

**EXHIBIT B.4**

**MURAL INSTALLATION AND MAINTENANCE  
AGREEMENT**

THIS MURAL INSTALLATION AND MAINTENANCE AGREEMENT (this "Agreement") dated \_\_\_\_\_ ("Effective Date") is made this <<INSERT DATE>>, in the City and County of San Francisco, State of California, by and between <<INSERT NAME OF OWNER IN ALL CAPS AND UNDERSCORED>> ("Owner"), << INSERT NAME OF ARTIST IN ALL CAPS AND UNDERSCORED>> ("Artist") and the City and County of San Francisco ("City").

**WITNESSETH:**

WHEREAS, Article 27 of the City and County of San Francisco Public Works Code requires Owner to allow a mural to be painted on a Surface-Mounted Facility that has been installed in the public right-of-way pursuant to a permit issued by San Francisco Public Works.

WHEREAS, Owner, working with San Francisco Public Works and the San Francisco Arts Commission, has selected Artist to install a mural on the permitted Surface-Mounted Facility at Owner's expense; and

WHEREAS, Owner desires to provide such authority on the terms and conditions set forth herein:

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained in this Agreement and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

**ARTICLE 1  
DEFINITIONS**

Unless the context otherwise requires, the following capitalized terms (whether singular or plural) shall have the meanings set forth below:

1.1 "Alter" or "Alteration" shall mean, with respect to the Mural, to alter, repair, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface.

1.2 "Budget" shall mean the budget attached hereto as part of Appendix A intended to fully cover the cost of installing the Mural at the Permitted Site.

1.3 "Mural" shall mean the work of art designed or produced by Artist and selected for installation on the Permitted Site as depicted in Appendix B.

1.4 "Permitted Site" shall mean <<INSERT LOCATION OF SURFACEMOUNTED FACILITY >> as shown in Appendix C.

## ARTICLE 2 INSTALLATION, TERM, FUNDING, REMOVAL

2.1 Authorization. Owner authorizes Artist to install the Mural at the Permitted Site using the materials identified in Appendix D.

2.2 Term. This Agreement shall have a term of ten years from the Effective Date, unless this Agreement is terminated pursuant to Sections 2.6 below or extended by the parties in writing. Notwithstanding the foregoing, and subject to provisions of Sections 2.6 and 2.7 below, Owner agrees to maintain the Mural on the Permitted Site for a minimum of ten years from the date that installation is completed.

2.3 Supervision. Owner reserves the right to supervise Artist's installation of the Mural on the Permitted Site. Artist shall notify Owner in writing when Artist intends to install the Mural so that Owner can supervise Artist's installation to the extent necessary to protect Owner's Surface-Mounted Facility from damage. Artist may proceed with the installation if Owner is not present, unless Owner has notified Artist in writing that Artist may not proceed unless Owner is present.

2.4 Funding. Owner shall cover the costs of all materials and labor to install the Mural at the Permitted Site, but only to the extent those costs are within the Budget. Artist shall be responsible for any costs that exceed the Budget. Owner shall provide Artist with 50% of the funding within ten days of receiving a request from the Artist that includes a notice that the Artist intends to begin installation of the Mural. The remaining 50% of the funding shall be provided upon completion of the installation. If the Artist fails to complete the installation, Artist agrees to refund to Owner any funds provided to Artist.

2.5 Completion of Installation. Artist shall complete installation within 120 days after the Effective Date.

2.6 Termination. Owner may elect to terminate this Agreement without any liability to Artist should Artist: (a) fail to install the Mural that is depicted in Exhibit A; or (b) fail to complete installation of the Mural on the date required by Section 2.5 for any reason whatsoever including lack of funding. In the event of such termination, Owner may elect to cover or remove those parts of the Mural that have been installed.

2.7 Removal. Artist understands that Owner installed the Surface-Mounted Facility in the public right-of-way to use to provide <<DESCRIBE FUNCTION OF SURFACE-MOUNTED FACILITY >>. Should Owner reasonably determine that

the Mural is harming Owner's Surface-Mounted Facility or limiting the Owner's use of the Surface-Mounted Facility for the purpose for which it is intended, Owner may provide Artist with 60-day notice that Owner will remove the Mural from the Permitted Site at the end of the notice period. If possible, Owner shall work with Artist to find another suitable site for the Mural.

## ARTICLE 3

## INTELLECTUAL PROPERTY, MAINTENANCE AND REPAIRS, ALTERATION, ARTIST'S RIGHTS

3.1 Copyright. Subject to the restrictions and usage rights and licenses granted to Owner hereunder, and unless otherwise agreed to by the parties in writing, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Mural.

3.2 Owner's Intellectual Property License. Artist hereby grants to Owner, and to Owner's agents, authorized contractors and assigns, and to City an unlimited and irrevocable license to do the following with respect to the Mural:

- I. Implementation, Use, and Display. Owner may use and display the Mural on the Permitted Site only. To the extent the Mural involves design elements that are incorporated by Artist into the design of the Permitted Site, Owner may implement such elements at the Permitted Site.
- II. Reproduction and Distribution. Owner and City may make, display, and distribute, and authorize the making, display, and distribution of photographs and other reproductions of the Mural. Owner and City may use such reproductions for any Owner-related or City-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic, and multimedia publicity. Owner and City shall ensure that such reproductions are made in a professional and tasteful manner, in their sole and reasonable judgment. Owner and City shall make reasonable efforts to ensure that such reproductions include the following credit line and copyright notice where practicable: "Title of Artwork]" © [Year of completion] by <<INSERT ARTIST'S NAME OR OTHER COPYRIGHT HOLDER'S NAME>>. Failure to include such credit line and notice in any reproductions shall not constitute a breach of this agreement. Neither Owner nor City may license or sublicense its rights for any private or commercial purpose. This license granted hereunder does not include the right to sell photographs or reproductions of the Mural or to authorize the sale of such photographs or reproductions.

3.3 Third Party Infringement. Neither Owner nor City is responsible for any third party infringement of Artist's copyright or for protecting Artist's intellectual property rights.

3.4 Publicity. Owner and City shall have the right to use Artist's name, likeness, and biographical information, in connection with the display or

reproduction and distribution of the Mural. Artist shall be reasonably available to attend any ceremonies related to the Mural.

- 3.5 Trademark. In the event that Owner's or City's use of the Mural creates trademark, service mark or trade dress rights in connection with the Mural, Owner and City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.
- 3.6 Resale Royalty. If Owner sells the Mural as a fixture to its Surface Mounted Facility, the Owner and the Artist agree that the resale price of the Mural shall be presumed to be less than the funds provided to Artist by Owner under this Agreement. Thus, Owner has no obligation to pay resale royalties pursuant to California Civil Code § 986 or any other law requiring the payment of resale royalties.
- 3.7 Maintenance and Repairs. Owner shall be responsible for maintenance and repair of the Mural only to the same extent that Public Works Code Article 27 requires owner to maintain a permitted Surface-Mounted Facility.
- 3.8 Waiver of Artist's Rights. With respect to the Mural produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist hereby waives any and all claims, arising at any time and under any circumstances, against Owner and 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. Specifically, Artist hereby waives any and all such claims against Owner or any future owners of the Permitted Site, and its agents, officers and employees, and City for Alteration of the Mural regardless of whether such Alteration is made necessary for Owner to use its Surface-Mounted Facility for its own business purposes. Artist hereby represents and warrants that the Artist is authorized to sign this waiver.
- 3.9 Indemnity. Artist represents and warrants that the Mural is the sole work of the Artist and does not infringe the intellectual property rights of any third parties. Artist agrees to indemnify Owner and/or City against any claims brought against Owner or City alleging that the Mural infringes the intellectual property rights of any third parties.

#### ARTICLE 4

NOTICES AND OTHER COMMUNICATIONS

4.1 Requirements. Unless otherwise specifically provided herein, all notices, consents, directions, approvals, instructions, requests and other communications hereunder shall be in writing, shall be addressed to the person and address set forth below and shall be (a) deposited in the U.S. mail, first class, certified with return receipt requested and with appropriate postage, (b) hand delivered or (c) sent via facsimile (if a facsimile number is provided below):

If to Owner:                   <<INSERT OWNER NAME>>  
   <<INSERT ADDRESS>>  
   San Francisco, CA <<INSERT ZIP CODE>>  
   Attn: <<INSERT CONTACT NAME>>  
   Email: <<INSERT EMAIL ADDRESS >>

If to Artist:                   <<INSERT NAME OF ARTIST>>  
   <<INSERT ADDRESS>>  
   San Francisco, CA <<INSERT ZIP CODE>>  
   Attn: <<INSERT CONTACT NAME>>  
   Email: <<INSERT EMAIL ADDRESS >>

If to City:                       San Francisco Public Works  
   Bureau of Street Use and Mapping  
   1155 Market Street, 3rd Floor  
   San Francisco, CA 94103  
   Email: <<INSERT EMAIL ADDRESS >>

4.2 Effective Date of Notice. All communications sent in accordance with Section 4.1 shall become effective on the date of receipt. Such date of receipt shall be determined by: (a) if mailed, the return receipt, completed by the U.S. postal service; (b) if sent via hand delivery, a receipt executed by a duly authorized agent of the party to whom the notice was sent; or (c) if sent via facsimile, the date of telephonic confirmation of receipt by a duly authorized agent of the party to whom the notice was sent or, if such confirmation is not reasonably practicable, the date indicated in the facsimile machine transmission report of the party giving such notice.

4.3 Change of Address. From time to time any party hereto may designate a new address for purposes of this Article 4 by notice to the other party.

**ARTICLE 5  
MISCELLANEOUS**

5.1 Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL ONE PARTY TO THIS AGREEMENT BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES,

INCLUDING LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY ACTIVITIES PERFORMED IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF WHETHER A CLAIM MADE BY THAT PARTY IS BASED ON CONTRACT OR TORT.

5.2 Survival. The provisions contained in Article 3 above shall survive the expiration or termination of this Agreement.

5.3 Modification. This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

5.4 Governing Law; Venue. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California, without regard to its conflict of laws principles. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

5.5 Headings. All article and section headings and captions contained in this Agreement are for reference only and shall not be considered in construing this Agreement.

5.6 Entire Agreement. This Agreement and the Appendices hereto set forth the entire Agreement between the parties, and supersede all other oral or written provisions.

5.7 Counterparts. This Agreement may be executed in multiple counterparts and signatures may be exchanged by facsimile or electronically, each of which shall be deemed to be an original document, and all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first specified herein.

**OWNER**

**<<INSERT NAME OF OWNER IN ALL CAPS>>**

By:

Print Name:

Title:

**ARTIST**

**<<INSERT NAME OF ARTIST IN ALL  
CAPS>>**

By:

Print Name:

Title:

**CITY AND COUNTY OF SAN FRANCISCO**

By:

Print Name:

Title: