

AGREEMENT NO.

**BETWEEN THE CITY OF LOS ANGELES
AND
SAN PEDRO BAY HISTORICAL SOCIETY, INCORPORATED,
SUZANNE MATSUMIYA AND EUGENE DAUB**

THIS AGREEMENT ("Agreement") is made and entered into by and between the CITY OF LOS ANGELES, a municipal corporation ("City") acting by and through its Board of Harbor Commissioners ("Board") and SAN PEDRO BAY HISTORICAL SOCIETY, INCORPORATED ("Proponent") whose address is P.O. Box 1568, San Pedro, California 90733, SUZANNE MATSUMIYA ("Artist"), an individual, whose address is 461 W. 12th Street, San Pedro, California 90731 and EUGENE DAUB, an individual, whose address is 295 W. 15th Street, San Pedro, California 90731 ("Artist" and collectively referred to as "each Artist" or "the Artists").

WHEREAS, Proponent submitted an application to the Los Angeles Harbor Department ("Department") for placement of two bronze plaques ("Project") on an outdoor freestanding wall located on Department property at 100 W. 5th Street, Liberty Hill Plaza ("Project Site"), to commemorate Joe Hill, an internationally renowned labor activist from the early 20th century; and

WHEREAS, Joe Hill, a Swedish immigrant, resided in San Pedro from 1910 to 1913 during which time he became a labor union pioneer and composed songs which were used by the nascent labor movement to unify its ranks and bring attention to abysmal working conditions across the country; and

WHEREAS, Joe Hill's legacy and music are recognized as an inspiration to the subsequent American civil rights and anti-war movements and the proposed Project will recognize and commemorate his role in the history of labor unionization as it occurred on the Los Angeles Waterfront; and

WHEREAS, Proponent's application was reviewed in compliance with the Department's Memorial Policy, and the review panel recommends that the Board approve Proponent's Project; and

WHEREAS, Proponent will pay for all costs related to the design, fabrication, transport and installation of the Project as more fully described herein; and

WHEREAS, Proponent and the Artists will work together to design and fabricate the Project, and by entering into this Agreement with the Department are protecting their respective intellectual property rights while agreeing to certain modifications to or waiver of their artist's moral rights, as further described herein; and

WHEREAS, Department agrees to perform on-going maintenance of the Project after installation, as further described herein; and

WHEREAS, City, Proponent and the Artists desire to enter into this Agreement whereby each party shall undertake their respective obligations of the Project, as described herein;

NOW, THEREFORE, in consideration of the covenants, terms and conditions hereinafter contained to be kept and performed by the respective parties hereto, it is mutually agreed as follows:

1. INCORPORATION OF RECITALS

The recitals to this Agreement above are incorporated herein and made a part hereof.

2. WORK TO BE PERFORMED BY PROPONENT AND THE ARTISTS

2.1 Proponent shall hire and work with all necessary third parties including the Artists to design, fabricate and install the Project in accordance with this Agreement. The Project details are set forth in Exhibit A and attached hereto.

2.2 Proponent and the Artists acknowledge and agree that they lack authority to design, fabricate and install the Project in any manner other than as set for in Exhibit A. Upon reasonable prior notice, Proponent shall provide City with access to the Project during normal business hours to make reasonable inspections and reviews of progress with respect to the Project. City shall have the right to review the Project at reasonable times during the fabrication. If the City, upon review of the Project, determines that it does not conform to the design or fabrication set forth in Exhibit A, City reserves the right to notify the Proponent in writing of the deficiencies. Proponent or the Artists, as appropriate, shall promptly make changes to the Project based on the City's objections, to the Project Engineer's reasonable satisfaction, at Proponent's sole cost and expense and shall notify the City in writing of the completion of changes to the Project. City's Project Engineer shall resolve in his or her sole reasonable discretion any issues or questions as to the quality or acceptability of the Project.

2.3 Obligations of this Agreement, whether undertaken by the Proponent, the Artists or Subconsultants, if any, are and shall be the responsibility of Proponent. Proponent acknowledges and agrees that this Agreement creates no rights for any Subconsultants with respect to City and that obligations that may be owed to Subconsultants, including, but not limited to, the obligation to pay Subconsultants for services performed, are those of Proponent alone. All Subconsultants whom Proponent utilizes shall be deemed to be its agents. Subconsultants' performance of any work related to the Project shall not be deemed to release Proponent from its obligations under this Agreement or to impose any obligation on the City to such Subconsultant(s) or give the Subconsultant(s) any rights against the City.

2.4 Proponent, at its sole cost and expense, shall furnish all services, materials, equipment, subsistence, transportation and all other items necessary to complete and install the Project. As between City and Proponent, Proponent is solely responsible for any taxes or fees which may be assessed against it or its employees resulting from work or services to complete the Project, whether social security, payroll or other, and regardless of whether assessed by the federal government, any state, the City, or any other

governmental entity. Proponent shall also pay all applicable state or local fees necessary to obtain approval, plan checks, permits and variances for the Project.

2.5 Prior to installation of the Project, Proponent shall make periodic written or verbal progress reports to City at City's request. Such reports may include information on any meetings, conflicts, or resolutions, design fabrication and/or progress.

2.6 Proponent shall be responsible for providing services described herein including, but not limited to the quality and timely completion of the services. Proponent shall promptly notify City of any problems encountered which may impede the satisfactory and timely performance of the work, or the satisfactory completion of any other activities required to be undertaken by this Agreement. Time is of the essence in the completion of the Project.

2.7 Proponent and the Artists agree that an essential element of this Agreement is the proposed design and fabrication of the Project as shown in Exhibit A, along with the skill and expertise of the Artists. Neither the Proponent nor the Artists shall assign this Agreement and/or any portion thereof to any third parties. Failure to conform to this provision shall constitute grounds for termination of the Agreement pursuant to Section 4 below.

2.8 Fabrication

A. The Proponent and the Artists shall fabricate and install the Project in substantial conformity with the Design shown in Exhibit A. Proponent and the Artists may not deviate from the approved Design without written approval of City.

B. Proponent and the Artists shall take reasonable measures to protect or preserve the integrity of the Project such as the application of protective or anti-graffiti coatings, if applicable. The Project must be durable, taking into consideration that the Project Site is in an outdoor public place exposed to elements including but not limited to weather, temperature variation, and people. During installation of the Project on-site, the Proponent shall avoid creating nuisance conditions arising out of its operations.

C. Prior to requesting authorization to transport and install the Project, Proponent shall be required to provide City with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. Proponent must obtain all proper permits and provide proof of insurance, as applicable, prior to entering the Project Site. All additional workers or subcontractors must provide proof of insurance prior to entering City property.

D. Proponent shall notify City when fabrication of the Project has been completed and that the Project is ready for delivery and installation at the Project Site. City shall provide Proponent written notice that the Project is in compliance with the Design requirements shown in Exhibit A.

E. Proponent acknowledges that any work related to preparation of the Project Site required for the Project installation shall be the responsibility of Proponent. Any expenses for Project Site preparation shall be paid by Proponent unless otherwise provided in this

Agreement.

2.9 Installation

A. Upon the City's final approval of the fabricated Project as being in conformity with the Design, the Proponent shall deliver and install the completed Project to the Project Site in accordance with the direction of the project engineer.

B. Proponent shall be present to supervise the installation of the Project. Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Proponent. Proponent shall comply with City's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at City's request, must be supervised by Proponent. Proponent shall commit adequate resources to complete the Project within the schedule specified in this Agreement. Proponent shall be present at the final completion of the Project to sign off on the work performed and completion of Project.

C. Proponent, rather than City, is responsible for site conditions and the health and safety of Proponent's employees, subcontractors and agents, and all other persons that work on or visit the Project site at the invitation of Proponent. City shall not be responsible for any damage to persons or property, including the Project, as a result of the use, misuse or failure of any equipment used by Proponent, or by any of its employees, subcontractors or agents, even if such equipment be furnished, rented or loaned to Proponent by City.

D. Proponent shall provide notice to City in writing when Proponent has completed installation of the Project. The City promptly shall send a written notice identifying any obligations, services or deliverables that Proponent has not satisfactorily met or any defects in Proponent's performance, and the requirements for Proponent to cure any such default. Proponent shall have thirty (30) days from delivery of the notice to cure any defects in Proponent's performance identified in the notice. The Project shall not be finally accepted by City unless the Department has issued a notice of final acceptance.

E. Upon installation of the Project, Proponent shall provide the Project Engineer with a comprehensive manual for maintenance and preservation of the Project ("Maintenance Manual") along with product data sheets for any material or finish used. The Maintenance Manual shall also include any instructions for minimizing the effects of vandalism, weathering, or other hazards, as applicable. Proponent must ensure that all maintenance requirements will be reasonable in terms of time and expense, and not in excess of that required by the City under this Agreement.

3. SERVICES TO BE PERFORMED BY CITY

3.1 City shall furnish Proponent or the Artists, upon request, information which may be lawfully supplied and which is necessary to perform their obligations as determined by City.

3.2 The Director of Waterfront/Commercial Real Estate or his or her designee is designated as the contract administrator for City.

3.3 The Chief Harbor Engineer of the Engineering Division of City's Harbor

Department or his or her designee is designated as the Project Engineer and shall decide any and all questions which may arise as to the procedures, requirements, quality or acceptability of the installation of the Project on City property.

3.4 Upon notice from Proponent that fabrication of the Project is complete, City shall review the Project and provide Proponent written notice of any defects in Design not in compliance with Exhibit A. Proponent shall be given sufficient time to cure any defects or otherwise perform to the satisfaction of the Project Engineer, at which time City will provide written notice to Proponent of compliance with the Design.

3.5 Upon notice from Proponent that installation of the Project is complete, City shall provide Proponent written notice of any obligations, services or deliverables that Proponent has not satisfactorily met or any defects in Proponent's performance, and the requirements for Proponent to cure any such default. After Proponent has cured any defects or otherwise performed to the satisfaction of the project engineer, City shall provide Proponent written notice of final acceptance of the Project.

3.6 While this Agreement is in effect, City shall perform the maintenance and preservation methods prescribed in the Maintenance Manual provided by Proponent. City's obligation to perform maintenance and preservation services for the Project shall not exceed Five Hundred Dollars (\$500) per fiscal year. In the event City determines that the maintenance and preservation of the Project will exceed \$500 per fiscal year, the City shall have the option to exercise any of its termination rights under the Agreement.

4. EFFECTIVE DATE AND TERM OF AGREEMENT

4.1 Subject to the provisions of Charter Section 373, the effective date of this Agreement shall be the date of its execution by Executive Director as authorized by the Board. Consultant is aware that pursuant to Charter Section 373 and Administrative Code Section 10.5, this Agreement requires approval by City Council prior to becoming effective.

4.2 Proponent shall complete fabrication and installation of the Project as set forth herein within one year from the effective date of the Agreement. In the event that Proponent fails to complete the Project within one year from the effective date, the Agreement shall terminate unless a written amendment is entered into by the parties.

4.3 This Agreement shall be in full force and effect commencing from the date of execution by the Executive Director and shall continue until the earliest occurrence of the following events: 1) Proponent fails to perform any its obligations required by the terms of the Agreement and within the time period set forth in Section 4.2; 2) City exercises its option to terminate the Agreement under Section 5 of this Agreement; or 3) City exercises its option to remove or relocate the Project pursuant to Section 16 of this Agreement.

5. TERMINATION DUE TO NON-APPROPRIATION OF FUNDS

This Agreement is subject to the provisions of the Los Angeles City Charter which, among other things, precludes the City from making any expenditure of funds or incurring any liability, including contractual commitments, in excess of the amount appropriated thereof.

The Board, in awarding this Agreement, is expected to appropriate sufficient funds to meet the estimated expenditure of funds in each fiscal year during the life of the Agreement. However, the Board is under no legal obligation to do so.

The City, its boards, officers, and employees are not bound by the terms of this Agreement or obligated to make payment thereunder in any fiscal year in which the Board does not appropriate funds therefore. The City is not obligated to perform under this Agreement in any fiscal year in which funds have not been appropriated for the Agreement by the Board.

If in any subsequent fiscal year funds are not appropriated by the Board for City to perform the services required by the Agreement, the Agreement may be terminated. However, such termination shall not relieve the parties of liability for any obligation previously incurred.

6. RECORD KEEPING AND AUDIT RIGHTS

Proponent and each Artist shall keep and maintain full, complete and accurate books of accounts and records of the services performed under this Agreement in accordance with generally accepted accounting principles consistently applied, which books and records shall be readily accessible to and open for inspection and copying at the premises by City, its auditors or other authorized representatives. Such books and records shall be maintained by Proponent and each Artist for a period of three (3) years after completion of services to be performed under this Agreement or until all disputes, appeals, litigation or claims arising from this Agreement have been resolved.

7. PROPONENT AND ARTISTS ARE INDEPENDENT CONTRACTORS

Proponent and each Artist, in the performance of the Work, are independent contractors and not agents or employees of City. Proponent and the Artists shall not represent themselves as agents or employees of the City and shall have no power to bind the City in contract or otherwise.

Any terms in this Agreement referring to direction from City shall be construed as providing for direction as to compliance with this Agreement and the result of Proponent's or the Artists' work only, and not as to the means by which such a result is obtained.

8. INDEMNIFICATION AND INSURANCE

8.1 Indemnification

Except for the sole negligence or willful misconduct of the City, or any of its Boards, Officers, Agents, Employees, Assigns and Successors in Interest, Proponent undertakes and agrees to defend, indemnify and hold harmless the City and any of its Boards, Officers, Agents, Employees, Assigns, and Successors in Interest from and against all suits and causes of action, claims, losses, demands and expenses, including, but not limited to, attorney's fees (both in house and outside counsel) and cost of litigation (including all actual litigation costs incurred by the City, including but not limited to, costs of experts and

consultants), damages or liability of any nature whatsoever, for death or injury to any person, including Proponent's employees, agents and the Artists, or damage or destruction of any property of either party hereto or of third parties, arising in any manner by reason of the negligent acts, errors, omissions or willful misconduct incident to the performance of this Agreement by Proponent, the Artists or subcontractors of any tier. Rights and remedies available to the City under this provision are cumulative of those provided for elsewhere in this Agreement and those allowed under the laws of the United States, the State of California, and the City. This indemnity shall survive the termination or expiration of this Agreement.

8.2 General Liability Insurance

Proponent shall procure and maintain in effect at all times during the first year of this Agreement, without requiring additional compensation from the City, commercial general liability insurance covering personal and advertising injury, bodily injury, and property damage providing contractual liability, independent contractors, products and completed operations, and premises/operations coverage written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Proponent's normal limits of liability but not less than One Million Dollars (\$1,000,000.00) combined single limit for injury or claim. Said limits shall provide first dollar coverage except that Executive Director may permit a self-insured retention or self-insurance in those cases where, in his or her judgment, such retention or self-insurance is justified by the net worth of Proponent. The retention or self-insurance provided shall provide that any other insurance maintained by the Harbor Department shall be excess of Proponent's insurance and shall not contribute to it. In all cases, regardless of any deductible or retention, said insurance shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the Artists and the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

8.3 Automobile Liability Insurance

Proponent and each Artist shall procure and maintain at its expense and keep in force at all times during the first year of this Agreement, automobile liability insurance written by an insurance company authorized to do business in the State of California rated VII, A- or better in Best's Insurance Guide (or an alternate guide acceptable to City if Best's is not available) within Proponent's normal limits of liability but not less than Five Hundred Thousand Dollars (\$500,000) covering damages, injuries or death resulting from each accident or claim arising out of any one claim or accident. Said insurance shall protect against claims arising from actions or operations of the insured, or by its employees. Coverage shall contain a defense of suits provision and a severability of interest clause. Additionally, each policy shall include an additional insured endorsement (CG 2010 or equivalent) naming the City of Los Angeles Harbor Department, its officers, agents and employees as Primary additional insureds, a 10-days notice of cancellation for nonpayment of premium, and a 30-days notice of cancellation for any other reasons.

8.4 Workers' Compensation and Employer's Liability

Proponent shall certify that it is aware of the provisions of Section 3700 of the California Labor code which requires every employer to be insured against liability for Workers' Compensation or to undertake self-insurance in accordance with the provisions of that Code, and that Proponent shall comply with such provisions before commencing the performance of the Project under this Agreement.

8.5 Additional Insurance Requirement

Proponent and each Artist agrees to obtain any additional insurance which may be required by the City pursuant to any permits, applications or other rights which may be granted in order to enter onto City property or otherwise complete the Project.

8.6 Acceptable Evidence and Approval of Insurance

Electronic submission is the required method of submitting insurance documents. Proponent's and each Artist's insurance brokers or agents shall register with the City's online insurance compliance system **Track4LA™** at <http://track4la.lacity.org/> and submit the appropriate proof of insurance on their behalf.

8.7 Carrier Requirements

All insurance which the parties are required to provide pursuant to this Agreement shall be placed with insurance carriers authorized to do business in the State of California and which are rated A-, VII or better in Best's Insurance Guide. Carriers without a Best's rating shall meet comparable standards in another rating service acceptable to City.

8.8 Notice of Cancellation

Each insurance policy described above shall provide that it will not be canceled or reduced in coverage until after the Board of Harbor Commissioners, Attention: Risk Manager and the City Attorney of City have each been given thirty (30) days' prior written notice by registered mail addressed to 425 S. Palos Verdes Street, San Pedro, California 90731.

8.9 Modification of Coverage

Executive Director, at his or her discretion, based upon recommendation of City's insurance consultants, may increase or decrease amounts and types of insurance coverage required hereunder at any time during the term hereof by giving ninety (90) days' prior written notice to Proponent.

8.10 Renewal of Policies

At least thirty (30) days prior to the expiration of each policy, Proponent and each Artist shall furnish to Executive Director a renewal endorsement or renewal certificate showing that the policy has been renewed or extended or, if new insurance has been obtained, evidence of insurance as specified above. If Proponent or either Artist neglects

or fails to secure or maintain the insurance required above, Executive Director may, at his or her own option but without any obligation, obtain such insurance to protect City's interests. The cost of such insurance will be invoiced to the appropriate party for reimbursement payment to City.

8.11 Accident Reports

Proponent or either Artist, as appropriate, shall report in writing to Executive Director within fifteen (15) calendar days after they, their officers or managing agents have knowledge of any accident or occurrence involving death of or injury to any person or persons, or damage in excess of Five Hundred Dollars (\$500.00) to property, occurring at the Project site, or elsewhere within the Port of Los Angeles if they or their officers, agents, employees are involved in such an accident or occurrence. Such report shall contain to the extent available (1) the name and address of the persons involved, (2) a general statement as to the nature and extent of injury or damage, (3) the date and hour of occurrence, (4) the names and addresses of known witnesses, and (5) such other information as may be known to either the Proponent, its officers or managing agents or the Artists.

9. WARRANTIES

A. Proponent and the Artists shall guarantee all work to be free from faults of material and workmanship for a period of three (3) years after installation, free and clear of any liens from any source whatsoever, and will not require maintenance substantially in excess of that described in the recommendation provided by Proponent to City in the Maintenance Manual.

B. Proponent shall, at its sole cost and expense and without any compensation from City, correct or revise any errors, omissions or other deficiencies in performance of the work within sixty (60) days after discovery by City or by mutual agreement between Proponent and City after final acceptance. Corrections will be made in a timely fashion.

C. Proponent and the Artists warrant that City's compliance with the Maintenance Manual will be sufficient to maintain the Project within an acceptable standard of public display and that foreseeable exposure to the elements and general wear and tear 1) will cause the Project to experience only minor repairable damages; 2) will not cause the Project to fall below an acceptable standard of public display; and 3) will not result in irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

D. Proponent and the Artists warrant that, unless otherwise stipulated, the Project is original, that it is an edition of one (1), and that Proponent and the Artists shall not sell or reproduce the Project or allow others to do so without the prior written consent of City, which may be withheld in City's sole discretion.

E. To the extent the Project incorporates products covered by a manufacturer's warranty, Proponent and the Artists shall provide copies of such warranties to City.

10. AFFIRMATIVE ACTION

Proponent and the Artists shall not discriminate in their employment practices against any employee or applicant for employment because of employee's or applicant's race, religion, national origin, ancestry, sex, age, sexual orientation, disability, marital status, domestic partner status, or medical condition. All subcontracts awarded under or pursuant to this Agreement shall contain this provision.

The provisions of Section 10.8.4 of the Los Angeles Administrative Code are incorporated herein by this reference and made a part of this Agreement.

12. SMALL/VERY SMALL BUSINESS ENTERPRISE PROGRAM AND LOCAL BUSINESS PREFERENCE PROGRAM

It is the policy of the Department to provide Small Business Enterprises (SBE), Very Small Business Enterprises (VSBE) and Minority-Owned, Women-Owned, Disabled Veteran Business Enterprises and all Other Business Enterprises (MBE/WBE/DVBE/OBE) an equal opportunity to participate in the performance of all City contracts in all areas where such contracts afford such participation opportunities. Consultant shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs to achieve participation in subcontracts where such participation opportunities present themselves and attempt to ensure that all available business enterprises, including SBEs, VSBEs, MBEs, WBEs, DVBEs, and OBEs, have equal participation opportunity which might be presented under this Agreement.

It is also the policy of the Department to support an increase in local and regional jobs. The Department's Local Business Preference Program aims to benefit the Southern California region by increasing jobs and expenditures within the local and regional private sector. Consultant shall assist the City in implementing this policy and shall use its best efforts to afford the opportunity for Local Business Enterprises to achieve participation in subcontracts where such participation opportunities present themselves.

13. CONFLICT OF INTEREST

Proponent and the Artists have reviewed and understand the provisions of Section 1090 et seq. and Section 87100 et seq. of the California Government Code relating to conflict of interest of public officers and employees, as well as the Los Angeles Municipal Code ("LAMC") Municipal Ethics and Conflict of Interest provisions of Section 49.5.1 et seq. and the Conflict of Interest Codes of the City and City's Harbor Department. All parties hereto agree that they are unaware of any financial or economic interest of any public officer or employee of City relating to this Agreement. Notwithstanding any other provision of this Agreement, it is further understood and agreed that if such financial interest does exist at the inception of this Agreement, City may immediately terminate this Agreement by giving written notice thereof. Proponent's and the Artists' signatures on this Agreement constitute their affirmation that any former employees of City or City's Harbor Department that are employed by Proponent or the Artists and that assist in performing the Project work shall be free of any conflicts of interest with respect to City and City's Harbor Department.

14. COMPLIANCE WITH APPLICABLE LAWS

Proponent's and the Artists' activities under this Agreement, including their performance of the Project work, shall comply with all federal, state, municipal, local and departmental laws, ordinances, rules, regulations, and orders. If in any instance a City standard is more stringent than a state, federal or other requirement, the City standard shall be followed unless City notifies Proponent or the Artists otherwise in writing, in which case the requirements of said notification shall apply.

15. INTELLECTUAL PROPERTY AND PUBLICITY RIGHTS

15.1 Subject to usage rights and licenses granted to City hereunder, each Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. The artists shall be deemed joint authors of the Project. Copyright shall not extend to predominantly utilitarian aspects of the Project, such as landscaping elements, furnishings or other similar objects.

15.2 Proponent and each Artist grants to City, including its authorized agents and consultants, an unlimited, irrevocable, perpetual license with respect to the Project, whether in whole or in part, in all media (including electronic and digital) throughout the universe, to make and distribute, and authorize the making, display and distribution of photographs and other two-dimensional reproductions of the Project, including any reproductions in all media, for purposes of advertising, publicity, educational, marketing and/or promotion of the City, and for non-profit use including, but not limited to, use in the form of brochures, print, posters, books or calendars about or featuring the Port (and/or the City), as well as internet, film, and all other forms of electronic and/or all other forms of media (existing now and in the future). City's rights under the license include the right to allow productions by movie, television or any other media, in which the image of the Project might appear, irrespective of the nature of the production (e.g, educational, profit or non-profit) without further compensation by City to Proponent or either Artist. City will retain one hundred percent (100%) of all license or permit fees (including all filming permit fees) levied by City in connection with the use of City premises by any third party.

15.3 All reproductions by the City shall contain a credit to the Artists and a copyright notice to the extent and in a form reasonably possible and appropriate, as determined by City.

15.4 Reproductions of images of the Project for commercial purposes (e.g., the sale of t-shirts, postcards, and posters), shall be subject to a separate written agreement to address the terms of the license to be granted by Proponent or either Artist to City.

15.5 City's right of ownership includes the right to modify, remove permanently and/or relocate the Project if City so desires. In the event that City desires to modify, relocate or remove the Project, City shall give Proponent and the Artists notice as provided in paragraph 16, to give the parties an opportunity to regain ownership of the Project.

15.6 Proponent and each Artist warrants that the Project is the result of the artistic efforts of each Artist and that the Project will be installed and become the property of City free and clear of any liens, claims or other encumbrances of any type.

15.7 In view of the intention that the Project in its final dimension shall be unique, neither Proponent nor either Artist will execute or authorize another to execute a duplicate (including a work substantially similar in materials, scale, shape, color and composition) of the Project.

15.8 Except as otherwise provided in this Agreement, City will be responsible for performing all maintenance and repair of the Project, including ongoing day-to-day maintenance and all repairs of the Project necessitated by ordinary wear and tear. Any other maintenance, repair, or restoration of the Project may be done at City's discretion.

15.9 City shall not be responsible for, and shall not be liable to Proponent or either Artist for, any infringement of the Artists' copyright by third parties (e.g., photos taken by third parties at site to be used for commercial purposes by third party) and shall not be responsible for protecting the intellectual property rights of Proponent or either Artist.

15.10 Proponents or either Artist shall promptly and fully inform City in writing of any patents, trademarks or copyrights related to services provided under this Agreement or patent, trademark or copyright disputes, existing or potential, of which Proponent or either Artist has knowledge, relating in any way to the Project. Proponent and each Artist agrees to save, keep, hold harmless, protect and indemnify City and any of its officers or agents from any and all damages, cost or expenses in law or equity from any claim of infringement of any patent, trademark, services mark or copyright of any person or persons, or corporations in connection with the Project.

16. ARTISTS' MORAL RIGHTS; CITY'S OWNERSHIP RIGHTS

16.1 With respect to the Project produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Proponent and each Artist waives any and all claims, arising at any time and under any circumstances, against City, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the Project is incorporated into a building or wall such that the Project cannot be removed from the structure without alteration of the Project, Proponent and each Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for alteration of the Project.

16.2 City intends to display the Project at the Project Site as set forth in this Agreement and to maintain the Project in good condition. City, however, shall preserve complete flexibility to operate and manage Department property in the public's interest. Therefore, City retains the absolute right to alter the Project in City's sole judgment. City may alter the Project to eliminate hazard, to comply with the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 5301(d)) or to otherwise aid City in the management of its property. If City finds the Project Site to be inappropriate, City has the right to install the Project at an

alternate location that City chooses in its sole discretion.

16.3 If City intends to take any action with respect to the Project or the Project Site that would alter the Project, other than routine cleaning and maintenance, the following procedures shall apply:

1. Notice. Where time permits, City shall notify Proponent and the Artists at least ninety (90) days prior to any alteration or removal of the Project.

2. Consultation. After receiving such notice, Proponent, on its own behalf and on behalf of the Artists, shall consult with City to come to a mutually agreeable plan for disposition of the Project. Such consultation shall be without charge by Proponent or the Artists unless otherwise specifically agreed in writing. If City intends to remove the Project, the parties shall consult regarding methods to minimize or repair any alteration to the Project caused by such removal.

3. Restoration. If the Project is altered or modified, with or without notice to the Proponent and the Artists, and City intends to maintain the Project on display, City shall make a reasonable effort to engage the parties in the restoration of the Project. However, City has no obligation under this Agreement to restore the Project to its original condition, to compensate any party for any restoration work, or to maintain the Project on display. If Proponent or the Artists fail or refuse to negotiate with City with respect to any restoration, City may contract with any other qualified entity for such restoration.

4. Removal. Where time permits, if City intends to take action that will destroy, or significantly alter the Project, such as destruction of all or part of the Project Site, and City determines that it will not remove the Project itself, City shall allow the parties to remove the Project at their expense within ninety (90) days of notice from the City of the need to remove the Project, in which case title shall revert to the Artists. If Proponent or the Artists fail to remove the Project within the 90 day notice period, City may alter or remove the Project in any manner, including destroying it, in City's sole discretion, and this Agreement shall terminate.

5. Remedies. If City breaches any of its obligations under this Section, Proponent's and the Artists' remedies shall be limited as follows: if City inadvertently fails to provide a required prior notice, City will provide notice as soon as it discovers the omission, and before alteration of the Project if that remains possible. If City alters the Project without providing Proponent or the Artists a required prior notice, each party shall be given the first right of refusal to restore the Project at the same location at that party's expense. If Proponent and the Artists elect not to restore the Project, City may alter the Project in any manner, at City's sole discretion, and this Agreement shall terminate.

16.4 If City alters the Project without one or both of the Artist's consent in a manner that is prejudicial to either or both the Artist's reputation, each Artist retains the right to disclaim authorship of the Project in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

16.5 Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of City, the Proponent and each Artist retains Artists' moral rights in the Project, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and

989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent Proponent or the Artists from pursuing a claim for alternation of the Project against a third party who is not an officer, employee, agent successor or assign of City. City has no obligation to pursue claims against third parties to remedy or prevent alternation of the Project. However, as owner of the Project, City may pursue claims against third parties for damages or to restore the Project if the Project has been altered without City's authorization.

17. TITLE, OWNERSHIP OF PROJECT AND RISK OF LOSS

17.1 Title Transfer. Except in the case of early termination of this Agreement, title to the Project shall transfer from Proponent and/or the Artists to City upon the Project Engineer's final acceptance of the Project. Title transfer shall be self-executing upon final acceptance. Proponent and the Artists shall cooperate in providing to City any title transfer documents, confirmation of payment to any subcontractors, lien releases, and other documents as City may request or require.

17.2 Risk of Loss. The risk of loss or damage to the Project shall be borne solely by the Proponent and the Artists until final acceptance of the Project by City. Proponent and the Artists shall take steps to protect the Project from loss or damage.

17.3 Ownership of Documents. Conceptual Design, Design Development Documents, Construction Documents, Samples, Mock-ups and all other documents prepared and submitted by Proponent or the Artists to City pursuant to this Agreement shall belong to the City. Proponent and the Artists may retain originals of such documents and items and provide copies to City.

18. EXCUSABLE DELAYS

In the event that performance of any party hereto is delayed or suspended as a result of circumstances beyond the reasonable control and without the fault and negligence of said party, none of the parties shall incur any liability to the other parties as a result of such delay or suspension. Circumstances deemed to be beyond the control of the parties hereunder include, but are not limited to, acts of God or of the public enemy, insurrection acts of the federal government or any unit of state or local government in either sovereign or contractual capacity, fires, floods, earthquakes, epidemics, quarantine restrictions, strikes, freight embargos, or delays in transportation, to the extent that they are not caused by the party's willful or negligent acts or omissions, and to the extent they are beyond the party's reasonable control. In the event that performance of the services by Proponent or the Artists in compliance with the terms of this Agreement occurs, said parties shall notify City in order to enter into a written amendment to modify the Agreement as needed.

19. CITY'S DISCLOSURE OBLIGATIONS

Proponent and each Artist acknowledges that City is subject to laws, rules and/or regulations generally requiring it to disclose records upon request, which laws, rules and/or regulations include, but are not limited to, the California Public Records Act (California Government Code Sections 6250 et seq.).

20. NOTICES

In all cases where notice is to be given under this Agreement, service shall be deemed sufficient if said notice is deposited in the United States mail, postage prepaid. When so given, such notice shall be effective from the date of mailing of the same. **It shall be the duty of each party to give written notice of any change of address in writing, which shall be considered effective when the other parties have received written notice of the change. If not advised of a change of address in writing, notice given to the address below shall be deemed sufficient even if the address is no longer accurate or effective. There shall be no duty, express or implied, of City to undertake any research of a current address or the whereabouts of Proponent or either Artist or any of their successors and/or heirs.**

Notice to the City shall be addressed to:

The Port of Los Angeles
Waterfront/Commercial Real Estate Division
425 S. Palos Verdes Street
San Pedro, California 90731
Re: Joe Hill Memorial

Notice to the Proponent shall be addressed to:

San Pedro Bay Historical Society
P.O. Box 1568
San Pedro, California 90733
Re: Joe Hill Memorial

Notice to the Artists shall be addressed to:

Suzanne Matsumiya
461 W. 12th Street
San Pedro, California 90731
Re: Joe Hill Memorial

Eugene Daub
295 W. 15th Street
San Pedro, California 90731
Re: Joe Hill Memorial

21. SERVICE CONTRACTOR WORKER RETENTION POLICY AND LIVING WAGE REQUIREMENTS

The Board adopted Resolution No. 5771 on January 13, 1999, agreeing to adopt the provisions of Los Angeles City Ordinance No. 171004 relating to Service Contractor Worker Retention ("SCWR"), Section 10.36 et seq. of the Los Angeles Administrative Code, as the policy of City's Harbor Department. Further, Charter Section 378 requires compliance with the City's Living Wage requirements as set forth by ordinance, Section 10.37 et seq. of the Los Angeles Administrative Code. Proponent and each Artist shall comply with the policy wherever applicable. Violation of this provision, where applicable,

shall entitle City to terminate this Agreement and otherwise pursue legal remedies that may be available.

22. WAGE AND EARNINGS ASSIGNMENT ORDERS/NOTICES OF ASSIGNMENTS

Proponent, each Artist and Subconsultants, if any, shall comply with all applicable state and federal employment reporting requirements for employees.

Proponent, each Artist and Subconsultants, if any, shall certify that the principal owner(s) are in compliance with any Wage and Earnings Assignment Orders and Notices of Assignments applicable to them personally. Proponent, each Artist and Subconsultants shall fully comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignments in accordance with Section 5230 et seq. of the California Family Code.

23. EQUAL BENEFITS POLICY

The Board adopted Resolution No. 6328 on January 12, 2005, agreeing to adopt the provisions of Los Angeles City Ordinance No. 172,908, as amended, relating to Equal Benefits, Section 10.8.2.1 et seq. of the Los Angeles Administrative Code, as a policy of City's Harbor Department. Proponent and each Artist shall comply with the policy wherever applicable. Violation of this policy shall entitle the City to terminate any agreement with Proponents or either Artist and pursue any and all other legal remedies that may be available.

24. PREVAILING WAGES

Notwithstanding that the parties do not intend that the Work performed under this Agreement shall constitute a Public Work, if the fabrication and/or installation of any Work under this Agreement is determined by any administrative agency having jurisdiction to be a "Public Work", Proponent and the Artists shall pay to all persons performing labor in the fabrication or installation of the Project not less than the established prevailing wages for the labor so performed. Proponent and each Artist shall indemnify and pay or reimburse the City for any damages, penalties or fines (including, but not limited to, attorney's fees and costs of litigation) that the City incurs, or pays, as a result of noncompliance with applicable prevailing wage laws in connection with any work performed pursuant to this Agreement.

25. STATE TIDELANDS GRANTS

This Agreement is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this Agreement is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. Proponent and each Artist agree that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

26. CONSTRUCTION OF AGREEMENT

This Agreement shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this Agreement and it shall be deemed their joint work product; each and every provision of this Agreement shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

27. TITLES AND CAPTIONS

The parties have inserted the section titles in this Agreement only as a matter of convenience and for reference, and the section titles in no way define, limit, extend or describe the scope of this Agreement or the intent of the parties in including any particular provision in this Agreement.

28. MODIFICATION IN WRITING

This Agreement may be modified only by written agreement of all parties. Any such modifications are subject to all applicable approval processes required by, without limitation, City's Charter and City's Administrative Code.

29. WAIVER

A failure of any party to this Agreement to enforce the Agreement upon a breach or default shall not waive the breach or default or any other breach or default. All waivers shall be in writing.

30. SEVERABILITY

Should any part, term, condition or provision of this Agreement be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this Agreement shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this Agreement, then such part, term, condition or provision shall be deemed not to be a part of this Agreement; or (b) if such part, term, condition or provision is material to this Agreement, then the parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the parties as closely as possible.

31. GOVERNING LAW / VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the conflicts of law, rules and principles of such State. The parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State or Federal courts located in the County of Los Angeles, State of California, in the judicial district required by court rules.

32. INTEGRATED AGREEMENT

This Agreement contains the entire understanding and agreement between the parties hereto with respect to the matters referred to herein. No other representations, covenants, undertakings, or prior or contemporaneous agreements, oral or written, regarding such matters which are not specifically contained, referenced, and/or incorporated into this Agreement by reference shall be deemed in any way to exist or bind any of the parties. Each party acknowledges that it has not been induced to enter into the Agreement and has not executed the Agreement in reliance upon any promises, representations, warranties or statements not contained, referenced, and/or incorporated into the Agreement. **THE PARTIES ACKNOWLEDGE THAT THIS AGREEMENT IS INTENDED TO BE, AND IS, AN INTEGRATED AGREEMENT.**

33. EXHIBITS; SECTIONS

All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached. To the extent the terms of an exhibit conflict with or appear to conflict with the terms of the body of the Agreement, the terms of the body of the Agreement shall control. References to sections are to sections of this Agreement unless stated otherwise.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date next to their signatures.

THE CITY OF LOS ANGELES, by its
Board of Harbor Commissioners

Date: _____

By: _____

Eugene D. Seroka
Executive Director

Attest: _____

Amber M. Klesges
Board Secretary

PROPONENT

SAN PEDRO BAY HISTORICAL
SOCIETY

Date: 4/10/16

By: [Signature]
FRANK B. Andersen, President San Pedro Bay Historical Society
Print Name and Title

Attest: [Signature]
Terelle Jerricks
Print Name and Title

Signatures Continue on Page 19

EXHIBIT A

JOE HILL MEMORIAL

Proponent shall oversee the creation, delivery and installation of two bronze plaques, (1) 8 feet wide, 3.5 feet high and 1 inch thick, comprised of a collage and text commemorating Joe Hill and (2) an adjacent plaque showing credits, donor names and logos with an estimated size of 18 inches wide, 24 inches high and 1 inch thick.

A sketch of the memorial, along with a mock-up of the location and adjacent donor plaque are shown on the next two pages included with this exhibit.

The final sketch will be created and executed by Suzanne Matsumiya, and will be used to sculpt a bas relief of the memorial. A large format digital print will be transferred onto a sculpting clay surface. Creation of the bas relief sculpture, delivery to the foundry, oversight of the mold making process and refinement of the mold detailing will be executed by Eugene Daub. Mc3inc foundry in Hawthorne California will cast the mold in bronze and apply surface finishes.

The adjacent plaque will be photo-etched from hard copy on bronze and finished to complement the memorial.

The finished bronze for both plaques will be thoroughly coated with industrial lacquer followed by several coats of wax.

With management and oversight by the Proponent and Artists, the foundry will deliver and install the plaque to the site, which location shall be the south facing side of the free standing wall located at 100 W. 5th Street, Liberty Hill Plaza, shown on the page attached to this exhibit.

All costs, expenses and fees to complete the Project shall be the responsibility of Proponent.

PROPOSED DESIGN OF THE JOE HILL MEMORIAL PLAQUE



