agreement shall be provided to the City if requested at any time.

17. INDEMNIFICATION AND GENERAL LIABILITY

Artist shall defend, indemnify and hold harmless the City and its officers, employees, agents, contractors, consultants and members of its boards, committees and commissions and the Property (an "Indemnified Person") harmless from and against any and all Losses arising directly or indirectly, in whole or in part, out of any injury to or death to any person or damage to or destruction of any property, from any cause whatsoever, relating to Artist's performance, attempted performance or failure to perform under this Agreement or breach of this Agreement, whether such Loss is caused by the Artist or its agents, employees or contractors, or by any third party, but excluding liability caused by conduct of the City.

In the event any action or proceeding is brought against an Indemnified Person by reason of a claim arising out of any Loss covered by this indemnity, and upon written notice from such Indemnified Person, Artist shall at the Artist's sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the Indemnified Person. Each Indemnified Person shall have the right to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment covered by the indemnity set forth in this Section.

City of Emeryville | Mural Artist Agreement: Design and Installation of Art Work

For purposes of this Section, the term "Losses" shall mean any and all claims, demands, losses, damages, liens, liabilities, injuries, deaths, penalties, fines, lawsuits and other proceedings, judgments and awards rendered therein, and costs and expenses, including, but not limited to, reasonable attorney's fees.

The Artist shall indemnify and hold the City harmless from all loss and liability, including attorney's fees, court costs, and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark and all other intellectual property claims of any third-party persons arising from the Artist's work under this Agreement.

The provisions of this Section 17 shall survive termination of this Agreement.

18. DEFAULT; REMEDIES; TERMINATION

18.1 For Cause

Failure or refusal of either party to perform or do any act herein required shall constitute a default. Either party may terminate this Agreement upon seven (7) days' advance written notice to the other party in the event that the other party 1) materially breaches any duty, obligation, or service required pursuant to this Agreement and 2) fails to cure such breach within ten (10) days after written notice of such breach from the non-breaching party.

In the event this Agreement is terminated by reason of the Artist's default, the Artist shall immediately refund to the City the amount of any interim payment(s) made to the Artist.

18.2 For Public Convenience or Necessity

The City may terminate this Agreement at any time, in whole or in part, for any as a condition of receiving the fair and reasonable payment from the City, the Artist agrees to transfer title to all partially completed work, plans, notes, drawings, etc. to the City. Upon termination by City pursuant to this subsection 18.2, City shall provide for payment to the Artist for services rendered and expenses incurred prior to the termination date. Artist shall receive payment only for expenses directly related to the current phase of the Project at the time of termination. Such payment shall not exceed the amount of the Interim Payment for the current phase of the Project at the time of termination.

18.3 Legal Remedies

Termination by the City pursuant to this Section does not waive any other legal remedies available to the City. The remedies described herein are 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.

City of Emeryville | Mural Artist Agreement: Design and Installation of Art Work**19. NOTICES**

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

CITY**AMBER EVANS**

1333 Park Avenue
Emeryville, California 94608
Phone No.: (510) 596-4382
Fax No.: (510) 596-4389
E-Mail: aevans@emeryville.org

ARTIST**NIGEL SUSSMAN**

1511 Addison Street
Berkeley, CA 94703
Phone No.: (510) 691-9898
Fax No.: n/a
E-Mail: nigel@nigelsussman.com

Any submittal, payment, request, notice, or report shall be deemed delivered five (5) business days after the party providing notice has mailed said notice to the other party by certified mail.

20. OWNERSHIP OF ART WORK; COPYRIGHT AND PATENTS; DOCUMENTATION**20.1 Generally**

Artist shall retain all rights under the Copyright Act of 1976, 17 U.S.C. 101 et seq., and all other rights in and to the Art Work except as otherwise set forth in this Agreement. The City is not responsible for any third-party infringement of the Artist's copyrights and Artist agrees to hold the City harmless for any such infringement.

20.2 Title and Risk of Loss

Title to the Art Work shall be held by the City. The Artist bears the risk of damage to or loss of the Art Work prior to Final Acceptance by City.

20.3 Display

The City has the right to display the project drawings and models, and is authorized to make and reproduce photographs and other two-dimensional reproductions of any drawings or models for publicity and program purposes.

20.4 Ownership of Documents and Models

Studies, drawings, designs, maquettes and models prepared and submitted to the City shall be returned to the Artist following Execution of the Art Work.

20.5 Reproduction Rights

City shall have a perpetual, nonexclusive license to make, and to authorize the making of photographs and other two-dimensional reproductions of the work 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 exhibit on catalogues, books, slides,

City of Emeryville | Mural Artist Agreement: Design and Installation of Art Work

photographs, postcards, posters and calendars, and the City's on-line homepage; in art magazines, art books, and art and news sections of newspapers; in general 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 from stations operated for educational purposes or on programs for educational purposes from all stations.

20.6 Artistic Credit

The City hereby agrees to credit the Artist for the Art Work upon publication of any two-dimensional reproductions of the work as stated in this Section.

21. SUBCONTRACTING

The Artist shall not subcontract this Agreement or any part of it unless such subcontracting is approved by the City in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. In the event Artist desires to subcontract for any of the services under this Agreement, the Artist shall notify the City in writing and describe in detail the services to be provided by said subcontractor. Within ten (10) business days after receipt of Artist's notice of intent to subcontract, City shall notify Artist in writing of its consent to subcontract, which consent shall not be unreasonably withheld. All subcontractors shall obtain insurance for the coverages and amounts described in Section 16. All insurance policies of subcontractors shall name the City as an additional insured.

The Artist's agreements with its subcontractors shall require that the subcontractors comply with each of the Artist's legal obligations to the City as set forth in this Agreement.

22. NO ASSIGNMENT OR TRANSFER

Artist shall consistently give its personal attention to the faithful execution of the scope of work of this Agreement. The Artist shall keep the work under its control and shall not assign or subcontract the whole or any part thereof, except as herein provided. All transactions with subcontractors shall be made through the Artist, and no subcontractor shall relieve the Artist of any of the Artist's liability or obligations under this contract.

23. COMPLIANCE WITH LAWS

In the performance of this contract, Artist agrees to comply with applicable laws and regulations. Artist covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of Artist by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Artist under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent

City of Emeryville | Mural Artist Agreement: Design and Installation of Art Work

professionals. Artist shall not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, or disability.

24. CONFLICTS OF INTEREST

Artist covenants and declares that, other than this Agreement, it has no business holdings or agreements with any official, employee or other representative of the City. For the duration of this Agreement, in the event the Artist or its principals, agents or employees acquire such a holding, interest or agreement within the City of Emeryville or with any official, employee or representative of the City in the future, the Artist will immediately notify the City of such holding, interest or agreement in writing.

25. BUSINESS TAX CERTIFICATE

Prior to commencement of the services to be provided hereunder, Artist shall apply to the City of Emeryville Finance Department for a business tax certificate, pay the applicable business license tax and maintain said business tax certificate during the term of this Agreement, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.

26. LIVING WAGE

Artist shall comply with the requirements of the City's Living Wage Ordinance set forth in Chapter 31 of Title 5 of the Emeryville Municipal Code, unless said Agreement is (i) between the City and another governmental entity, (ii) subject to a higher prevailing wage rate as defined in the California Labor Code, or (iii) subject to federal or state laws or regulations that would preclude the application of the City's laws.

Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Agreement for all employees of Artist who perform at least twenty-five percent (25%) of the work arising from this Agreement, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to Section 5-31.08. Artist shall promptly provide to the City documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the City.

Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against Artist for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the City may terminate the Agreement and pursue any other remedies available to the City, including debarment, for violations of the Living Wage Ordinance.

Artist shall notify each of its affected employees with regards to wages that are required to be paid pursuant to this chapter. "Living Wage" means no less than \$16.97 per hour (as of July 1, 2021, subject to increase annually on July 1st to reflect the twelve-month

City of Emeryville | Mural Artist Agreement: Design and Installation of Art Work

average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If Artist contributions for health benefits are not paid on an hourly basis, Artist must demonstrate to the City the hourly value of such benefits in order to receive credit for such payments to covered employees.

27. MISCELLANEOUS***27.1 Survival of Indemnities and Other Provisions***

Termination of this Agreement shall not affect City's right to enforce any and all indemnities, representations or warranties given or made by Artist to City under this Agreement, nor shall it affect any other provision of this Agreement that expressly states it shall survive termination.

27.2 Force Majeure

The term "Force Majeure" with respect to a delay in performance shall mean any delay that is attributable to:

- 1) any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either party thereto), civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body;
- 2) any changes in any applicable laws or the interpretation thereof; or
- 3) any flood, washout, explosion, or any other cause beyond the reasonable control of the party from whom performance is required, or any of its contractors or other representatives. Any prevention, delay or stoppage in a party's performance hereunder due to Force Majeure shall excuse the performance of the party affected for a period of time equal to any such prevention, delay or stoppage; provided, however, that during the period of any such delay or stoppage, the party whose performance hereunder is excused shall take all reasonable steps necessary to minimize the length of such delay or stoppage.

27.3 Governing Law

This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of California. Any legal action taken to enforce the terms of this Agreement shall be instituted in the Superior Court of the State of California, County of Alameda, or in the United States District Court, Northern District of California. The prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which the party may be entitled.

27.4 Successors and Assigns

The terms, covenants and conditions contained in this Agreement shall bind and inure to the benefit of Artist and City and, except as otherwise provided herein, their personal representatives and successors and assigns. There are no third-party beneficiaries to this Agreement.

27.5 Integrated Agreement; Modification

This Agreement contains all the agreements of the parties hereto relating to the subject matter addressed herein, and cannot be amended or modified except by a written agreement mutually executed between each of the parties hereto.

27.6 Non-waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

27.7 Entire Agreement; Construction and Interpretation of Agreement

- The parties intend that this Agreement (including all of the attached exhibits, which are made a part of this Agreement) shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous written or oral agreements or understandings.
- Should any provisions or portions of this Agreement be held unenforceable or invalid, the remaining provisions and portions shall be unaffected by such holdings.
- The subject headings of the paragraphs of this Agreement are for convenience only and shall not affect the construction or interpretation of any of its provisions.
- The parties hereto agree to execute such further instruments and to take such further actions as may be reasonably required to carry out the intent of this Agreement.
- This Agreement may be executed in two or more counterparts, each of which shall be deemed original, but all of which taken together shall constitute one and the same instrument.
- If more than one person executes this Agreement on behalf of Artist, the obligations and liabilities of each such person shall be joint and several as to all obligations and liabilities of Artist hereunder.
- For purposes of this Agreement, reasonable attorney's fees and legal costs and charges of City's City Attorney Office shall be based on fees regularly charged by private attorneys in the City with an equivalent level of expertise and practicing in law firms with approximately the same number of attorneys as the City Attorney's Office.

City of Emeryville | Mural Artist Agreement: Design and Installation of Art Work

28. WAIVER OF AGREEMENT

The City's failure to enforce any provision of this Agreement or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

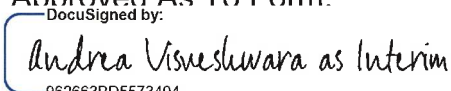
SIGNATURES ON FOLLOWING PAGE

City of Emeryville | Mural Artist Agreement: Design and Installation of Art Work

29. SIGNATURE PAGE TO ARTIST AGREEMENT: DESIGN, FABRICATION, TRANSPORTATION AND INSTALLATION OF ART WORK

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:

DocuSigned by:

962663BD5573494...
City Attorney

Dated: **CITY OF EMERYVILLE**

_____, 2021

Christine S. Daniel, City Manager

Dated:

08/22/2021, 2021

ARTIST
DocuSigned by:


87585BE83D834AF...
Nigel Sussman, Artist

(Signature)

ATTACHMENTS

- Exhibit A: Artist Proposal
- Exhibit B: Art Work Location Map
- Exhibit C: Eligible Costs
- Exhibit D: Artist Payment Schedule

NIGEL SUSSMAN ILLUSTRATION, LLC

1511 Addison Street Berkeley, CA 94703
(510) 691-9898 nigel@nigelsussman.com

March 19, 2021

Mural Proposal – 1451 Sherwin Ave. Emeryville, CA

Trying to capture the essence of a location in a piece of art is something I do with my site-specific work, and this piece is a perfect example. Combining the idea of a map with relevant local iconography in a bold and approachable graphic style represents the City of Emeryville's diversity and personality. The heroes of the painting are the local shorebirds, but other elements include the Emeryville Arts Center, City Hall, the Bay Bridge, Emeryville Marina, Bay Trail, Pixar Studios, The Emeryville Shellmound, local flora, the I-80 freeway, the local culinary scene, shopping, biking, shipping, railway, and more.

By utilizing the existing colors of the building, along with a simple, cheerful color palette, the painting will easily integrate with the sites existing architecture. I am proposing to paint over the architectural elements and organically blur the hard edges to balance extreme linear construction. In this spirit, I also have proposed incorporating and keeping the trellis instead of 'fighting' it. The interesting texture and layering effect will be best utilized as a place to install a painting on cut plywood sheets. A puzzle of CNC routed plywood sheets would be cut to spec (by my connection with a local set-building company in Oakland. This accounts for a large portion of the supplies/materials cost.), hand painted and sealed by me, and then installed with appropriate hardware into the existing trellis. The pieces would be light enough not to pose any structural stress. The interesting juxtaposition of the painted panel layered on metal and wall textures would accentuate the art placement.

As with all of my mural work, I have started with a rough sketch that captures my suggested layout, content, and color-scheme. Learned in my advertising and illustration background, I prefer to collaborate with the client, incorporating feedback and suggestions rather than just painting what I 'feel.' I would want to add, change, and refine the illustration based on your collective feedback before redrawing the final illustration with more detail, and then translating the approved image onto the wall by hand using commercial-grade house-paint and brushes. With the aid of a small scissor lift, I will paint the entire surface and install the pre-prepared wood panels on my own. Once completed, the entire mural will be painted with a coating of non-sacrificial anti-graffiti coating to make tagging removable with a gentle power-wash.

Exhibit A



Artist Statement

As an illustrator and muralist, I draw pictures for a living and enjoy the process of creating, but what is most rewarding for me is the way that art can make people happy. Public art can engage and inspire, and most importantly, bring joy to everyday life. A lot of my public work has been beautifying otherwise barren spaces like construction barriers. I usually paint in a bold, graphic, and line-work with a limited palette. The subject matter is always universal, fun, and positive. Art brings to life moments in time, our feelings, connection, and so much more; I'm thankful to be able to create pieces of work that tell a story. I would be honored and thrilled to work with the City of Emeryville to create art for the local community and visitors alike to enjoy, and to continue to help beautify the neighborhood.

Professional References

The individuals below represent organizations that have hired Nigel Sussman Illustration to complete mural and illustration projects. More references available upon request.

Matthew Jervis – Director of Vitality, Downtown Berkeley Association
510-549-2230 mjervis@downtownberkeley.com

Craig Corpora – Program Associate, Civic Art Collection and Public Art Program
(415) 252-2249 craig.corpora@sfgov.org

THANK YOU FOR YOUR TIME AND CONSIDERATION!

NIGEL SUSSMAN.COM

Nigel Sussman

Illustrator / Muralist

nigel@nigelsussman.com ▪ (510) 691-9898

Portfolio **NigelSussman.com**

Employment **Principal, Nigel Sussman Illustration, LLC.** Berkeley, CA

March 2014 – Present

▪ Freelance illustration and murals for local and international clients including:

Adidas, AdsNative, ADT, Airbnb, Amazon, Arup, Autodesk, Atlas Edibles, Backpacker Magazine, Bai, Battlebots, Bosch, Cal Student Store, California Academy of Sciences, City of Berkeley, CW Analytical, Downtown Berkeley Association, eBay, Facebook, FirstRound Capital, Google, GRID Alternatives, Harvest Properties, Highlights Magazine, Illustoria Magazine, Intuit, Lagunitas Brewing, Lanesplitter Pizza, Lenovo, Levi's, LinkedIn, Paypal, Peel.tv, Popular Science Magazine, Printweek Magazine, Redbull, Redtail Technologies, Robinhood, Rubrik, Say Media, Seven Stills Distilling, Scholastic, Science Magazine, SFMOMA, Sierra Nevada, Square, Statefarm, Tacolicious, Telegraph Business Improvement District, The Fillmore SF, The UC Theatre, Twitter, Visa, VMWare, Yahoo

Associate Creative Director, Say Media. San Francisco, CA

October 2010 – September 2015

Major responsibilities included:

- Art Direction, design, animation
- Training and overseeing production of studio
- Illustration for Say partners and internal promotion/branding

Senior Interactive Designer, Doremus & Co. San Francisco, CA

September 2008 – October 2010

Major responsibilities included:

- Design, animation and production of Flash for banners, eBooks and websites
- Image editing and layout/coding for emails and other web collateral
- Illustration and Storyboarding for video concepts

Interactive Designer, McCann Erickson. San Francisco, CA

December 2006 – September 2008

Major responsibilities included:

- Animation and production of Flash banners

Interactive Production Artist, Organic Inc. San Francisco, CA

June 2006 – December 2006

Major responsibilities included:

- Animation and production of Flash banners

Web Designer, Netopia Design Headquarters. Emeryville, CA

June 2005 – June 2006

Education **California College of the Arts,** Oakland/San Francisco, CA

2003-2005 Illustration,

BFA in Illustration from California College of the Arts (2005)

Carnegie Mellon University, Pittsburgh, PA

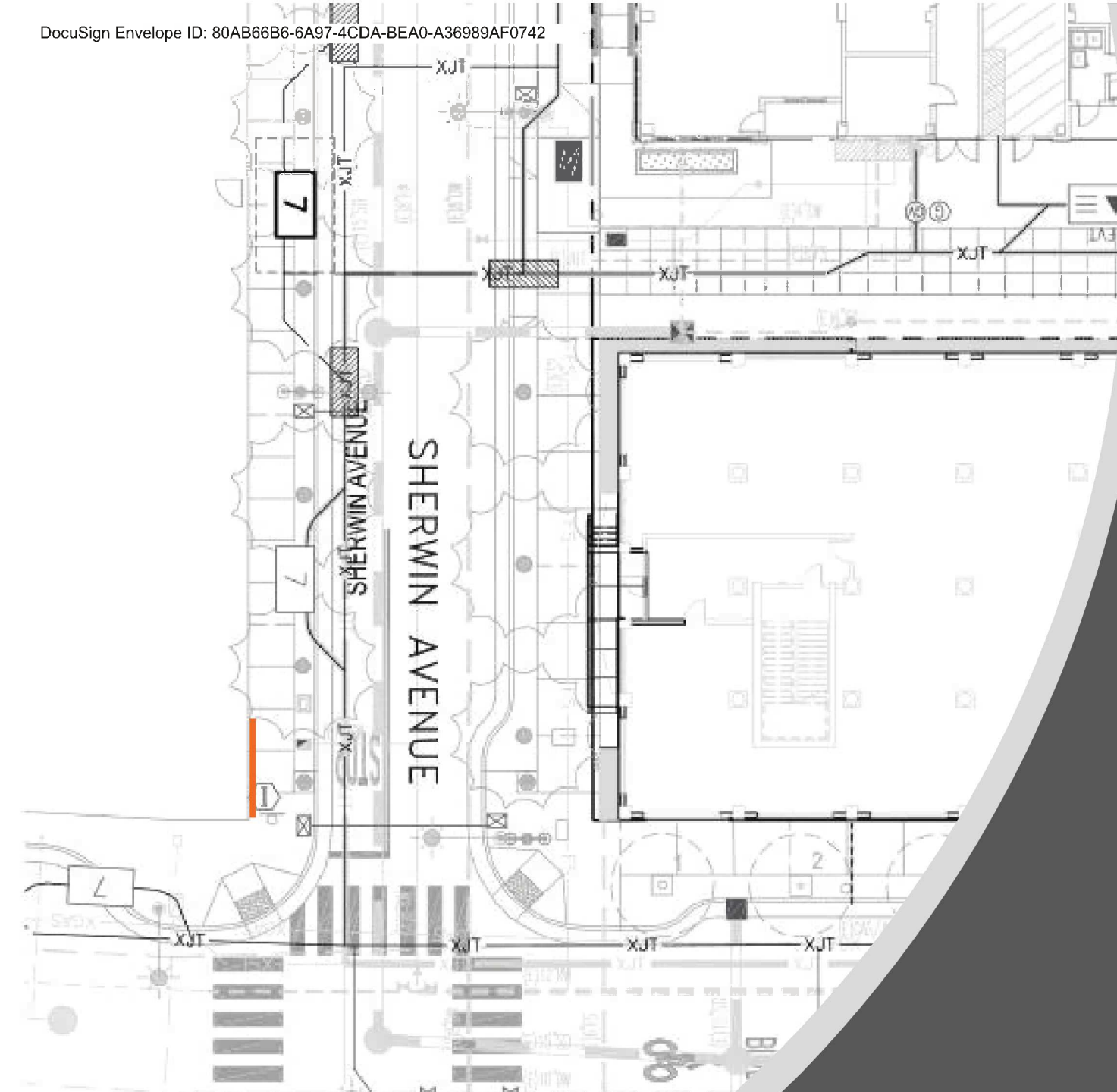
2001-2003 Visual Arts

Skills

- Mac & PC: Adobe Creative Suite (Photoshop, Illustrator, After Effects)
- GIF Animation and Video editing
- High level of proficiency in traditional and digital media including drawing, painting
- Large-scale mural design and installation

NIGEL SUSSMAN.com

1511 Addison Street ▪ Berkeley, CA 94703



Mural Façade

Exhibit B Mural Location



Exhibit B
Mural as Proposed in
Location, on Sherwin at
Horton



CITY OF EMERYVILLE MURAL PUBLIC ART PROJECT
PUBLIC ART PROPOSAL FORM - MURAL PROPOSAL

Artist's Name (or Team Leader) Nigel Sussman

Address_ 1511 Addison St.

City/State Berkeley, CA Zip Code 94703

Email Address Nigel@nigelsussman.com

Telephone(s)_ 510-691-9898

Names and E-mail or telephone numbers of additional team members*, if applicable:

Name N/A E-mail or Phone _____

Name _____ Email or Phone _____

*Please provide additional team member names on a separate, attached, sheet if necessary.

Please check the requirements as below and attach

- Artist information
 - ☒ Resume/CV
 - ☒ Examples of prior work (color images)
 - ☒ Artist statement
 - ☒ References
- Proposal
 - ☒ Visual proposal (can be line drawing) and narrative proposal
 - ☒ Maintenance plan/materials description
 - ☒ Photo(s) of proposed mural location(s) and hand drawn or computer generated simulations of proposed mural
 - ☒ Site plan/dimensions/location

Project Schedule:

	Delivery Date- Assume Installation starts September 1
Final Design	October 1
Site Preparation	November 1
Installation	November 2-9
Completion	November 10
Community Celebration	November 13

Project Budget:

Cost

1. Site Preparation including wall repair as needed if removing screen in Segment B	\$300
2. Paint/Primer/Sealer*	\$650
3. Supplies/Materials, other	\$2600
4. Artist Fee	61800
5. Equipment Rentals	\$1200
6. Insurance	\$500
7. Permits (required if access closures/ traffic control is needed in public right of way for installation)	0
8. Anti-Graffiti Treatment	\$950
9. Removal of Screen in Segment B (if including Segment B in proposal)	0
10. Optional Community Participation Stipend	
11 Contingency (15% minimum)	\$12000
<i>*Note: Artist to confirm existing surface condition and note/include in proposal surface treatment, if necessary, to provide optimal background surface for proposed mural.</i>	
Total	\$80000

Confirm Contract requirements acceptable? ☒ Yes ☐ NoConfirm understanding of possible permitting requirements? ☒ Yes ☐ NoConfirm waive rights to work integral to proposal? ☒ Yes ☐ No

Optional: Community Participation Proposal included?

- ☐ Yes
- ☒ No

I / We have read the Emeryville Mural Project RFP and the City of Emeryville Public Art Contract and agree to abide by the terms therein:



Nigel Sussman

Artist or Team Representative

Nigel Sussman - Deliverables and Payment Schedule

Exhibit D

Tasks	Date	Percent	Payment
Final Design	10/1/2021	25%	\$ 17,000.00
Site Preparation	11/1/2021	10%	\$ 6,800.00
Installation	11/2-9/21		\$ -
Completion	11/10/2021	50%	\$ 34,000.00
Community Celebration	11/13/2021	15%	<u>\$ 10,200.00</u>
			\$ 68,000.00
Contingency -payable on receipt of documentation of unforeseen costs		up to	<u>\$12,000</u> Paid as invoiced is approved
Contract Price			\$ 80,000.00

Exhibit D

EMERYVILLE LICENSE AGREEMENT

This License Agreement ("**License Agreement**") is made and entered into as of _____ ("**Effective Date**") by the City of Emeryville, a municipal corporation ("**City**"), and P & H Associates, a California limited partnership ("**Property Owner**") and Nigel Sussman, LLC ("**Artist**").

RECITALS

WHEREAS, pursuant to Article 4 of Chapter 2 of Title 3 of the Emeryville Municipal Code, the City has allocated funds for the design, and installation of an original piece of art; and

WHEREAS the Property Owner is the owner of the property improved with a single-story warehouse building and located at Park Street, Horton Street, Sherwin Street, and Hubbard Street in Emeryville (APNs 49-1034-1-4 and 49-1034-1-3) ("**Property**"). A site plan for the Property with a depiction of the licensed area ("**Licensed Area**") is shown on Exhibit A to this agreement; and

WHEREAS, pursuant to Resolution No. _____, _____ ("**Artist**") and the City have executed an agreement dated _____ ("**Art Agreement**") for Artist to design and install a mural ("**Mural**") as an original piece of art on Property's north elevation wall, accessible from Horton Street and Sherwin Avenue public streets and sidewalk rights-of-way as depicted in Exhibit A to the Art Agreement,

NOW, THEREFORE, the parties agree as follows:

1. Grant of License. For the Term of this License Agreement (defined in Section 4.a), Property Owner hereby grants to City, Artist and their respective agents, employees, contractors and sub-contractors, and volunteers, a limited, exclusive and revocable license (the "**License**") to install and maintain the Mural in the Licensed Area (defined below) and, this non-exclusive license for ingress and egress across or through the Property to the Licensed Area, the location of which is depicted in Exhibit A to this License agreement. City and Artist shall not use the Licensed Area for any other purpose or business except as provided in this Agreement without obtaining Property Owner's prior written consent, which consent may be denied in Property Owner's sole and absolute discretion. Notwithstanding any provision or term contained herein to the contrary, this License Agreement does not constitute a deed, a lease or an easement nor does it grant City any estate or interest in land, nor shall any expenditure made by City with respect to the Licensed Area change the character of this revocable License to an irrevocable License.
2. Consideration. The Property Owner hereby acknowledges consideration for the grant of the License.

3. Installation of the Mural. The Mural shall be installed in accordance with all applicable laws and building codes and the Art Agreement and shall be completed in a good and workmanlike manner. City shall pay all costs for work performed by it or on its behalf and shall keep the Property free and clear of mechanics' liens or any other liens.

4. Maintenance of the Mural.

- a. Term. Subject to Section 9, Property Owner agrees not to paint over, change or modify the Mural in any way without the written permission from the City until November 30, 2025 ("**Term**"). Property Owner also agrees to take reasonable steps to ensure that its agents, employees, tenants, contractors, subcontractors and volunteers do not paint over, change or modify the Mural in any way during the Term. The City is not obligated to remove the Mural at the end of the Term or upon any other termination or expiration of the License Agreement. Provided there is no uncured default by City as provided in Section 9, this Section shall survive termination prior to November 30, 2025 of the License Agreement.
- b. Maintenance. During the Term, City shall, at its sole cost and expense, make all necessary repainting, repairs, and restorations, ordinary as well as extraordinary, foreseen as well as unforeseen, to the Mural and all parts of each thereof. In addition, City shall, within five (5) business days after written notice from Property Owner, promptly and adequately repaint, repair and/or remove graffiti from the Mural at City's sole cost and expense. The Property Owner may request for the City to repair damage to the mural at any time during the term of this license agreement. The City shall respond in writing within five (5) business days to arrange maintenance and repair of the Mural and work shall be performed in a timely manner. A failure to provide the maintenance and repair of the Mural as provided in this section, to the reasonable satisfaction of Property Owner, shall be a default under this Agreement and Property Owner shall have the right to terminate the License Agreement.

5. Insurance. Artist shall provide Certificate of Insurance naming P & H Associates, LLC, Ranelagh Ventures LLC, William H. Banker, Jr., and GS Management as additional insureds for the policies of insurance referenced in Section 16 of the Art Agreement. The Artist shall be required to comply with the Art Agreement and provide insurance naming the Property Owner an additional insured during the installation of the Mural and during any subsequent repair and maintenance of the Mural by Artist as described in Section 4.b of this License Agreement.

6. VARA/CAPA Waiver. With respect to the Mural and in consideration of the procedures and remedies specified in this Agreement, Artist waives any and all

claims, arising at any time and under any circumstances, against the Owner Parties (defined herein), 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. The Mural shall be incorporated into the Property such that the Mural cannot be removed from the Property without alteration of the Mural. Artist waives any and all such claims against Owner Parties of the Property, and their agents, officers and employees, for any alteration or removal of the Mural. Artist and Property Owner shall each execute the attached Waiver as set forth in Exhibit C.

7. Indemnification.

a. City shall use reasonable care to prevent damage to the Property and shall indemnify and hold harmless Property Owner, and each of their respective partners, affiliates, tenant agents, employees, successors and assigns (collectively the “**Owner Parties**”) from and against all claims, damages or liability, related to the City's use of the Property for installation and maintenance of the Mural. Such indemnity shall extend, but not be limited to, claims, damages, and liability arising from injuries or damages to persons or property. Such indemnity shall not apply to any injuries to persons or property, which result from the willful misconduct or gross negligence of Property Owner.

b. Artist shall use reasonable care to prevent damage to the Property and shall indemnify and hold harmless Owner Parties from and against all claims, damages or liability, related to the Artist's use of the Property for installation and maintenance of the Mural. Such indemnity shall extend, but not be limited to, claims, damages, and liability arising from injuries or damages to persons or property. Such indemnity shall not apply to any injuries to persons or property, which result from the willful misconduct or gross negligence of Property Owner. Artist shall indemnify, defend and hold harmless Owner Parties from all loss and liability, including reasonable attorney's fees, for any infringement of the patent rights, copyright, trade secret and all other intellectual property claims related to the Mural.

8. Limitation of Liability. Notwithstanding anything to the contrary herein, in no event shall Owner Parties be liable to Artist for any special, consequential, indirect or incidental damages arising out of or in connection with this License Agreement.

9. Termination of License: Restoration of the Licensed Area. Unless extended by Property Owner in its sole and absolute discretion, this License Agreement shall automatically terminate on November 30, 2025. Unless otherwise provided for in Section 4.a of this agreement, in the event of a default by City under this Agreement which remains uncured after thirty (30) days written notice, Property Owner shall have the right to terminate this License Agreement. Upon the termination of this License Agreement, Property Owner shall have the right to paint over or otherwise remove the Mural without notice to City or Artist.

10. Notices: All notices, requests, consents, claims, demands, waivers and other communications under this Agreement (each, a "**Notice**", and with the correlative meaning "**Notify**") must be in writing and addressed to the other Party at its address set forth below (or to such other address that the receiving Party may designate from time to time in accordance with this Section).

Notice to Owner: P&H Associates
c/o GS Management Company
5674 Sonoma Drive
Pleasanton, CA 94566

Notice to City: City of Emeryville
Community Development Department
Attn: Amber Evans
1333 Park Avenue
Emeryville, CA 94608

Notice to Artist: Nigel Sussman, LLC
1511 Addison Street
Berkeley, CA 94703

11. General Provisions.

a. If any action is commenced to enforce any provision of this Agreement or in connection with its meaning, the prevailing party in such action shall be awarded, in addition to any other relief it may obtain, its reasonable costs and expenses, including reasonable attorney's fees and expenses.

b. This License Agreement constitutes the entire agreement between Property Owner, Artist and City relating to the License. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement are of no force and effect unless it is in writing and signed by Property Owner and City.

c. This License Agreement may be executed in counterparts, each of which shall be deemed an original, but such counterparts, when taken together, shall constitute one agreement.

d. The law of the State of California will govern the interpretation and enforcement of this License Agreement. The exclusive venue for any legal action related to this Agreement shall be the State of California Superior Court for the County of Alameda or the United States District Court for the Northern District of California.

e. If any provision or portion of this License Agreement is determined to be illegal or unenforceable in any respect, such determination will not affect the validity or enforceability of any other provisions, each of which will be deemed to be independent and severable.


f. This Agreement shall be binding on the heirs, executors, administrators, assigns, and successors-in-interest of the Property Owner.

IN WITNESS THEREOF, said parties have executed this agreement on the date first hereinabove written.

CITY OF EMERYVILLE

By: _____
Christine Daniel, City Manager

Approved as to form:
DocuSigned by:


962663BD5573494...
Andrea Visveshwara, Interim City Attorney

PROPERTY OWNER

P & H ASSOCIATES, LLC,
a California limited partnership

By: Ranelagh Ventures, LLC,
Its General Partner

DocuSigned by:

By: _____
1EB6DF5BAE264E2...
Brad Marks

ARTIST

NIGEL SUSSMAN, LLC


DocuSigned by:

87585BE83D834AF...
Nigel Sussman, Artist

EXHIBIT A
Emeryville License Agreement

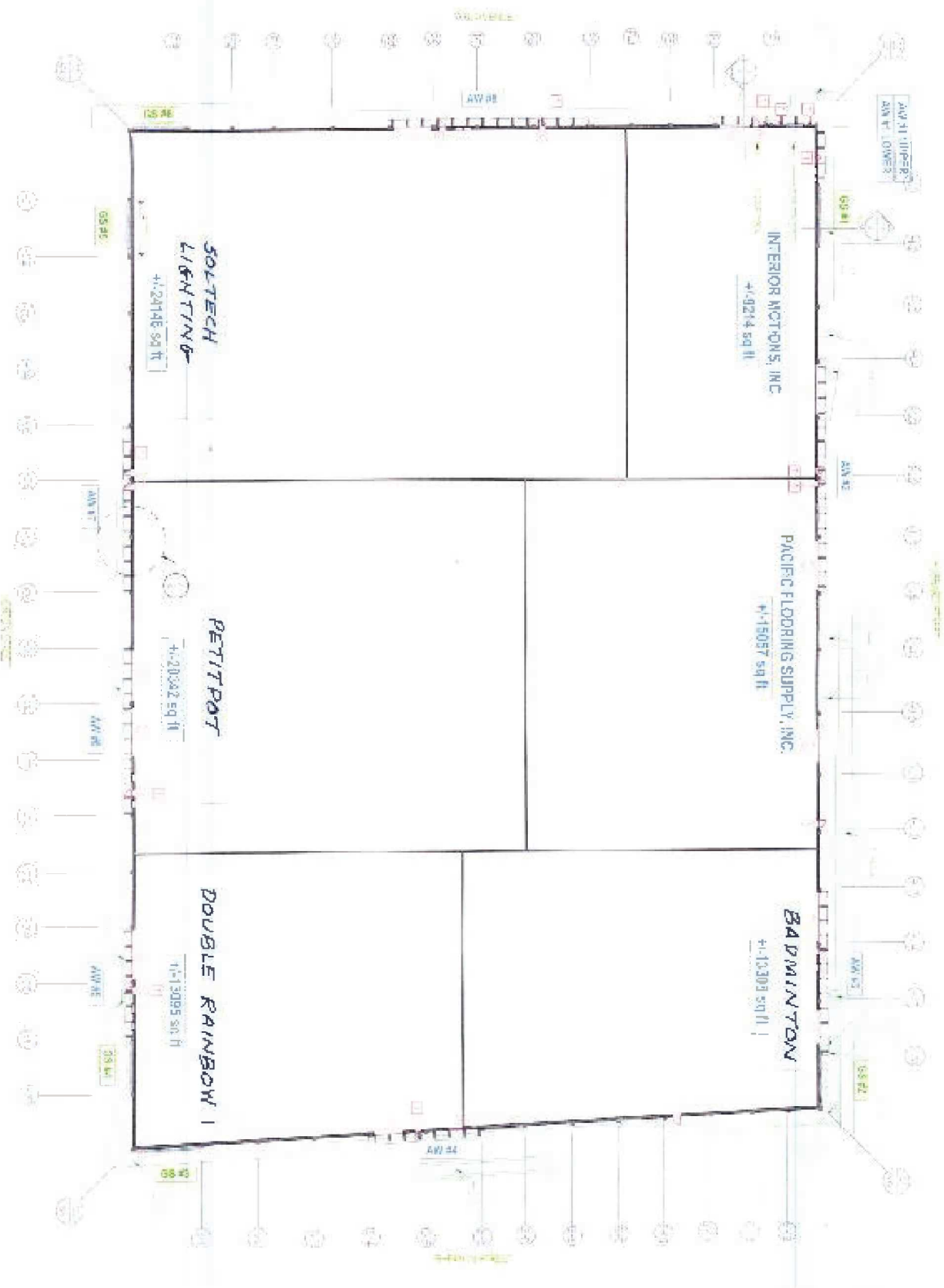


EXHIBIT B

Mural Location

Mural Façade

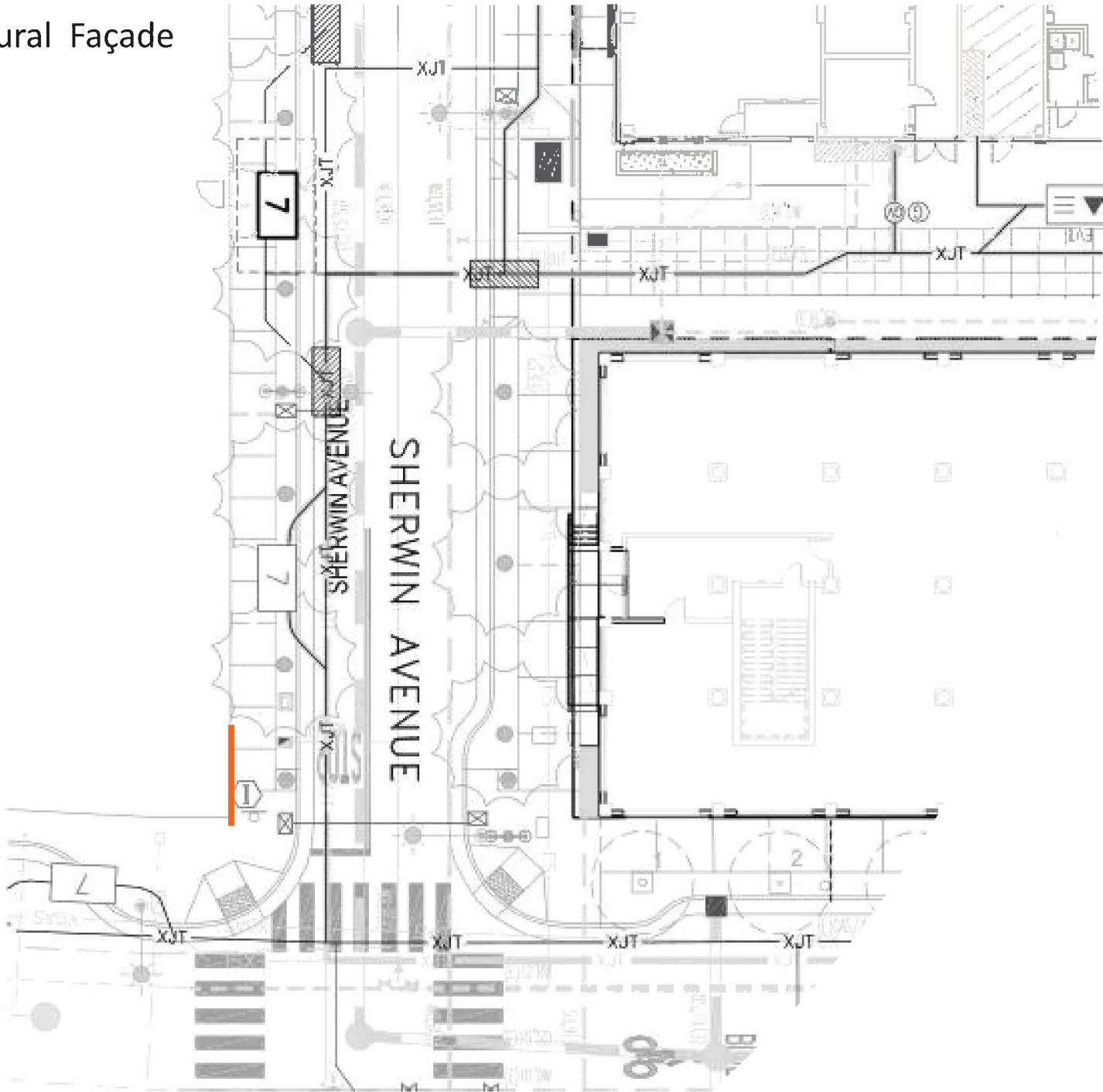


EXHIBIT C
Waiver of Proprietary Rights for Artwork

NIGEL SUSSMAN, LLC, a _____ (“Artist”) and his respective agents and others working on their behalf (collectively, “Producer”) has designed an installation of a mural (“Work”) at 1514 Sherwin Street, Emeryville, California (the “Property”). In consideration of approval by P & H Associates, a California limited partnership, the owner of the Property (“Owner LLC”) of the Work to be created or installed by Producer on the exterior wall on the Property, Producer agrees to waive and does hereby waive voluntarily all rights to attribution and integrity with respect to the Work and any and all claims as may arise under the Visual Artists Rights Act of 1990, 17 U.S.C. §§106A and 113(d) (“VARA”), the California Art Preservation Act (Cal. Civ. Code §§987 and 989) (“CAPA”), or any other local, state, foreign or international law, as currently drafted or as may be hereafter amended, that conveys the same or similar rights (“Moral Rights Laws”), with respect to the Work, its display, removal from display, exhibition, installation, conservation, storage, study, alteration and any other activities conducted by Owner LLC or any of their respective employees, officers, agents, members, owners, partners, affiliates, subsidiaries, directors, successors and assigns (“Owner Parties”). The Work shall be incorporated into a building such that the Work cannot be removed from the building without physical defacement, mutilation, alternation, distortion, destruction, or other modification (collectively, “Modification”) of the Work and Producer waives, to the fullest extent possible, any and all such claims under any Moral Rights Laws arising out of or against any current or future owners of the Property, and its agents, officers and employees, for Modification of the Work.

Producer agrees and hereby grants Owner the absolute right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the Work, in whole or in part, without prior written notification as provided in the License Agreement between Producer and Owner dated _____ (the “License Agreement”). For the avoidance of doubt, all terms of this waiver shall survive the term of the License Agreement.

Owner LLC has the right to elect to, but no obligation to, pursue claims against third parties for modifications or damage to the Work done without the Owner LLC’s authorization including claims against third parties for modifications or damage or to restore the Work. In the event that the Owner pursues such a claim, it shall notify Producer, and Producer shall cooperate with the Owner’s efforts to prosecute such claims.

Producer bears the sole responsibility for providing Owner with any changes to the Producer’s address for notices which changes must be mailed to Owner at _____.

Producer understands the effect of this waiver and hereby acknowledges that Producer is surrendering the rights described herein with respect to the Work.

PROPERTY OWNER:

P & H ASSOCIATES,
a California limited partnership

By: Ranelagh Ventures, LLC
Its General Partner

Brad Marks

PRODUCER:

NIGEL SUSSMAN, LLC

Nigel Sussman, Artist