

**AGREEMENT FOR THE DESIGN, FABRICATION, INSTALLATION AND  
MAINTENANCE OF PUBLIC ART WORK**

THIS AGREEMENT for the design, fabrication, installation and maintenance of Public Art Work is entered into this **21<sup>st</sup>** day of **August, 2020**, between the City of Brisbane (“City”), the Friends of the Brisbane Library, a non-profit organization (“Friends”) and **Precita Eyes Muralists** (“Artist”)

WHEREAS, City is constructing a new public Library at 163 Visitacion Avenue, Brisbane, CA; and

WHEREAS, Friends has been instrumental in obtaining donations from individuals and businesses in order to enhance the Library; and

WHEREAS, the Library will have a “donor wall” that will reflect those individuals and businesses that have donated in order to enhance the Library; and

WHEREAS, the City and Friends intend for the donor wall to have a public art presence; and

WHEREAS, Friends requires the services of an artist to create a work of art that will be displayed on the donor wall (“the Artwork”); and

WHEREAS, Artist is a professional artist whose work and qualifications make the Artist uniquely qualified to create the Artwork; and

WHEREAS, Artist has completed a community design workshop and presented an initial design proposal for the Artwork, attached to this Agreement as Exhibit A, and a narrative for the Artwork, attached to this Agreement as Exhibit B, which design has been modified in Exhibit D attached to this Agreement; and

WHEREAS, Friends has allocated funds for the design and fabrication of the Artwork; and

WHEREAS, City and Friends have agreed that the Artwork is appropriate for the donor wall.

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions of this Agreement, the parties agree as follows:

**Article 1 Scope of Services**

**1. Artist’s Obligations**

- a. The Artist shall perform all services and furnish all supplies, material and/or work equipment as necessary for the design and fabrication of the Artwork. Services shall be

performed in a professional manner. Artist shall provide the Artwork within two months from the date of this Agreement as set forth in the preliminary schedule set forth in Exhibit C attached to this Agreement. Artist shall provide guidelines and recommendations for ongoing maintenance of the Artwork prior to the City's acceptance of the Artwork.

**2. Friends' Obligations**

- a. Friends shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- b. Friends shall install on the donor wall the Artwork containing a credit to the Artist.

**3. Payment**

- a. Friends shall pay Artist \$25,000 for the Artwork and completed installation. The first payment in the amount of \$5,000 will be due at the signing of this Agreement. The second payment in the amount of \$10,000 will be due upon the Friends' and City's approval of the final design of the Artwork. The final payment in the amount of \$10,000 will be due upon delivery and installation of the completed Artwork (mural and tile mosaic), and acceptance by Friends and the City.

**Article 2. Risk of Loss**

The Artist shall bear the risk of loss or damage to the Artwork until Friends and the City accept the Artwork.

**Article 3. Artist's Representations and Warranties**

The Artist represents and warrants that:

- a. the Artwork is solely the result of the artistic effort of the Artist;
- b. except as otherwise disclosed in writing to the Friends and the City, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c. the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d. the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- e. the Artwork is free and clear of any liens from any source whatsoever;
- f. all Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party;
- g. the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;

- h. all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence;
- i. these representations and warranties shall survive the termination or other extinction of this Agreement.
- j. The Artist represents and warrants that all work will be performed in accordance with professional “workmanlike” standards and free from defective or inferior material or qualities that cause or accelerate deterioration of the Artwork.
- k. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.

#### **Article 4. Ownership and Intellectual Property Rights**

##### **4.1 Title**

Title to the Artwork shall pass to the City upon the City’s acceptance and Friends’ payment for the Artwork.

##### **4.2 Copyright Ownership**

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 et seq., as the sole author of the Artwork for the duration of the copyright.

##### **4.3 Reproduction Rights**

- a. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate [three]-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the Friends and the City. However, nothing shall prevent the Artist from creating works in the Artist’s manner and style of artistic expression.
- b. The Artist grants to the Friends and the City and their assignees an irrevocable license to make two-dimensional reproduction of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publication provided that these rights are exercised in a tasteful and professional manner.
- c. All reproductions by the Friends or the City shall contain a credit to the Artist and a copyright notice in substantially the following form: © [Artist’s name, date of publication].
- d. The Artist shall not reproduce nor replicate the Artwork without the Friends’ and the City’s express written permission which the Friends and the City in their sole discretion may give except for the use of photographs of the Artwork for purposes of the Artist’s resume, in which case the Artist must provide acknowledgment to the Friends and the City in substantially the following form: “An original artwork owned and commissioned by the City of Brisbane and the Friends of the Brisbane Library.”

- e. The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- f. If the Friends or the City wishes to make reproductions of the Artwork for commercial purposes including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.

## **Article 5. Artist's Rights**

### **5.1 General**

- a. The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- b. The Friends and the City will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the Artist. The Friends and the City shall take reasonable measures to avoid these from occurring as a result of the gross negligence of the Friends, the City, and their representatives, or employees pursuant to the federal Visual Artists' Rights Act.
- c. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist may have in law or equity under this Agreement. Upon written request, the Friends or the City shall remove the identification plaque and all attributive references to the Artist at its own expense upon receipt of the notice. No provision of this Agreement shall obligate the Friends or the City to alter or remove any such attributive reference printed or published prior to the Friends' or the City's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.
- d. Artist shall on an ongoing basis provide to the Friends and the City the Artist's contact information, such as address, email address, phone number, etc. Friends and the City shall have no obligation other than to make reasonable efforts to notify the Artist.
- e. If the Artist is deceased or becomes mentally incapacitated, Friends and the City shall make reasonable efforts to notify the Artist's heirs, successors, assigns or conservator.

### **5.2 Alteration of Site or Removal of Artwork**

- a. The Friends and the City shall make reasonable efforts to notify the Artist in writing upon alteration of the site of the Artwork which would entail removal or relocation of the Artwork which might result in the Artwork being destroyed, distorted or modified. The Artist shall be granted the right of consultation regarding the removal or relocation of the Artwork. If the Artwork cannot be successfully

removed or relocated as determined by the Friends and the City, the Artist may disavow the Artwork.

b. The Artwork may be removed or relocated or destroyed by the City should the Artist, Friends and the City not reach agreement on the removal or relocation of the Artwork after a period not to exceed 90 days after written notice to the Artist. During the 90 day period, the parties shall engage in good faith negotiations concerning the Artwork's removal or relocation.

c. If the City reasonably determines that the Artwork presents an imminent hazard to the public, other than as a result of the City's failure to maintain the Artwork as required under this Agreement, the City may authorize the removal of the Artwork without the prior approval of the Artist.

d. This clause is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The Parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

#### **Article 6. Artist as an Independent Contractor**

The Artist agrees to perform all work under this Agreement as an independent contractor and not as an employee of the Friends or the City. The Artist acknowledges and agrees that the Artist shall not hold herself out as an authorized agent of the Friends or the City with the power to bind in any manner.

The Artist shall provide the Friends with the Artist's Tax Identification number and any proof of such number as requested by the Friends. The Artist shall provide the City with a copy of the Artist's City business license.

#### **Article 7. Assignment of Artwork**

The work and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the Friends and the City. The City shall have the right to assign or transfer any and all of the City's rights and obligations under this Agreement, subject to the Artist's consent, if ownership of the Project Site is transferred; if the Artist refuses to give consent, this Agreement shall terminate.

#### **Article 8. Termination**

a. Any Party may terminate this Agreement without recourse by the others where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operation; superior governmental regulation or control; public emergence; or strike or other labor disturbances. Notice of termination of this Agreement shall be given to the non-

terminating party in writing not less than 15 days prior to the effective date of termination.

b. The Friends or the City may terminate this Agreement without cause upon 60 days written notice to the Artist. The Friends shall pay the Artist for services performed and commitments made prior to the date of the termination, consistent with the schedule of payments set forth in this Agreement. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated.

c. If the Artist defaults for cause other than death or incapacitation the Artist shall return to the Friends all funds provided by the Friends in excess of the expenses already incurred.

**Article 9. Death or Incapacity**

a. If the Artist becomes unable to complete this Agreement due to death or incapacity, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist.

b. In the event of incapacity, the Artist's conservator shall assign the Artist's obligations and services under this Agreement to another artist provided that the Friends and the City approves of the new artist and so agrees in writing. If the Friends and the City do not agree, the Friends or the City may elect to terminate this Agreement. The Artist shall retain all rights under this Agreement

c. In the event of death, this Agreement shall terminate effective the date of death. The Artist's heirs shall retain rights under this Agreement.

**Article 10. Amendments**

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by all Parties.

**Article 11. Entire Agreement**

This Agreement comprises all of the covenants, promises, agreements and conditions between the Parties. No verbal agreements or conversation between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligation.

**City of Brisbane**

DocuSigned by:  
  
Clayton Hofstine, City Manager

**Friends of the Brisbane Library**

DocuSigned by:  
*Dawn David*  
128546F8C382412  
Dawn David, Co-President

DocuSigned by:  
*Wendy Towle*  
36FE064F90E64DE  
Wendy Towle, Co-President

**Artist – Precita Eyes Muralists Association, Inc.**

DocuSigned by:  
*Susan Cervantes*  
4FBB7F40DCBB476  
Susan Cervantes, Executive Director

Approved as to form:

Thomas McMorrow, City Attorney

## APPENDIX

### Exhibit A: Phase I Design Concept





**Exhibit B: Phase I Design Narrative**



**PRECITA EYES MURALISTS ASSOCIATION INC.**

**Celebrating 43 years of Community Mural Art and Culture**

2981 24th Street, San Francisco, CA 94110 • Ph: (415)285-2287

348 Precita Avenue • San Francisco, CA 94110 • Phone: (415) 285-2311 • [www.precitaeyes.org](http://www.precitaeyes.org)

June 26, 2020

RE: Precita Eyes Muralists Friends of Brisbane Library Donor Wall Mural Narrative  
Directed by Susan Cervantes with Lead Artist Julia Barzizza

**Nested Together We Flourish!**

A large book opens to a page depicting the Ohlone people. The book represents the history of Brisbane and its everlasting stories. Binary code spills from the pages, representing the present and future. It spells the city's date of incorporation: November 27, 1961.

A pair of kids sit at the edge of the book, one reading, and the other gazing upward as native birds (a Red-tailed Hawk, a Swift, and parrots) carry the pages of Brisbane history beyond the nest and into the world! The pages are scribed with dates important to the library's history: the date the library opened, the date it was moved to the community drug store, the year the library grew into the largest location of its own, and the year the community center and library were combined and commemorated.

Native plantlife (Silver Lupine, California Sagebrush, Miner's Lettuce, Blue Chaparral, Poppies and Lessengia) grow around houses and intergenerational communities to create a nest around Brisbane. Brisbane residents volunteer to garden and restore the native plants and flowers. While some garden, others protest the construction of the quarry and the residential development on San Bruno Mountain. The construction trucks encroach onto the nested city from the right side of the mural, and the Brisbane residents gather together to protect their community. Above the protesters is a great-horned owl and her chick, symbolizing wisdom and generations growing safely together.

Behind the owl is the Mission Blue nursery, overflowing with plantlife and greenery. Music drifts from musicians playing in the gazebo, and the notes trickle above the nursery while Mission Blue butterflies flit in-between.

In the background looms a vibrant San Bruno mountain, fog rolls over one side of the mountain, carrying a sailboat symbolic of the Brisbane pier. More houses nestle together in the distance, and Brisbane residents howl at the moon! In the far distance is the emerald city (San Francisco). Night stars twinkle over houses decorated with colorful stars.

At the left is the healing quarry, surrounded by viridian, wisps of wind and trails. Kids roll down one side of the mountain in colorful derby cars. The other trails are also alive with runners, cyclists, and a traditional fire truck. Nested together, the community flourishes and radiates warmth, resilience, and integrity.

**Exhibit C: Project Completion Timeline**

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### **Brisbane Donor Art Wall Preliminary Timeline 8/13/20**

<b>Day</b>	<b>Date</b>	<b>Meeting / Presentation Times</b>	<b>Description</b>
Friday	8/21		Full executed agreement and first payment
Monday	8/24		Design revision in blackline for review by Susan
Wednesday	8/26	<b>Time TBD</b>	Design revision for review by FOBL
Thursday	8/27		Transfer mural design to the wall.
Thursdays	9/3 - 9/24		Second payment due. Mural painting completed by 9/24
TBD	9/24 -10/1		Set-up studio for mosaic.
Thursdays & Fridays	10/1 - 10/24		Mosaic installed by 10/24
Thursday	10/29/2020		Seal mural & varnish
Friday	10/30/2020		Final payment due
TBD	TBD		Mural unveiling or ceremony?



**Exhibit D:** Phase I Design Changes as of 8/14/2020

Friends of Brisbane Library (FOBL) requested the following revisions to the design and scope of the project.

- Increase of project budget to \$25,000.
- Expansion of scope to include tile/mosaic media incorporated with mural.
- Finalize size of canvas to 8 feet height x 14 feet width with donor tile border.
- Clarification of various design elements including but not limited to: Mountain / cloud depiction, bird selection, dates / years indicated, citizenry, etc.
- Capture artwork development progress via photography, videography for archive, community media, and marketing purposes (for all parties).

Precita Eyes has accepted and plan to make adjustments to the size, media, and design in response to FOBL's request.

- Acceptance of incorporating tile/mosaic elements. Final list to be locked with design review.
- Coordination of artwork with FOBL's donor tile color / texture / placement selection.
- Follow up on design adjustments to Brisbane images, dates, design elements.
- Timeline to complete artwork by end of October.