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8 SAN FRANCISCO MUSEUM
OF MODERN ART

ELECTRONICALLY
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*Superior Court of California,
County of San Francisco*
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Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN FRANCISCO

12 San Francisco Museum of Modern Art,
13
14 Plaintiff,
15
16 v.
17 San Francisco Community College District,
18
19 Defendant.

Case No. _____ **CGC-23-609700**
**COMPLAINT FOR
DECLARATORY RELIEF**

1 Plaintiff San Francisco Museum of Modern Art (“SFMOMA” or “Museum”) brings this
2 action against defendant San Francisco Community College District, also known as City College
3 of San Francisco (“CCSF”) because CCSF is refusing to fulfill its contractual obligations relating
4 to SFMOMA and CCSF’s joint endeavor to conserve, relocate, and exhibit CCSF’s Diego Rivera
5 mural, *Unión de la Expresión Artística del Norte y del Sur de este Continente*, commonly known
6 as *Pan American Unity* (“Mural”). The Mural is one of San Francisco’s most important works of
7 public art. Through SFMOMA and CCSF’s multi-year, collaborative effort, the Mural has been
8 meticulously restored and currently is on display free to the public at SFMOMA. In early 2024,
9 CCSF’s Mural will be returned to its campus.

10 SFMOMA brings this action because CCSF is now disputing its obligations under the
11 Loan and Partnership Agreement dated September 13, 2019 (“Agreement”), attached as **Exhibit 1**,
12 which sets forth SFMOMA’s and CCSF’s respective rights and obligations related to the Mural.
13 Specifically, CCSF agreed that SFMOMA’s financial obligations to the Mural project would be
14 capped at \$3.975 million and that CCSF would bear responsibility for all expenses in excess of
15 that amount. SFMOMA has already paid more than it agreed—over \$4 million to date—and
16 therefore has no further financial obligations under the Agreement. SFMOMA has not sought,
17 and is not currently seeking, to recoup this overage. It has merely asked CCSF to acknowledge
18 and fulfill its obligations under the Agreement.

19 Despite its express agreement and a ready source of funding for the Mural project—\$181.3
20 million of San Francisco taxpayer bond funds prominently earmarked for the “Diego Rivera
21 Theater with Mural”—CCSF is now disregarding the Agreement and refusing to hold up its end
22 of the bargain. CCSF also has failed to engage in time-sensitive, necessary planning to facilitate
23 the deinstallation of CCSF’s Mural from SFMOMA’s premises and the safe delivery of the Mural
24 to CCSF’s premises. CCSF’s inaction is impeding SFMOMA’s ability to perform its contractual
25 obligations and putting at risk SFMOMA’s 2024 exhibition commitments. The Museum therefore
26 reluctantly seeks a judicial order confirming the parties’ rights and obligations under the clear and
27 plain language of the Agreement, so the parties can move past this dispute and resume their long
28 and positive collaboration in this important and historic joint project.

1 Plaintiff SFMOMA alleges as follows:

2 **PARTIES**

3 1. Plaintiff SFMOMA is California non-profit organization organized under the laws
4 of the state of California and with its principal place of business at 151 Third Street, San
5 Francisco, California 94103. SFMOMA is one of the largest museums of modern and
6 contemporary art in the United States, and an important cultural center for the Bay Area.

7 SFMOMA is the steward of an internationally renowned collection of art, which includes works
8 by renowned artists such as Diego Rivera, Frida Kahlo, Andy Warhol, Mark Rothko, Jackson
9 Pollock, Henri Matisse, and Georgia O’Keeffe, to name only a few.

10 2. Defendant CCSF is a public community college located in San Francisco. CCSF
11 operates numerous campuses throughout the City of San Francisco. It comprises the entire San
12 Francisco Community College District and is part of the California Community Colleges System.

13 **JURISDICTION AND VENUE**

14 3. This Court has jurisdiction to adjudicate the parties’ dispute in this action under
15 Cal. Civ. Proc. Code § 410.10. The Court has jurisdiction over the parties because SFMOMA and
16 CCSF contractually consented to this Court’s jurisdiction in paragraph 21 of the Agreement,
17 which provides: “Any disputes arising out of this Agreement will be subject to the exclusive
18 jurisdiction of the state and federal courts located in San Francisco County, California, and each
19 party consents to personal jurisdiction thereof.” As a public agency located in San Francisco,
20 California, CCSF is also subject to this Court’s general jurisdiction.

21 4. Venue is proper in this Court because, inter alia, the events giving rise to this
22 dispute occurred in San Francisco, California, where both SFMOMA and CCSF are located,
23 where the Agreement was entered into, where the contractual obligations were to be performed,
24 and where the subject matter of this dispute (the Mural) is currently located. Additionally, venue
25 is proper under Code of Civil Procedure section 394, subdivision (a), because CCSF is a local
26 agency situated in San Francisco, California. Venue is additionally proper because the Agreement
27 in paragraph 21 provides: “Any disputes arising out of this Agreement will be subject to the
28 exclusive jurisdiction of the state and federal courts located in San Francisco County, California.”

1 **EXEMPTION FROM GOVERNMENT CLAIMS ACT SECTION 905**

2 5. This action is exempt from the presentation requirements of the Government
3 Claims Act because it is not an action for “money or damages.” (Gov. Code, § 905.)

4 6. Nevertheless, SFMOMA’s claim regarding the meaning of the Agreement and the
5 parties’ respective rights and obligations thereunder was actually received by the CCSF Board on
6 or about June 15, 2023. (Gov. Code, §915, subd. (e)(1).) The CCSF Board failed or refused to act
7 on the application within the time prescribed by section 911.6. (Gov. Code, § 911.6.)

8 **FACTUAL ALLEGATIONS**

9 7. SFMOMA relocated, restored, and for more than two years exhibited to the public
10 free of charge CCSF’s treasured Diego Rivera Mural pursuant to the Agreement.¹ SFMOMA has
11 performed all of its obligations under the Agreement and then some, but CCSF is now denying its
12 clear and express obligations under the contract.

13 **A. The Mural’s Creation And Display At CCSF’s Campus**

14 8. The Mural was created by Diego Rivera—one of the most influential artists of the
15 twentieth century—in June 1940 at the Golden Gate International Exposition on Treasure Island.
16 Working on a scaffold in an airplane hangar before a live audience, Rivera painted the Mural on
17 ten steel-framed cement panels. Completed with support from local artists, and with scenes of the
18 Bay Area as a backdrop, the Mural is one of the most important artworks ever created in the area.

19 9. After the Exposition, the Mural was moved to the campus of San Francisco Junior
20 College, today known as CCSF. The Mural was initially intended to be displayed in a new library
21 at CCSF, but the library was never built. The Mural languished in storage, unseen by the public,
22 until 1961, when the Mural was affixed to an interior lobby wall of CCSF’s Diego Rivera Theater.

23 10. In recent years, it became clear the Diego Rivera Theater was seismically unsafe
24 and in need of replacement. The Agreement expressly acknowledges this: “The structure in which
25 the Artwork is currently housed is not seismically safe and needs to be replaced.” (Agreement
26

27 _____
28 ¹ (See *Pan American Unity: A Mural By Diego Rivera*, SFMOMA at
<<https://www.sfmoma.org/exhibition/pan-american-unity/>>.)

¶ 2.B.) According to an article in The San Francisco Standard, in November 2021, “so much rain water leaked into the building from the faulty roof that the [theater] seats were underwater up to the third row.”²

11. To remedy the obvious risk of housing a priceless and fragile artwork in a leaking, seismically unsafe structure, CCSF intended to, and ultimately did, “seek[] voter approval of a bond measure to fund construction of a new performing arts center with space for safely exhibiting the [Mural],” (Agreement ¶ 2.B), and in the meantime, needed to figure out how to safely remove, relocate, and store the extraordinarily fragile and massive artwork, which measures twenty-two feet by seventy-four feet and weighs over 30 tons.

B. SFMOMA Partners With CCSF To Relocate And Restore The Mural

12. Beginning in 2017, CCSF and SFMOMA began exploring a partnership in which the Museum would help CCSF facilitate the complex process of safely relocating, restoring, and publicly exhibiting the Mural for free to the public at SFMOMA while CCSF constructed its new Performing Arts Education Center. But for SFMOMA’s willingness to partner, CCSF would have had to develop and fund a solution by itself. As CCSF’s General Counsel told its Board in seeking approval of the Agreement in 2019: “If not for SFMOMA I don’t know what we would have done because we don’t have the capacity to do this.”³

13. SFMOMA spearheaded the ambitious effort to determine how to safely extract and relocate the enormous and fragile work of art.⁴ The Museum contributed its expertise, staff, and resources and convened an international team of mechanical engineers, architects, art historians,

² (See Zigoris, *Future of Priceless Diego Rivera Mural in Limbo as City College Struggles to Right Its Finances*, The San Francisco Standard (May 10, 2022) at <<https://sfstandard.com/2022/05/10/future-of-priceless-diego-rivera-mural-in-limbo-as-city-college-struggles-to-right-its-finances/>>.)

³ (See CCSF Regular Meeting of the Board of Trustees, Discussion on Agenda Item 7.C.230: Approval of Loan Agreement with San Francisco Museum of Modern Art for Diego Rivera Mural (Sept. 26, 2019) (“CCSF September 26 Meeting”) at 5:29:08, at <https://ccsf.granicus.com/player/clip/1495?view_id=2&redirect=true&h=1f335cd556d0987bb7d66ec090879751>.)

⁴ (See Pogash, *How Do You Move a 30-Ton Diego Rivera Fresco? Very Carefully*, N.Y. Times (June 22, 2021) at <<https://www.nytimes.com/2021/06/22/arts/design/diego-rivera-mural-sfmoma.html>>.)

1 fresco experts, conservators, and art handlers to determine whether and how the Mural could be
2 safely removed from the Diego Rivera Theater and transported across the city to SFMOMA.⁵

3 14. The parties knew from the outset that this unprecedented project would involve
4 uncertainties, budgeting and otherwise. (See Agreement ¶ 5 [“SFMOMA and CCSF to maintain
5 communications on this schedule and given the unknowns and complexities of this project,
6 including but not limited to funding, construction timelines, deinstallation/installation and transit
7 challenges, conservation needs, etc. will make adjustments accordingly.”].)

8 15. Neither party knew whether or how it could be done or how much it would cost,
9 and both parties understood that known and unknown factors could complicate or increase the cost
10 of the project. (See Agreement ¶ 2.B [stating that “[g]iven its size, fragility, and the method by
11 which the [Mural] was installed, it will be difficult to move the [Mural] safely” and might not be
12 possible “within the limits of SFMOMA’s budget”].)

13 **C. CCSF Agreed To Pay All Costs Beyond SFMOMA’s Agreed Cap**

14 16. For the above-described reasons, SFMOMA’s participation in the Mural project
15 was conditioned on CCSF’s agreement that SFMOMA’s financial liability would be capped at
16 \$3.975 million under all circumstances.

17 17. This cap is repeatedly and unambiguously stated in the Agreement. For example:

18 a. Paragraph 4.A states: “SFMOMA agrees to fund a total budget for the
19 project **not-to-exceed THREE MILLION NINE HUNDRED SEVENTY FIVE**
20 **THOUSAND DOLLARS (\$3,975,000),”** i.e., the “Maximum Authorized Payment
Amount.” (Bold added.)

21 b. Paragraph 4.B states that “**once SFMOMA reaches its Maximum**
22 **Authorized Payment Amount, SFMOMA shall not be responsible for any**
23 **additional costs associated with the Artwork or the Project”** (defined in
24 Paragraph 4(a) to include “condition reporting and de-installation at CCSF, any
25 repair/restoration of the lobby area at CCSF where the Artwork is currently
displayed, packing, transport from CCSF to SFMOMA, insurance, conservation,
installation, exhibition presentation, the final de-installation at SFMOMA,
condition reporting, packing at SFMOMA and return transit to CCSF”). (Bold
added.)

26 c. Paragraph 4.E, which addresses SFMOMA’s obligations in the event of
27 damage during initial deinstallation at CCSF, provides: “Such repairs shall be
subject to a three party agreement among CCSF, the contractor, and SFMOMA, but

28 ⁵ (See Diego Rivera: Moving a Masterpiece, NBC Bay Area (Sept. 13, 2021) at
<<https://www.youtube.com/watch?v=r6K2YTyN4jg>> [documentary about Mural project].)

1 **shall not impose any additional costs on SFMOMA beyond the Maximum**
2 **Authorized Payment Amount hereunder.”** (Bold added.)

3 d. The “Estimated Project Budget” attached as Exhibit A to the Agreement
4 likewise states in all capital letters: **“IN NO EVENT SHALL SFMOMA’S**
5 **TOTAL BUDGET AND EXPENDITURES EXCEED \$3,975,000.”** (Bold
6 added.)

7 e. Paragraph 2.B states that SFMOMA’s participation in the project “has
8 limitations that must be respected.”

9 18. The Agreement likewise states in no uncertain terms that any excess costs beyond
10 SFMOMA’s agreed-upon \$3.975 million obligation are CCSF’s responsibility: **“All expenses,**
11 **other than those SFMOMA has agreed to cover under this Agreement, are the responsibility**
12 **of CCSF.”** (Agreement ¶ 4.C.)

13 19. The \$3.975 million cap on SFMOMA’s financial obligations, and CCSF’s
14 commitment to pay “all expenses” in excess of that cap, were material, specifically negotiated
15 terms. SFMOMA communicated to CCSF that the Museum’s participation was conditioned on
16 the cap. And, when the Board was considering whether to authorize the Agreement in 2019,
17 CCSF’s General Counsel specifically advised the CCSF Board of Trustees about the cap and
18 CCSF’s obligation to cover all project expenses beyond that amount.

19 20. The CCSF Board discussed publicly that, under the Agreement, SFMOMA’s
20 financial responsibility was capped at \$3.975 million and CCSF would bear any costs beyond that
21 (Trustee Selby: “It seems like there’s a whole lot of this could cost a lot more and if it does it’s
22 CCSF’s dollar.”); in response, CCSF’s General Counsel confirmed, “SFMOMA was clear that
23 \$3.975 million is what they’re going to pay.”⁶ The CCSF Board authorized the Agreement with
24 that understanding.

25 **D. CCSF Knew From The Outset It Would Have To Pay Its Share**

26 21. When the parties signed the Agreement, the two primary vendors who were
27 engaged to execute the project—Atthowe Fine Art Services (“Atthowe”) and Site & Studio

28 ⁶ (See CCSF September 26 Meeting, *supra*, at 5:37:04-5:37:54, at
<https://ccsf.granicus.com/player/clip/1495?view_id=%202&redirect=true&h=1f335cd556d0987b7d66ec090879751> at 5:37:04-5:37:54.)

1 Conservation (“Site & Studio”)—were still in an assessment phase and had not yet developed
2 work plans to remove the Mural from CCSF, transport it, and reinstall it at SFMOMA.

3 22. The Agreement is explicit that these vendor work plans were still in development
4 and that final transit and conservation plans would be submitted to CCSF for advance approval
5 upon completion:

6 a. “Moving forward, SFMOMA will continue working with CCSF and experts
7 as proposals are developed for this project.” (Agreement ¶ 1.)

8 b. “The Parties have and will continue to cooperate in SFMOMA’s efforts to
9 investigate how to safely remove the Artwork from its current location” (*Id.*
10 ¶ 2.B.)

11 c. “SFMOMA will continue working with CCSF and contract art handlers and
12 conservators on identifying and executing best practices for conservation and
13 protection of the mural All plans for conservation and transit will be approved
14 in advance by CCSF.” (*Id.* ¶ 7.)

15 d. “SFMOMA will work with Atthowe, internal staff, and outside parties to
16 develop these work plans for the development of the conservation, packing, transit,
17 and installation plan and its execution.” (*Ibid.*)

18 23. Preliminary vendor assessments were necessary due to the unprecedented nature of
19 the project and because CCSF did not possess “as-builts,” i.e., plans detailing how the Mural had
20 been assembled and attached to the wall of the Diego Rivera Theater. Vendors had to probe the
21 Mural’s outside wall to examine the Mural’s backing and determine how it was affixed to the
22 theater wall before they could develop a plan to extract this extraordinarily fragile and valuable
23 artwork without damaging it. It was not possible to develop a work plan or reliable budget before
24 completion of this assessment, as all parties knew at the time—including CCSF.

25 24. Based on these preliminary assessments, the project team built 3-D models and
26 technical drawings that culminated in building a full-scale replica of the Mural panels at The
27 National Autonomous University of Mexico (UNAM) School of Engineering’s Center for
28 Mechanical Design and Technological Innovation in Mexico City. These models were used to
create simulations so the project team could test different handling approaches and understand the
potential effects on the Mural from vibrations and impacts.⁷

⁷ (See Kneer, *Pan American Unity*, STRUCTURE (Apr. 2022) at <<https://www.structuremag.org/?p=20084>>.)

1 25. Based on these experiments, Atthowe and Site & Studio developed work plans that
2 were submitted to CCSF for advance approval in Fall 2020. These contracts, attached as **Exhibits**
3 **2 and 3**, were approved by CCSF and signed by then-CCSF Chancellor Dr. Rajen Vurdien.

4 26. The final project scope and budgets, as approved by CCSF in Fall 2020, anticipated
5 that approximately \$2.5 million would be spent on the first deinstall/repair, transit, and reinstall
6 phase (at SFMOMA) and that the total project budget *exclusive* of the second deinstall, transit, and
7 reinstall phase (at CCSF) would be approximately \$3.735 million—close to SFMOMA’s agreed-
8 upon funding cap of \$3.975 million. Thus, in Fall 2020 and before any work commenced, CCSF
9 approved a budget for the project’s initial deinstall/transport phase (from CCSF to SFMOMA) that
10 would exhaust SFMOMA’s funding *before* the project’s second deinstall/transport phase (from
11 SFMOMA to CCSF)—exactly where the parties stand today.

12 27. As early as Fall 2022—and on multiple other occasions—SFMOMA alerted CCSF
13 that SFMOMA would exceed, and then had exceeded, the cap on its financial obligations and that
14 CCSF would therefore have to bear all remaining project costs as the Agreement requires:

15 a. For example, in an email dated October 21, 2022, SFMOMA’s General
16 Counsel wrote to CCSF Chancellor David Martin and Trustee John Rizzo: “We
17 will also need to discuss CCSF’s financial responsibilities as SFMOMA will have
18 reached the parties’ mutually agreed cap on expenses.”

19 b. At a meeting with Chancellor Martin and Trustee Rizzo on November 21,
20 2022, the parties discussed SFMOMA’s costs to date, and SFMOMA again
21 informed CCSF that it had already expended more than \$3.975 million.
22

23 **E. CCSF Has Repudiated Its Financial Obligations Under The Agreement**

24 28. Despite the Agreement’s express cap on SFMOMA’s financial obligations, CCSF’s
25 full visibility into the project and approval of the final vendor budgets, and SFMOMA’s repeated
26 efforts to notify CCSF that the mutually agreed SFMOMA cost cap had been exceeded and that
27 CCSF would be responsible for remaining project costs, on March 20, 2023, CCSF inexplicably
28 demanded that the Museum return the Mural “at SFMOMA[’s] sole cost and expense.”

1 29. In the months since, CCSF has denied its obligations under the Agreement and has
2 questioned whether SFMOMA has in fact exceeded its agreed \$3.975 million share. CCSF has
3 offered no valid legal or factual justifications for these actions.

4 30. CCSF’s primary response has been that the Agreement requires SFMOMA to
5 return the Mural by September 1, 2023. But the express cap on SFMOMA’s financial obligation
6 is not tied in any way to the return deadline. Regardless, CCSF requested more than a year ago to
7 extend the original September 1, 2023 return deadline into early 2024; CCSF’s request is attached
8 as **Exhibit 4**. SFMOMA agreed and has arranged its programming in reliance upon that mutually
9 agreed extension. (See Agreement ¶ 4.B [“Any revisions to this deadline are subject to the mutual
10 agreement of SFMOMA and CCSF.”].) CCSF Chancellor Martin and the CCSF Board of
11 Trustees have repeatedly and publicly confirmed this mutually agreed extension into early 2024.⁸

12 31. In any event, SFMOMA stands ready and willing to return the Mural to CCSF’s
13 campus: The only obstacles are CCSF’s repudiation of its obligation to pay the associated costs
14 and its refusal to participate in time-sensitive and necessary planning for the return transit of the
15 Mural, which involves multiple third-party vendors as well as the City of San Francisco (to secure
16 required permits and street closures). SFMOMA has been attempting to engage CCSF in these
17 logistical arrangements—which are necessary to ensure the safe transportation of CCSF’s fragile
18 property to its premises—since October 2022 and has repeatedly emphasized the time-sensitivity
19 and complexity of these efforts. CCSF has not responded to SFMOMA’s outreach regarding these
20 matters and has taken no steps to help coordinate the return of CCSF’s Mural to its campus.

21 32. CCSF is aware the Mural cannot remain in SFMOMA’s Roberts Family Gallery
22 indefinitely. Indeed, at the December 8, 2022 Regular Meeting of the CCSF Board of Trustees,
23 Board members discussed that the Gallery was committed to other exhibitions in 2024.

24 _____
25 ⁸ (See, e.g., CCSF Special Meeting of the Board of Trustees, Item 6.B. Authorize the District to
26 Negotiate a Possible Loan of the Diego Rivera Mural to the Treasure Island Museum (Dec. 22,
27 2022) (“December 22 Special Meeting”) at <[https://ccsf.granicus.com/player/clip/
1960?&redirect=true&h=f28787d27fa9e31364dc531f8803fa58](https://ccsf.granicus.com/player/clip/1960?&redirect=true&h=f28787d27fa9e31364dc531f8803fa58)> [Agenda Item Details reading:
28 **“SFMOMA currently displays the Mural and will continue to do so until January 2024.”**];
id. at 2:42:20 [Statement of Chancellor Martin: **“As we know, the mural is slated to be removed
from SFMOMA in January of 2024.”**].)

1 **F. CCSF Has Earmarked Taxpayer Bond Funds To Pay Its Share**

2 33. CCSF’s refusal to pay its comparatively minor share of the costs to safely relocate
3 and restore its treasured Mural is all the more puzzling because CCSF sought, and San Francisco
4 taxpayers approved, a \$845 million bond measure to fund facilities improvements including the
5 “Performing Arts and Education Center with Diego Rivera ‘Pan American Unity’ Mural.”⁹

6 34. According to public reports regarding CCSF’s expenditure of bond funds, CCSF
7 has earmarked more than \$180 million in taxpayer bond funds for the “Diego Rivera Theater with
8 Mural” bond budget line item,¹⁰ the Mural has been featured prominently in annual reports of the
9 Citizens’ Bond Oversight Committee,¹¹ and the Mural will be the centerpiece of CCSF’s new
10 Performing Arts Education Center upon its completion.

11 35. It appears from these public reports that CCSF has access to a significant pool of
12 funds specifically earmarked for this purpose (and orders of magnitude larger than the remaining
13 project costs). SFMOMA, by contrast, cannot pay more than it agreed to pay and budgeted for
14 without adversely impacting its public programming and operating necessities.

15 **FIRST CAUSE OF ACTION FOR DECLARATORY RELIEF**

16 36. Plaintiff SFMOMA incorporates each and every allegation contained in Paragraphs
17 1 through 35, inclusive, as though fully set forth herein.

18 _____
19 ⁹ (See CBOC 2021-2022 Annual Report on Proposition A 2005 & Proposition A 2020 (May 4,
20 2023) (“CBOC Annual Report”), at pp. 3 [background], 6 [funded projects], 9 [expenditures for
21 “Diego Rivera Theater with Mural”], at <[https://go.boarddocs.com/ca/ccsf/Board.nsf/
files/CRRL8Q555A3B/\\$file/CCSF%20CBOC%202021-2022%20Annual%20Report%
20FINAL.pdf](https://go.boarddocs.com/ca/ccsf/Board.nsf/files/CRRL8Q555A3B/$file/CCSF%20CBOC%202021-2022%20Annual%20Report%20FINAL.pdf)>.)

22 ¹⁰ The Board of Facilities Master Planning Committee recently approved a bond budget transfer in
23 the amount of \$80.3 million to Project OC-001 – Diego Rivera Theater with Mural, bringing the
24 total budget to \$181.3 million, and recommended this transfer to the full board for consideration.
(See December 22 Special Meeting, *supra*, Item 213: Authorize Revision to Proposition A – 2020
25 Master Bond Project List Revision (BLR) #2, at <[https://ccsf.granicus.com/player/clip/
1960?&redirect=true&h=f28787d27fa9e31364dc531f8803fa58](https://ccsf.granicus.com/player/clip/1960?&redirect=true&h=f28787d27fa9e31364dc531f8803fa58)> [Agenda Item Details reading:
26 “The purpose of Bond List Revision #2 is to transfer budget to Project OC-001 Diego Rivera
Theater with Mural ... to accommodate budget needs.”].)

27 ¹¹(See, e.g., CBOC Annual Report, *supra*, at <[https://go.boarddocs.com/ca/ccsf/Board.nsf/files/
CRRL8Q555A3B/\\$file/CCSF%20CBOC%202021-2022%20Annual%20Report%
28 20FINAL.pdf](https://go.boarddocs.com/ca/ccsf/Board.nsf/files/CRRL8Q555A3B/$file/CCSF%20CBOC%202021-2022%20Annual%20Report%20FINAL.pdf)>.)

1 37. An actual, concrete controversy has arisen and now exists between SFMOMA and
2 CCSF regarding the parties' respective rights and obligations under the Agreement for which
3 SFMOMA desires a declaration of rights.

4 38. The Agreement expressly provides that SFMOMA's financial obligation is capped
5 at \$3.975 million and that CCSF is responsible for all project costs beyond SFMOMA's agreed-
6 upon cap. Because SFMOMA has exceeded that cap, CCSF is responsible for all remaining
7 project costs.

8 39. CCSF has repudiated its contractual obligation to pay these costs, has questioned
9 whether SFMOMA has satisfied its financial obligation, and has demanded that SFMOMA
10 continue to finance all project expenditures—even though SFMOMA has already exceeded the
11 specifically negotiated and explicit \$3.975 million contractual cap on SFMOMA's obligations.

12 40. Accordingly, pursuant to Code of Civil Procedure section 1060, SFMOMA
13 requests a judicial declaration of the parties' rights and obligations under the Agreement, including
14 that: (1) SFMOMA's maximum total financial obligation to pay expenses relating to the Mural
15 under the Agreement is \$3,975,000; (2) SFMOMA has paid at least \$3,975,000 in relation to the
16 Mural under the Agreement; (3) SFMOMA is not responsible for paying any further expenses
17 relating to the Mural, including but not limited to the costs associated with deinstalling the Mural
18 at SFMOMA and returning it to CCSF's campus; (4) as between CCSF and SFMOMA, CCSF is
19 solely responsible for paying any further expenses relating to the Mural, including but not limited
20 to the costs associated with deinstalling the Mural at SFMOMA and returning it to CCSF's
21 campus; (5) CCSF is responsible for insuring each individual panel of the Mural upon arrival on
22 CCSF's premises or an alternate storage facility; and (6) SFMOMA and CCSF agreed to extend
23 the loan of the Mural from the original date of September 1, 2023, through at least January 2024.

24 **PRAYER FOR RELIEF**

25 **WHEREFORE**, SFMOMA prays for a declaratory judgment that:

- 26 (1) SFMOMA's maximum total financial obligation to pay expenses relating to the Mural
27 under the Agreement is \$3,975,000;
28 (2) SFMOMA has paid at least \$3,975,000 in relation to the Mural under the Agreement;

- 1 (3) SFMOMA is not responsible for paying any further expenses relating to the Mural,
2 including but not limited to the costs associated with deinstalling the Mural at SFMOMA
3 and returning it to CCSF's campus;
- 4 (4) as between CCSF and SFMOMA, CCSF is solely responsible for paying any further
5 expenses relating to the Mural, including but not limited to the costs associated with
6 deinstalling the Mural at SFMOMA and returning it to CCSF's campus;
- 7 (5) CCSF is responsible for insuring each individual panel of the Mural upon arrival on
8 CCSF's premises or an alternate storage facility;
- 9 (6) SFMOMA and CCSF agreed to extend the loan of the Mural from the original date of
10 September 1, 2023, through at least January 2024; and
- 11 (7) SFMOMA also seeks costs of suit and such other and further relief as the Court deems
12 just and proper.

13
14 DATED: October 12, 2023

HAILYN J. CHEN
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17
18 By: 

19 Hailyn J. Chen
20 Attorneys for Plaintiff
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims that are so triable.

DATED: October 12, 2023

MUNGER, TOLLES & OLSON LLP

By: 

Hailyn J. Chen
Attorneys for Plaintiff

EXHIBIT 1

SB
19/1/19

LOAN and PARTNERSHIP AGREEMENT

This Agreement (the "Agreement") is made as of **September 13, 2019** by and between the San Francisco Museum of Modern Art ("SFMOMA"), 151 Third Street, San Francisco, California 94103, and City College of San Francisco ("CCSF"), **50 Frida Kahlo Way, San Francisco, CA 94112**

SFMOMA and CCSF will partner around the conservation, deinstallation at CCSF and installation at SFMOMA, and transit of Diego Rivera's mural, Unión de la Expresión Artística del Norte y Sur de este Continente (The Marriage of the Artistic Expression of the North and of the South on this Continent), 1940, also known as "Pan American Unity" ("Artwork"). The Artwork is owned by and currently on view at CCSF and planned for presentation to the general public at SFMOMA in the Roberts Family Gallery starting in the fall of 2020 (final dates TBD).

1. BACKGROUND

To date, multiple investigations have taken place to better understand the condition of the Artwork, determine how the Artwork panels are installed in the CCSF theatre building, and develop a plan to deinstall at CCSF, transit to and install at SFMOMA and return to CCSF.

December 2017

CCSF and SFMOMA entered into a **Memorandum of Understanding** to lay out the initial terms of this partnership, dated December 6, 2017, a copy of which is attached to this Agreement as Exhibit D.

January 2018

Local stakeholders convened at CCSF to begin assessing the scope of and logistics surrounding the project. Later that month, SFMOMA staff traveled to Mexico City to become familiar with other Rivera murals, guided by curator Jay Oles and Sandra Zetina.

May 2018

SFMOMA contracted Atthowe Fine Arts Services ("Atthowe") and other experts including conservators, concrete specialists, and building engineers to begin exploratory work on the mural. Assessment of the mural's condition, installation and structural integrity began at this time pursuant to terms set out in the May 1, 2018 "Vendor Agreement (Evaluation and Assessment - Proposed Removal and Installation of Rivera Mural)." See Exhibit A (SFMOMA AND CCSF Agreement with Atthowe, dated May 1, 2018). A key goal of this preliminary assessment was to compare the mural's installation with historical architectural drawings to determine if the mural was installed as previously designed. The preliminary assessment found that the "as built" varied from the original designs in several respects, including the manner the piece was ultimately attached to the wall.

July 2018

SFMOMA contracted Atthowe to engage tests to confirm the methods used to set the Nelson studs into the wall behind the mural. A concrete specialist assessed the grout used to set the studs in place. A key goal of this work was to begin to understand which tools might be necessary to deinstall the mural, and subsequently what type of vibration might result. See Exhibit B (SFMOMA and CCSF Agreement with Atthowe, dated May 22, 2019).

November 2018

The SFMOMA project team met with Dan Hanford of Atelier (NYC), a fine art packing and handling specialist with significant experience working with Rivera's portable murals. The group visited Rivera's *Still Life and Blossoming Almond Trees* (1931) portable mural located in Stern Hall on the UC Berkeley campus for a preliminary discussion on the deinstall and transportation of the mural. The group later visited the Artwork at CCSF to discuss options for removing and protecting the panels, and to gain insight from Dan's experience.

December 2018

The SFMOMA project team met with Alejandro Ramírez Reivich, a mechanical design engineer from National Autonomous University of Mexico (UNAM), Mexico, and two of his engineer colleagues to view the mural and introduce key questions surrounding the project. Topics discussed included monitoring and controlling vibration during deinstallation and transportation.

January 2019

Diego Rivera Roundtable, organized by SFMOMA and held in Mexico City, brought together experts in the field from both U.S. and Mexico for a working discussion to continue informing and shaping the process and plan for detach and deinstall, stiffening, protection and dampening, loading and transportation, and re-installation.

May 2019

SFMOMA entered into a Vendor Agreement with Atthowe to further assess the steps to disconnect and remove the Artwork from its current site and with Site and Studio Conservation, LLC, to assess the current condition of the Artwork and to determine whether any conservation work should be done prior to the Artwork being deinstalled and moved to SFMOMA. See Exhibits B (SFMOMA-CCSF-Atthowe Agreement) and C (SFMOMA Agreement with Site and Studio Conservation, dated May 22, 2019).

Moving forward, SFMOMA will continue working with CCSF and experts as proposals are developed for this project.

2. DESCRIPTION OF ARTWORK; ADDITIONAL FACTS**A. TECHNICAL DESCRIPTION of THE ARTWORK AS INSTALLED AT CCSF**

The Artwork consists of ten fresco panels comprised of a painted lime plaster layer over a concrete and metal wire lath substrate. Each panel is framed by an equal leg angle iron to which a reinforcing steel framework channel is attached. The overall mural measures 22 feet by 74 feet and weighs approximately 42,500 – 47,500 pounds. The mural is composed of two different sized panels – square panels on the top row of the mural and smaller rectangular panels (half height) which comprise the bottom row. The parties understand that more information about the artwork and installation may become available as the examination process continues.

In their current installation in the CCSF theater building, the mural panels are set into a structural concrete wall with metal rods, Nelson studs, which were welded to the steel framework of the Artwork. The panels were set in place with these rods aligning into precast holes in the concrete wall behind the mural. The studs were then grouted into place, sealing the wall and securing the studs within the holes. The acoustical ceiling of the theater was put in after the mural was installed, and as such the space between the top of the mural and the ceiling is extremely limited.

B. ADDITIONAL FACTS

Given its size, fragility, and the method by which the Artwork was installed, it will be difficult to move the Artwork safely.

The structure in which the Artwork is currently housed is not seismically safe and needs to be replaced. CCSF will be seeking voter approval of a bond measure to fund construction of a new performing arts center with space for safely exhibiting the Artwork.

The budget SFMOMA has developed for this Project reflects a commitment to preservation of this extraordinary work of art, but it has limitations that must be respected.

The Parties have and will continue to cooperate in SFMOMA's efforts to investigate how to safely remove the Artwork from its current location, a move that will be necessary in the future whether or not it can be done within the limits of SFMOMA's budget for the purpose of this Project.

The Parties understand and agree that deinstallation of the Artwork at CCSF will result in partial demolition to varying degrees of the current lobby area where the Artwork is installed. The parties understand and agree that the current lobby area where the artwork is installed in the building which is adjacent to, but separate from, the theater-shall be restored to a functional condition for lobby gathering purposes, consistent with its condition immediately prior to removal. Functionality shall be defined as being weathertight with any holes or openings required as part of the deinstallation, including any glass openings, to be closed and sealed. Finishes may vary from those of the original

building (e.g. stucco may be substituted for concrete) so long as the previous conditions are met. Where possible, SFMOMA would replace any broken or open glass doors or windows with replacement glass of similar condition and quality. SFMOMA is not responsible for correcting conditions that currently exist in the building (including accessibility issues and/or deteriorated building systems, or for any electrical changes or upgrades, or for making any further improvements or changes.

3. TERMS AND CONDITIONS OF LOAN TO EXHIBITION

In consideration of the financial investment made by SFMOMA, CCSF agrees to lend the Artwork to SFMOMA at no charge for a loan period beginning with the de-installation of the Artwork in spring 2020 at CCSF, and continuing until the close of the exhibition at SFMOMA, through deinstallation at SFMOMA, and through transport of the Artwork to CCSF under the terms of this agreement. For the purposes of this agreement, "transport of the Artwork to CCSF" includes transport to one of the following: a new CCSF Performing Arts Center (PAEC) or other location designated by CCSF on the CCSF campus in San Francisco, or to a mutually agreed upon storage location. SFMOMA is not responsible for re-installation at CCSF or for any movement between the above listed CCSF locations.

4. FINANCIALS

(a) SFMOMA agrees to fund a total budget for the project not-to-exceed THREE MILLION NINE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$3,975,000) "Maximum Authorized Payment Amount") (See Exhibit A – Budget). This represents SFMOMA's estimate of the reasonable costs for the condition reporting and de-installation at CCSF, any repair/restoration of the lobby area at CCSF where the Artwork is currently displayed, packing, transport from CCSF to SFMOMA, insurance, conservation, installation, exhibition presentation, the final de-installation at SFMOMA, condition reporting, packing at SFMOMA and return transit to CCSF at its new CCSF PAEC, or to another location designated by CCSF on the CCSF campus in San Francisco, or to a mutually agreed upon storage location (as provided above in Section 3 (Terms and Conditions)) (the "Project"). SFMOMA will be logistically and financially responsible for the expenses incurred and activities undertaken as called out above.

(b) The Artwork shall be returned for reinstallation at CCSF no later than September 1, 2023. Any revisions to this deadline are subject to the mutual agreement of SFMOMA and CCSF. The Parties agree that SFMOMA is not responsible for the costs or logistics related to the storage, and reinstallation of the Artwork following the presentation and deinstallation at SFMOMA and transit to CCSF. Moreover, once SFMOMA reaches its Maximum Authorized Payment Amount, SFMOMA shall not be responsible for any additional costs associated with the Artwork or the Project. For the avoidance of doubt, SFMOMA shall not be responsible for any costs in excess of the Maximum Authorized Payment Amount, or otherwise related to the post September 1, 2023 storage, transit, and/or reinstallation of the Artwork at CCSF's designated location. Nor is SFMOMA responsible for the costs or logistics related to any move from CCSF's designated storage

to the PAEC in the event the Artwork cannot be returned directly to the PAEC at the end of SFMOMA's exhibition.

(c) If CCSF wishes to engage SFMOMA for oversight of the re-installation at CCSF or a designated CCSF location, this shall be subject to a separate written Agreement between the Parties.

All expenses, other than those SFMOMA has agreed to cover under this Agreement, are the responsibility of CCSF.

(d) In the event that the new Performing Arts Center at CCSF is not ready for the timely installation of the Artwork following September 1, 2023, due to construction, budgetary, or any other reasons outside of SFMOMA's control, CCSF must pay for all costs associated with the insurance, interim storage, relocation, and reinstallation of the Artwork after September 1, 2023.

(e) Given the learnings to date on the manner in which the Artwork was originally installed, the Parties agree that the deinstallation of the Artwork at CCSF will result in partial demolition to varying degrees of the current lobby area where the Artwork is installed. SFMOMA will only be responsible for repairs to this lobby area that result from the deinstallation of the Artwork in so far as they are required to meet the standards set forth in Section 2 and the repairs are included in the scope of the work of the contractor responsible for deinstalling the Artwork and part of the allocated budget for this Project. Such repairs shall be subject to a three party agreement among CCSF, the contractor, and SFMOMA, but shall not impose any additional costs on SFMOMA beyond the Maximum Authorized Payment Amount hereunder. SFMOMA and CCSF would approve any subcontractors used by the contractor. (The parties anticipate that the contractor will be Atthowe Fine Arts Services.)

(f) The final plan for deinstallation of the Artwork will be discussed in detail between SFMOMA, CCSF, and related contractors for clarity of impact on the current building. If CCSF determines in its reasonable discretion that the de-installation of the work at CCSF will result in the CCSF theatre lobby becoming unusable for lobby gathering purposes following the required repair and restoration of such area under this Agreement, and if no reasonable alternative is available, CCSF may terminate this agreement. If SFMOMA determines in its sole discretion that the de-installation, shipping/transit, re-installation, or display of the work at SFMOMA will pose an undue risk to the Artwork, facilities, or will exceed the budgeted costs, or if the Artwork or its loan cannot be insured within SFMOMA's allocated budget for this Project, or if SFMOMA is not able to safely remove or move the work from its current site to SFMOMA, SFMOMA may terminate this Agreement.

(g) If after work has begun to remove the Artwork at CCSF, SFMOMA determines that continued work will pose an undue risk to the Artwork, facilities, or will exceed the budgeted costs, SFMOMA may terminate this Agreement. Under this scenario,

SFMOMA will work with CCSF to find a mutually agreeable solution, within the constraints of SFMOMA's allocated budget, for reinstallation to the extent necessary for the security of the Artwork consistent with its prior installation. If, as a consequence of the work already done, the Artwork cannot be reinstalled, in consultation with CCSF SFMOMA will be responsible for packing the deinstalled components of the Artwork and sending them to storage in a mutually agreeable location subject to the provisions governing packing and shipping set forth in section 7. Any necessary storage related expenses for the deinstalled components of the Artwork to be covered by SFMOMA until September 1, 2023 and subject to the constraints of SFMOMA's allocated budget for this Project.

5. SCHEDULE

The final Artwork will be fully installed and available for public viewing at SFMOMA in October 2020 (date TBD), to coincide with SFMOMA's *Diego Rivera* exhibition in the Museum's fourth floor galleries. In order to allow for a timely installation that considers further research and assessment, and stabilization work, the following schedule will be put in place:

Spring - Summer 2019	Complete documentation to assess materials and condition
Summer- Fall 2019	Stabilization and treatment of Artwork
Winter 2019-20	Vibration study and design development for Artwork removal
Spring 2020	Protection and Deinstallation at CCSF
Spring - Summer 2020	Transport to SFMOMA and installation at SFMOMA
Fall 2020	Cleaning, and preparations for public opening at SFMOMA
Spring/Summer 2023	Deinstallation at SFMOMA, transit to and installation at CCSF (through September 1, 2023)

SFMOMA and CCSF to maintain communications on this schedule and given the unknowns and complexities of this project, including but not limited to funding, construction timelines, deinstallation/installation and transit challenges, conservation needs, etc. will make adjustments accordingly.

6. FUNDRAISING and CREDIT LINE

SFMOMA and CCSF agree to meet and discuss any potential joint fundraising opportunities, which shall be subject to mutual written agreement.

SFMOMA and CCSF agree to include the Organizational Credit line in all printed materials related to the Artwork and its presentation at SFMOMA, including but not limited to exhibition announcements, invitations, educational materials, website, press releases, and in any other promotional materials.

The Organizational credit line for the Artwork is as follows:

Unión de la Expresión Artística del Norte y Sur de este Continente, (The Marriage of the Artistic Expression of the North and of the South on this Continent), by Diego Rivera, in the collection of City College of San Francisco, is presented by the San Francisco Museum of Modern Art.

The use of translations in the title subject to SFMOMA's editorial guidelines. After first mention of the title, the Artwork may be referred to as *Pan American Unity*.

Once back on display at CCSF, CCSF shall credit SFMOMA with the following:

This artwork was conserved in 2020/2021 through the generosity of the San Francisco Museum of Modern Art and its sponsors... (donor listing TBD).

SFMOMA will seek project funding from individuals, foundations, and corporations. The credit line is subject to change as sponsorship information becomes available. In all cases, without exception, any funding secured will be acknowledged on a separate line below the Organizational credit line in accordance with SFMOMA's guidelines for recognition. Any subsequent changes or additions to the credit line shall become part of this agreement.

7. CONSERVATION, PACKING AND TRANSPORTATION, and ACCESS

As per section 2, SFMOMA will continue working with CCSF and contract art handlers and conservators on identifying and executing best practices for the conservation and protection of the mural in anticipation of the deinstallation at CCSF, transit to and installation and deinstallation at SFMOMA, and transit from SFMOMA to CCSF or storage as provided in this agreement. All plans for conservation and transit will be approved in advance by CCSF.

A point-of-origin condition report will be prepared by SFMOMA or an independent contract conservator. This report will be annotated following the Artwork's arrival at SFMOMA, prior to packing at deinstallation, and upon return to CCSF. This report will be the reference document used if a change or modification in the condition of the Artwork occurs during presentation or transport to CCSF.

SFMOMA will exercise due care in protecting the Artwork from damage, loss, and theft, including maintaining optimum standards of environmental and security controls consistent with the standards it has adopted and exercises for the preservation and safekeeping of its own property. If possible, and where SFMOMA determines that such measure is in the best interests of the Artwork, the Artwork shall be shipped back to CCSF encased in the framework constructed to install it at SFMOMA.

SFMOMA will work with CCSF and other contract vendors on the construction of packing and housing for the transit of the Artwork from CCSF to SFMOMA and back to CCSF. In consultation with CCSF, SFMOMA will arrange for the transport of the Artwork from CCSF to SFMOMA. In accordance with sections 4 and 5, SFMOMA shall arrange for the return transport to CCSF.

CCSF will provide all necessary access to the Artwork on its premises at CCSF and shall cooperate in the work to be performed pursuant to the Work Plans provided by Atthowe, SFMOMA, and outside parties and approved in advance by CCSF. SFMOMA will work with Atthowe, internal staff, and outside parties to develop these work plans for the development of the conservation, packing, transit, and installation plan and its execution. SFMOMA will work with CCSF to identify timeframes that will allow for this work to be completed to meet the schedule outlined in section 5 and the opening of the presentation at SFMOMA. CCSF via Steven Bruckman or his designee, shall provide any necessary access or parking permits to facilitate the services under this Agreement. If additional work is necessary to best serve the purposes of this Agreement, CCSF will have staff available to approve additional work by either SFMOMA or its contractors deemed appropriate and necessary by CCSF and authorized by SFMOMA.

Any plans, diagrams, and models generated by SFMOMA for the purposes of planning and execution shall remain the property of SFMOMA.

8. HANDLING AND CARE

SFMOMA will provide periodic on-site inspection of the Artwork during the exhibition period to ensure that the condition of the Artwork meets the standards set by SFMOMA and CCSF during installation and deinstallation. SFMOMA will maintain security coverage during public hours. SFMOMA will be responsible for the handling and care of the Artwork during the period of time covered by this Agreement, specifically during the timeframes in which SFMOMA is working on site with the Artwork. No agents or employees of SFMOMA shall be held personally responsible or liable for any damage to or destruction of the Artwork supplied by the CCSF during the exhibition period.

SFMOMA assumes the right, unless specifically denied by CCSF, to examine and document the Artwork by all modern scientific methods during the exhibition. It is understood that SFMOMA will not clean, restore, conserve, or otherwise alter the Artwork while on site at SFMOMA without consent of CCSF unless SFMOMA and CCSF have agreed to a maintenance schedule prior to the opening of the Exhibition at SFMOMA. Any emergency alterations during the exhibition will be recorded and forwarded to CCSF.

9. INSURANCE

Liability Insurance Requirements.

SFMOMA represents that it has and will comply with CCSF's General Liability, Workers Compensation, and Auto insurance requirements, which shall be provided to SFMOMA prior to execution of this Agreement and attached hereto, and SFMOMA shall provide a certificate evidencing its insurance.

Fine Arts Insurance.

SFMOMA will insure the Artwork at [REDACTED]. SFMOMA shall arrange for commercial insurance ("all risk" fine arts insurance with standard exclusions, including, but not limited to, loss or damage resulting from gradual and natural deterioration, wear and tear, inherent vice, etc.) from the condition checking and de-installation of the Artwork at CCSF, while in transit, during the installation and exhibition at SFMOMA, through the deinstallation, condition checking and packing at SFMOMA, and return transit to CCSF or an alternate storage facility. CCSF will insure the Artwork upon arrival on its premises or storage facility.

SFMOMA agrees to name Atthowe Fine Arts Services and Site and Conservation Services, LLC as an additional insured, and to name CCSF as an additional insured and as loss payee, under SFMOMA's fine arts insurance policy and will provide CCSF and Atthowe with a certificate of insurance evidencing such coverage.

It is understood by CCSF that all tangible objects are subject to gradual inherent deterioration for which SFMOMA is not responsible. Notwithstanding any other provision of this Agreement, CCSF agrees that in the event of loss or damage to the Artwork, CCSF's sole recovery against SFMOMA, its officers, agents, contractors (including Atthowe and contract conservators and specialists) and employees, shall be limited to the amount, if any, paid by the insurance required under this Agreement. CCSF hereby releases SFMOMA and such parties from any further liability from any and all claims arising out of such loss or damage. The policy covers the Artwork for the amount indicated above against "all risks" of physical loss or damage from external cause in keeping with the exclusions listed above while in transit and on location during the exhibition period.

SFMOMA agrees that any loss, damage, deterioration, or change in the condition of the Artwork will be reported to CCSF immediately upon SFMOMA's discovery of such change in condition.

Except for emergency procedures to arrest the possibility of further damage, SFMOMA will not make or permit the making of any repairs to the Artwork unless and until it receives written permission from CCSF.

10. COPYRIGHT, PHOTOGRAPHS, REPRODUCTIONS

SFMOMA will seek to secure the necessary copyright permissions for images to be reproduced by SFMOMA for promotional, social media, website, news/media, editorial, marketing, archival, scholarship, educational purposes and any other purposes in furtherance of the charitable and educational missions of SFMOMA and, where possible and where no additional fees are required, may also request the extension of such permissions to CCSF. Any fees related to these permissions for SFMOMA's uses will be the responsibility of SFMOMA. SFMOMA will be responsible for securing permission from the copyright holder when proposing to crop or bleed an image of the Artwork off the page, print in any single color other than black, or superimpose anything on the images of the Artwork. Notwithstanding the above, CCSF shall be solely responsible for its compliance with all applicable copyright laws and any applicable permissions or license agreements relating to the Artwork and shall indemnify, defend, and hold SFMOMA harmless for any CCSF violations of such laws or agreements in accordance with the Indemnification provisions of this Agreement.

Photography and filming of the Artwork on site by SFMOMA's and CCSF's professional staff is permitted for documentary or educational purposes, or publicity purposes (print, out of home, digital or broadcast, advertising, and social media authorized by SFMOMA and/or CCSF, subject to any required copyright licenses, but then only if supervised by SFMOMA or CCSF's professional staff on their respective premises. Any/all authorized photography is subject to the following restrictions:

- Lights may not be too close or intense
- Flashbulbs or flash equipment may never be used and SFMOMA shall post a notice, accordingly.

SFMOMA will use reasonable efforts to include the full biographical information about the Artwork, its complete ownership credit line, the photographer's credit line (if given), and the copyright notice when space and medium permit.

Reproductions of the Artwork will include the following information:

Diego Rivera, Unión de la Expresión Artística del Norte y Sur de este Continente (The Marriage of the Artistic Expression of the North and of the South on this Continent), 1940. Courtesy City College of San Francisco. ©Banco de Mexico Diego Rivera & Frida Kahlo Museums Trust, Mexico, D.F. / Artists Rights Society (ARS), New York. "Trust Copyright".

The use of translations in the title subject to SFMOMA's editorial guidelines. After first mention of the title, the Artwork may be referred to as *Pan American Unity*.

Visitors to the exhibition will be permitted to take photographs for personal, non-commercial uses.

11. PRESS, MARKETING, AND PUBLIC ANNOUNCEMENTS

The Parties will work collaboratively on media and marketing strategy. Once a direction is set in consultation with CCSF, SFMOMA shall have the right to advance the story of the project in all media channels without restriction from CCSF. SFMOMA shall have final authority over the use of its name, or logo usage by approval, or images of the interior(s) or exterior(s) of the Museum building. CCSF shall consult with SFMOMA on its use of SFMOMA's name or logos and shall coordinate with SFMOMA in advance on all press releases and media communications.

CCSF shall obtain SFMOMA's approval before issuing any press releases concerning or featuring images of the Artwork as part of a story that focuses on the project. In addition, where possible and where time permits, CCSF shall consult with SFMOMA before arranging or conducting any interviews with the press concerning or featuring the Artwork.

Marketing and social media campaigns will be developed in consultation of the Parties, and each SFMOMA and CCSF will have the right to direct specific executions without additional review, except as outlined in this Agreement.

When necessary, the Parties shall give the other five (5) working days to turn around approvals on press and marketing materials.

SFMOMA will conduct a photo shoot of the Artwork in situ at SFMOMA to create installation images for media, marketing, and advertising materials and social media.

SFMOMA will create and execute a press event to introduce the media to the installed Artwork at SFMOMA. CCSF will have a speaking opportunity, the ability to contribute to the guest list, and attend the event.

The Parties will share with each other copies of any printed materials relating to the installation including any press reports, installation photography, emails, internal magazine articles and any other materials that donors, visitors, and the public will have access to.

12. MEDIA AND PRODUCTION RIGHTS

Subject to the Trust copyright, SFMOMA shall have the authority to create images of the Artwork and the conservation and installation and deinstallation of the Artwork and to use such imagery in its sole discretion for educational, charitable (non-commercial), and archival purposes. For any commercial uses, SFMOMA shall obtain CCSF's prior approval, which shall not be unreasonably withheld.

13. TICKETING AND OPENING EVENTS

The Artwork will be on view in SFMOMA's Roberts Family Gallery, a free admission space for visitors.

SFMOMA will be responsible for the organization associated with opening events planned for SFMOMA and related to the Diego Rivera exhibition on view with the Artwork. SFMOMA will work with CCSF on finalizing the CCSF invitee list of selected staff, trustees, and sponsors to its opening reception and related events, with the number of CCSF guests for each event to be determined by SFMOMA, depending on event size.

14. PROGRAMS

SFMOMA will work with CCSF on the development of programs related to the Artwork, as appropriate and pending budget availability. As of the date of this agreement, a Roundtable on best practices in conservation and transport of Rivera murals was held in Mexico with CCSF representatives, and internships for CCSF students at SFMOMA have been established.

15. MERCHANDISE

SFMOMA may decide to create merchandise related to the Artwork and Exhibition and will work with CCSF on a supplemental merchandise agreement.

16. STAFF CONTACTS

The persons representing this project for each party for the purpose of receiving notices, rendering reports or giving approval required under this Agreement are (until notified by certified mail of a change):

For SFMOMA

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For CCSF

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17. LIABILITY AND INDEMNIFICATION

Each party represents and warrants to the other that it has full power and right to enter into this Agreement and that there are no conflicting obligations relating to the rights granted herein.

With respect to losses other than loss or damage to the Artwork (such claims to be covered under the fine arts insurance policy and provisions provided and referenced herein and governed by the appropriate SFMOMA insurer's claims process and procedures), the parties agree as follows:

SFMOMA agrees to indemnify, defend and hold harmless CCSF, its trustees, officers, agents and employees from any and all claims, damages, losses, liabilities and expenses, including but not limited to reasonable attorneys' fees and cost of litigation (collectively "Claims") in connection with any accident, loss, injury (including death) or damage to persons or property (including intellectual property and/or any copyright infringement claims or claims for breach of license agreements relating to the Artwork) arising out of the acts, errors or omissions of SFMOMA, its trustees, officers, agents, and employees related to the performance of activities conducted pursuant to this Agreement, but only to the extent such Claims are attributable to the acts or omissions of SFMOMA, its trustees, officers, agents and employees; provided that CCSF: (a) promptly notifies SFMOMA in writing of the claim; (b) grants SFMOMA sole control of the defense and/or settlement of the claim; and (c) provides SFMOMA, at CCSF's expense, with all assistance, information and authority reasonably required for the defense and/or settlement of the claim, but in a manner consistent with CCSF's respective confidentiality obligations and preservation of attorney/client, work product, and other privileges. SFMOMA shall not without consent of CCSF (which consent shall not be unreasonably withheld), effect any settlement or discharge or consent to the entry of any judgment, unless such settlement or judgment includes as an unconditional term thereof the giving by the claimant or plaintiff to CCSF of a general release from all liability in respect of such liability and imposes no restrictions or obligations on CCSF.

CCSF agrees to indemnify, defend and hold harmless SFMOMA, its trustees, officers, agents, and employees from any and all Claims in connection with any accident, loss, injury (including death) or damage to persons or property (including any intellectual property and any copyright infringement claims or claims for breach of license agreements relating to the Artwork) arising out of the acts, errors or omissions of the CCSF, its trustees, officers, agents and employees related to the performance of activities conducted pursuant to this Agreement, but only to the extent such Claims are attributable to the acts or omissions of CCSF, its trustees, officers, agents, and employees; provided that SFMOMA: (a) promptly notifies CCSF in writing of the claim; (b) grants CCSF sole control of the defense and/or settlement of the claim; and (c) provides CCSF, at SFMOMA's expense, with all assistance, information and authority reasonably required for the defense and/or settlement of the claim, but in a manner

consistent with SFMOMA's respective confidentiality obligations and preservation of attorney/client, work product, and other privileges. CCSF shall not without consent of SFMOMA (which consent shall not be unreasonably withheld), effect any settlement or discharge or consent to the entry of any judgment, unless such settlement or judgment includes as an unconditional term thereof the giving by the claimant or plaintiff to SFMOMA of a general release from all liability in respect of such liability and imposes no restrictions or obligations on SFMOMA.

Except with respect to liabilities arising out of CCSF's and SFMOMA's indemnification obligation, (A) neither party shall be liable to the other party for any punitive, incidental, indirect, special, reliance, or consequential damages, including lost business, revenue, or anticipated profits, whether based on breach of contract, tort (including negligence), or otherwise, and whether or not the party was advised of the possibility of such loss or damages and (B) in no event will either party's liability and damages under this Agreement exceed the amount of the Joint Project Expenses. The parties agree that the limitations of liability set forth in this section will survive any termination or expiration of this Agreement and will apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

CCSF and SFMOMA each hereby waive subrogation and agree to hold the other party harmless against worker's compensation benefits, personal injury, bodily injury or property damage claims and related expenses arising from its own trustees, officers, agents, and employees in connection with activities conducted pursuant to this Agreement.

18. CANCELLATION

In the event that SFMOMA is unable, for any reason, to conceive, research, or present the Artwork as agreed upon, in consideration of the scenarios called out in Section 4 of this agreement, or if it determines it cannot complete the Project within the budget, SFMOMA reserves the right to terminate this Agreement for its convenience.

19. CONFIDENTIAL INFORMATION

CCSF acknowledges that during the course of this Agreement, CCSF may have access to and come into contact with Confidential Information of SFMOMA. Confidential Information shall include, without limitation, all information related to the Exhibition and the business of SFMOMA. During the term of this Agreement, CCSF shall not reproduce, use, duplicate, distribute, disclose or otherwise disseminate any Confidential Information or any physical embodiments thereof (for example, documents) except to the extent necessary to complete the project and as required by law. Upon request by SFMOMA and in any event upon termination of the Agreement for any reason, CCSF shall promptly deliver to SFMOMA all property belonging to SFMOMA including, without limitation, any Confidential Information then in its custody, control or possession. SFMOMA also agrees to reciprocate this courtesy with regard to any Confidential Information revealed to SFMOMA by CCSF.

20. SUCCESSORS AND ASSIGNS

This Agreement shall incur to the benefit of and be binding upon the successors of each of the parties. This Agreement may not be transferred or assigned by CCSF in any manner whatsoever without the prior written consent of SFMOMA.

21. CONCLUSION AND GOVERNING LAW

This Agreement represents the entire mutual understanding of the parties hereto, and supersedes and replaces all prior documents, correspondence, conversations and other written or oral understandings related to the Agreement. This Agreement may only be modified, assigned or transferred in writing, with signatures from all parties.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. Any disputes arising out of this Agreement will be subject to the exclusive jurisdiction of the state and federal courts located in San Francisco County, California, and each party consents to personal jurisdiction thereof.

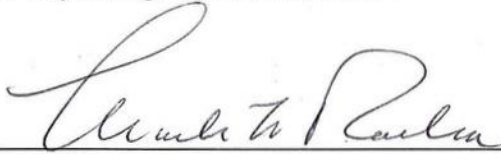
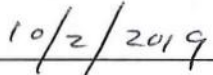
For The San Francisco Museum of Modern Art

Neal Benezra
Helen and Charles Schwab Director

Date

For City College of San Francisco

Dr. Mark Rocha
Chancellor

Date

Exhibit A: Budget

ESTIMATED PROJECT BUDGET

Deinstallation at CCSF, transit to SFMOMA, Installation at SFMOMA	\$ 1,750,000
Gallery preparation related expenses	\$ 275,000
Deinstallation at SFMOMA, condition reporting, packing, and transit to CCSF or designated storage	\$ 1,000,000
Insurance	\$ 300,000
Conservation related expenses	\$ 650,000
TOTAL	\$ 3,975,000

IN NO EVENT SHALL SFMOMA'S TOTAL BUDGET AND EXPENDITURES EXCEED \$3,975,000.

Exhibit B:

SFMOMA Agreement with CCSF and Atthowe, dated May 22, 2019

Exhibit C:

SFMOMA Agreement with CCSF and Site and Studio Conservation, LLP, dated May 22,
2019

EXHIBIT 2



2nd Amendment to Vendor Agreement

This **Second Amendment** (this "Amendment"), dated **November 12, 2020** amends the Vendor Agreement dated **May 22, 2019** (the "Original Agreement"), as previously amended on **August 29, 2019** by that certain 1st Amendment to Vendor Agreement (the "Prior Amendment" and together with the Original Agreement, the "Agreement"), by and between the **San Francisco Museum of Modern Art**, a non-profit organization, organized under the laws of the state of California having its principal place of business at 151 Third Street, San Francisco, California 94103 ("SFMOMA" or "Museum"), **Atthowe Transportation Co. Inc.**, DBA Atthowe Fine Art Services, a corporation whose address is 3924 Market St., Oakland, CA 94608 (hereinafter "Contractor", "Vendor" or "Atthowe"), and **City College of San Francisco**, an educational institution whose address is 50 Phelan Ave., San Francisco, CA 94112 (hereafter "City College", "Property Owner" or "CCSF").

Recitals

WHEREAS, SFMOMA, City College, and the Contractor (collectively, the "Parties") desire to execute this Amendment to update their existing Agreement;

WHEREAS, as of the date hereof, the evaluation and relocation assessment work contemplated in the Original Agreement has been completed by the Parties; and

WHEREAS, the Parties wish to proceed with the next phase of the project and amend the existing Agreement to:

- (i) Confirm and approve the final engineering and work plan for the deinstallation and relocation of the Mural as Scope of Work #2, including all subcontractors to be hired by the Contractor thereunder;
- (ii) Set forth the insurance and other requirements for each subcontractor contracted by the Contractor;
- (iii) Increase the maximum amount payable under the Agreement; and
- (iv) Accordingly extend the term of the Agreement through June 30, 2021 to permit completion of the supplemental Scope of Work #2.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. **Definitions.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.
2. **Amendments to the Agreement.** The Agreement is hereby modified as follows: (Modifications to the existing language are noted below: deletions are in strikethrough and additions are in bolded text.)
 - a) **Section 1 (Services; Purchases)** of the Agreement currently reads as follows:
 - 1) **Services; Purchases.** The services ("Services") and deliverables ("Deliverables") that Contractor is engaged to perform under this Agreement are described in Exhibit A – Scope of Work attached and incorporated by reference herein. The services and deliverables are

collectively referred to as the "Work Product". To the extent that SFMOMA's relationship with Contractor hereunder, in addition to the performance of Services, involves purchase of goods from Contractor, then such purchases shall be made pursuant to and governed by SFMOMA's form of Purchase Order and associated SFMOMA Terms and Conditions. The granting of any payment by SFMOMA, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor regarding unsatisfactory Work Product, or any obligations to remedy or repair such unsatisfactory Work Product, although the unsatisfactory character of such Work Product, equipment, or materials, may not have been apparent or detected at the time such payment was made.

Such section is hereby **amended and restated** in its entirety to read as follows:

1) Services; Purchases. The services ("Services") and deliverables ("Deliverables") that Contractor is engaged to perform under this Agreement are described in Exhibit A – Scope of Work **and Exhibit A-1 (SOW #2 - Mural Deinstallation and Relocation)** attached and incorporated by reference herein. The services and deliverables are collectively referred to as the "Work Product" **and are to be performed consistent with the professional skill and care ordinarily provided by consultants and contractors practicing under the same or similar circumstances.** ~~To the extent that SFMOMA's relationship with Contractor hereunder, in addition to the performance of Services, involves purchase of goods from Contractor, then such purchases shall be made pursuant to and governed by SFMOMA's form of Purchase Order and associated SFMOMA Terms and Conditions.~~ The granting of any payment by SFMOMA, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor regarding unsatisfactory Work Product, or any obligations to remedy or repair such unsatisfactory Work Product, although the unsatisfactory character of such Work Product, equipment, or materials, may not have been apparent or detected at the time such payment was made.

b) **Section 2 (Compensation; Maximum Payment Amount)** of the Agreement currently reads as follows:

2) Compensation; Maximum Payment Amount. SFMOMA agrees to pay Contractor for performing the Work Product as described in this Agreement on (i) Contractor's satisfactory performance of the Services, (ii) in accordance with the deliverable deadlines specified on Exhibit B – Deadlines and Deliverables, which is attached and incorporated by reference herein and (iii) SFMOMA's acceptance of the Work Product. The payment shall not exceed \$42,420.00, absent prior written approval by SFMOMA's Deputy Director of Finance and Administration or his or her designee. SFMOMA, rather than City College, is solely responsible for all costs incurred in connection with the Scope of Work to be performed under this agreement.

Such section is hereby **amended and restated** in its entirety to read as follows:

2) Compensation; Maximum Payment Amount. SFMOMA agrees to pay Contractor for performing the Work Product as described in this Agreement on (i) Contractor's satisfactory perform a rice of the Services, (ii) in accordance with the deliverable deadlines specified on Exhibit B – Deadlines and Deliverables and Exhibit B-1, which is attached and incorporated by reference herein and (iii) SFMOMA's acceptance of the Work Product. The payment shall not exceed \$42,420.00 for work performed under Exhibit A, \$2,467,630.00 for work performed under Exhibit A-1, and cumulatively \$2,510,050.00, absent prior written approval by SFMOMA's **Chief Financial Officer Deputy Director of Finance and Administration** or his or her designee. SFMOMA, rather than City College, is solely responsible for all costs incurred in connection with the SOWs to be performed under this Agreement.

- c) **Section 3 (Effective Date)** of the Agreement currently reads as follows:

3) Effective Date. This Agreement commences on the earlier of Effective Date and the date upon which Contractor commenced performance of the Services and will continue in full force and effect through September 30, 2019 or earlier upon completion of the Contractor's duties under this Agreement or termination as provided below in Section 13. Any extensions to this date to be mutually agreed to by City College and SFMOMA. After August 9, 2019, SFMOMA, the Contractor, and City College will work together to identify working hours and equipment set up that allows for City College's planned meetings to take place in the space. Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 shall survive termination of this Agreement.

Such section is hereby **amended and restated** in its entirety to read as follows:

3) Effective Date. This Agreement commences on the earlier of Effective Date and the date upon which Contractor commenced performance of the Services and will continue in full force and effect through June 30, 2021 ~~September 30, 2019~~ or earlier upon completion of the Contractor's duties under this Agreement or termination as provided below in Section 13. Any extensions to this date to be mutually agreed to by City College and SFMOMA. ~~After August 9, 2019, SFMOMA, the Contractor, and City College will work together to identify working hours and equipment set up that allows for City College's planned meetings to take place in the space.~~ Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 shall survive termination of this Agreement.

- d) **Section 4A (City College Authorization and Access)** of the Agreement currently reads as follows:

4A) City College Authorization and Access. City College hereby authorizes SFMOMA and Contractor to have access to the Mural site at City College during the May 28 – September 30, 2019 period, and shall cooperate in the work to be performed pursuant to Atthowe's Work Plan and the examination to be conducted by SFMOMA's conservators. City College shall cooperate with SFMOMA and Contractor to schedule on-site work and related activities at the City College premises. City College via Michael Almaguer or his designee, shall provide any necessary access or parking permits to facilitate the services under this Agreement at no extra charge to Contractor or SFMOMA.

If additional investigative work is necessary to best serve the purposes of this Agreement, or to return the building to its original condition, City College will have staff available to approve additional work by either Atthowe or SFMOMA deemed appropriate and necessary by City College and authorized by SFMOMA.

Such section is hereby **amended and restated** in its entirety to read as follows:

4A) City College Authorization and Access. City College hereby authorizes SFMOMA and Contractor to have access to the Mural site at City College during the May 28, 2019 to June 30, 2021 ~~September 30, 2019~~ period, and shall cooperate in the work to be performed pursuant to Atthowe's Work Plan and the examination to be conducted by SFMOMA's conservators. City College shall cooperate with SFMOMA and Contractor to schedule on-site work and related activities at the City College premises. City College via Michael Almaguer or his another City College designee, shall provide any necessary access or parking permits to facilitate the services under this Agreement at no extra charge to Contractor or SFMOMA.

In light of the the critical stages of the Mural relocation taking place between November 2020 and March 2021, City College agrees to provide further assurances that as a result of the safety, security, and timing needs of the Project, City College shall designate a qualified point person (either an existing staff member or a SFMOMA approved consultant hired by City College) who is authorized to act and make decisions on behalf of City College as the responsible and accountable project manager for this Project and primary daily contact for City College. Additionally, the qualified point person:

- i. Shall be designated and required to respond to SFMOMA and Atthowe within 2 hours for emergencies and within 24 hours for all other matters;
- ii. Will be readily available for weekly calls and daily calls during SFMOMA and Atthowe's designated critical project points and shall be on-site in the morning every work day of the Project until the Mural is safely installed at SFMOMA;
- iii. Has access to all needed supplies, locks, and facility, security, and operations contacts; and
- iv. Shall also be readily available and provide any additional liaison and reasonable daily project coordination assistance as specified by SFMOMA and Atthowe.

If additional investigative work is necessary to best serve the purposes of this Agreement, or to return the building to its original condition, City College will have staff available to approve additional work by either Atthowe or SFMOMA deemed appropriate and necessary by City College and authorized by SFMOMA.

e) **Section 6 (Contractor's Hires)** of the Agreement currently reads as follows:

6) Contractor's Hires. Contractor has, and hereby retains, full control over, and sole and exclusive responsibility for, the employment, direction, compensation and discharge of any and all persons whom Contractor may employ from time to time to assist Contractor in performing Services under this Agreement. Contractor shall be fully responsible for all matters relating to the payment of such employees, including compliance with social security, withholding tax, workers' compensation, overtime, minimum wage, and all other applicable laws and regulations. Notwithstanding the foregoing, Contractor shall not subcontract or delegate any of its obligations hereunder to any third party without the prior written consent of SFMOMA and City College.

Such section is hereby **amended and restated** in its entirety to read as follows:

6) Contractor's Hires. Contractor has, and hereby retains, full control over, and sole and exclusive responsibility for, the employment, direction, compensation and discharge of any and all persons whom Contractor may employ from time to time to assist Contractor in performing Services under this Agreement. Contractor shall be fully responsible for all matters relating to the payment of such employees, including compliance with social security, withholding tax, workers' compensation, overtime, minimum wage, and all other applicable laws and regulations. ~~Notwithstanding the foregoing,~~ Contractor shall not subcontract or delegate any of its obligations hereunder to any third party without the prior written consent of SFMOMA and City College; provided, however, that SFMOMA and City College consent to Contractor's engagement of the subcontractors set forth on Exhibit D hereto, such consent not to be unreasonably withheld or delayed. Notwithstanding receipt of approval from SFMOMA and City College as to any subcontractor, Contractor shall be fully liable to SFMOMA and City College for the timeliness and quality of all work performed and materials and equipment furnished in connection with the Services and Deliverables, whether the work, materials, and equipment are performed and furnished by Contractor or through subcontractors, sub-subcontractors (of all tiers), and

suppliers; provided however, that Contractor shall not be responsible for delays caused solely by SFMOMA, City College, or Force Majeure. The term "Force Majeure" shall mean an act of God, fire, flood, earthquake, explosion, war on American soil, act of terrorism on the Project, civil disturbance, labor strikes, state or local public health order that prohibits Contractor for performing the Services, an unusually severe storm designated as a 50-year storm or greater by the National Climate Data Center, or an unavoidable casualty beyond Contractor's control, where any such event is not caused by the negligent act or omission of Contractor, any subcontractor of any tier, or someone else for whom Contractor is responsible. Contractor assigns to SFMOMA and City College each subcontract agreement for any portion of the Work Product, provided that such assignment is effective only in the event that SFMOMA and City College terminate this Agreement with Contractor, and SFMOMA and/or City College notify Contractor and any such subcontractor that they intend to assume such subcontract agreement. Notwithstanding the lien rights of such subcontractors, if SFMOMA and/or City College elect to assume any subcontract agreement, SFMOMA and City College will not be liable to the applicable subcontractor for amounts not properly paid by Contractor to such subcontractor prior to the date SFMOMA and/or City College assume such subcontract agreement. SFMOMA and/or City College may further assign such subcontract agreements to a successor direct contractor or other person or entity. Contractor will require each direct subcontractor to include an equivalent assignment to SFMOMA and City College in each subcontract agreement of any subsequent tier.

All subcontract agreements at every tier shall be in a form reasonably acceptable to SFMOMA and City College. Before commencing the Services, Contractor will provide SFMOMA and City College with true, correct, and complete copies of all existing subcontract agreements, and will promptly thereafter provide SFMOMA and City College with true, correct, and complete copies of all additional subcontract agreements and modifications to or terminations of existing subcontract agreements entered into thereafter in accordance with this Agreement. Contractor will require each direct subcontractor, to the extent of the Work Product to be performed by such subcontractor, to be bound to Contractor by the terms of this Agreement, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of such subcontractor's portion of the Work Product, which Contractor assumes toward SFMOMA and City College. Each subcontract agreement will preserve and protect SFMOMA's and City College's rights under this Agreement with respect to the portion of the Work Product to be performed by such subcontractor so that subcontracting thereof will not prejudice such rights. Contractor shall require each direct subcontractor to enter into similar agreements with sub-subcontractors of any tier. Contractor will make available to each proposed direct subcontractor, prior to the execution of the subcontract agreement, copies of this Agreement. Direct subcontractors will similarly make copies of applicable portions of the Agreement available to their respective proposed sub-subcontractors. Subcontract agreements at every tier will provide that SFMOMA and City College are third-party beneficiaries of such subcontract, and that SFMOMA and City College may assert claims directly against the subcontractor for breach of contract, breach of express warranties, breach of implied warranties including warranties of merchantability and of fitness for a particular purpose, negligence, and other claims arising out of or related to the Work Product. Subcontract agreements at every tier will also provide that the subcontractor agrees to the contingent assignment of the subcontract to SFMOMA and City College pursuant to this Section 6.

f) **Section 10 (Damages to Facility)** of the Agreement currently reads as follows:

10) **Damages to Facility.** Contractor shall promptly, at its sole cost, restore and pay to repair any and all damage to City College's facilities and any personal property to the same conditions received by Contractor, with exceptions as called out in Exhibit A. Accordingly, where Contractor damages City College's facilities or any personal property, any final repair costs shall be

determined by CCSF in its sole discretion. In addition, City College shall approve the contractors that will conduct any repair work at City College, in City College's sole discretion. The City College Facility Manager may consult with any other applicable contractors or experts in determining the final repair costs. Repair costs approved by City College will be billed to the Contractor and shall be paid by Contractor within ten (10) calendar days of receipt of such invoice.

Such section is hereby **amended and restated** in its entirety to read as follows:

10) Damages to Facility. Contractor shall promptly, at its sole cost, restore and pay to repair any and all damage **Contractor causes** to City College's **or SFMOMA's** facilities and any personal property to the same conditions received by Contractor, with exceptions as called out in Exhibit A. Accordingly, where Contractor damages City College's **or SFMOMA's** facilities or any personal property, any final repair costs shall be determined by **City College or SFMOMA, as applicable**, in its sole discretion. In addition, City College shall approve the contractors that will conduct any repair work at City College, in City College's sole discretion, **and SFMOMA shall approve the contractors that will conduct any repair work at SFMOMA, in SFMOMA's sole discretion**. The City College Facility Manager **and SFMOMA** may consult with any other applicable contractors or experts in determining the final repair costs **at City College's or SFMOMA's facilities, as applicable**. Repair costs approved by City College **or SFMOMA** will be billed to the Contractor and shall be paid by Contractor within ten (10) calendar days of receipt of such invoice.

- g) The following paragraph (A) is added to **Section 11 (Indemnification)** of the Agreement as follows:

11A) Hazardous Materials and Conditions Waiver.

SFMOMA shall not be liable or responsible in any way for, and City College and Atthowe each hereby waives all claims, whether in contract or tort, against SFMOMA and its directors, officers, employees, and agents with respect to or arising out of: (a) any death or any injury of any nature whatsoever that may be suffered or sustained by City College, Atthowe, or any employee, agent, contractor, or subcontractor of either of them from any causes whatsoever, or (b) any loss or damage or injury to any property belonging to City College, Atthowe, or any employees, agents, contractors or subcontractors of either of them. Without limiting the generality of the foregoing, SFMOMA shall not be liable for any damage to City College's facilities during the removal of the Mural from City College's facilities, including the discovery or release of asbestos containing materials or any other hazardous substances in connection with the Services.

- h) **Section 12 (Liability Insurance Requirements)** of the Agreement currently reads as follows:

12) Liability Insurance Requirements. Contractor represents that it has and will comply with SFMOMA's insurance requirements as specified on Exhibit C (SFMOMA Insurance Requirements for Vendors/Independent Contractors). Contractor acknowledges that any insurance claims related to the Work Product will be made against its own insurance policies and not against any insurance policies of SFMOMA.

Such section is hereby **amended and restated** in its entirety to read as follows:

12) Liability Insurance Requirements. Contractor represents that it has and will comply, **and will cause each of its subcontractors and sub-subcontractors (of every tier) to comply**, with SFMOMA's insurance requirements as specified on Exhibit C (SFMOMA Insurance Requirements for Vendors/Independent Contractors). Contractor acknowledges, **and shall cause each of its subcontractors and sub-subcontractors (of every tier) to acknowledge**, that any insurance claims related to the Work Product will be made against **its Contractor's or such subcontractor's**

or sub-subcontractor's own insurance policies and not against any insurance policies of SFMOMA.

- i) **Section 12A (Fine Arts Insurance)** of the Agreement currently reads as follows:

12A) Fine Arts Insurance. For the work performed pursuant to this agreement, SFMOMA shall provide Fine Arts Insurance to the agreed value of the Mural, [REDACTED] for any loss of value and cost to repair arising from or in connection to the work of SFMOMA and its contracted parties, including Atthowe, under this Agreement. Loss of value shall be determined by a subsequent appraisal at time of loss utilizing similar evaluation methods as used in the 2016 appraisal which resulted in the [REDACTED] valuation. SFMOMA agrees to name Atthowe Fine Arts Services as an additional insured, and City College as an additional insured and loss payee under SFMOMA's policy and will provide City College and Atthowe with a certificate of insurance evidencing such coverage. In the event of loss or damage to the Mural arising out of the Services under this Agreement or any SFMOMA or Atthowe activities in connection with the Mural, City College's sole recovery shall be the amount payable, if any, by under SFMOMA's fine arts insurance to City College as the loss payee.

For future projects, fine arts insurance coverage for the Mural from the time the Contractor begins detaching the Mural from the City College site prior to packing at the Lender's premises, while in transit and on exhibition at SFMOMA, and until the Mural is condition checked after reinstallation at the Lender's premises, shall be insured by SFMOMA under the terms of a separate written loan agreement between the parties.

Such section is hereby **amended and restated** in its entirety to read as follows:

12A) Fine Arts Insurance. For the work performed pursuant to this agreement, SFMOMA shall provide ~~commercial insurance~~ **"all risk" fine arts insurance with standard exclusions, including, but not limited to, loss or damage resulting from gradual and natural deterioration, wear and tear, inherent vice, etc. ("Fine Arts Insurance")** to the agreed value of the Mural, [REDACTED], for any loss of value and cost to repair arising from or in connection to the work of SFMOMA and its contracted parties, including Atthowe, under this Agreement. ~~Loss of value shall be determined by a subsequent appraisal at time of loss utilizing similar evaluation methods as used in the 2016 appraisal which resulted in the [REDACTED] valuation.~~ **The coverage period extends from the condition checking immediately prior to de-installation preparation and de-installation of the Artwork at City College, while in transit, during the installation and exhibition at SFMOMA, through the deinstallation, condition checking and packing at SFMOMA, and return transit to City College or a storage facility. City College will insure the Artwork upon arrival on its premises or storage facility.** SFMOMA agrees to name Atthowe Fine Arts Services as an additional insured, and City College as an additional insured and loss payee under SFMOMA's **Fine Arts Insurance** policy and will provide City College and Atthowe with a certificate of insurance evidencing such coverage. In the event of loss or damage to the Mural arising out of the Services under this Agreement or any SFMOMA or Atthowe activities in connection with the Mural, City College's sole recovery shall be the amount payable, if any, ~~by~~ under SFMOMA's **Fine Arts Insurance** to City College as the loss payee. **The terms of this section regarding Fine Arts Insurance are consistent with the Loan and Partnership Agreement by and between SFMOMA and City College, dated September 13, 2019 (the "Loan Agreement").**

~~For future projects, fine arts insurance coverage for the Mural from the time the Contractor begins detaching the Mural from the City College site prior to packing at the Lender's premises, while in transit and on exhibition at SFMOMA, and until the Mural is condition checked after~~

~~reinstallation at the Lender's premises, shall be insured by SFMOMA under the terms of a separate written loan agreement between the parties.~~

j) **Section 13 (Termination)** of the Agreement currently reads as follows:

13) Termination. SFMOMA or City College may elect to terminate this Agreement at any time, for its convenience, and for any reason by giving written notice to Contractor; SFMOMA or City College may also terminate this Agreement immediately upon written notice if Contractor breaches this Agreement in any material respect. Should this Agreement be terminated prior to the completion of the Services hereunder, Contractor shall promptly deliver to SFMOMA any completed Work Product or Work Product in progress in complete accurate, detailed, and up-to-date order. Contractor also agrees that upon termination of this Agreement all property (including Confidential Information) furnished to, obtained by, used by, or prepared by Contractor in the course of or incident to its work with SFMOMA belongs to SFMOMA and shall be returned promptly to SFMOMA and City College upon termination of this Agreement. Contractor may not terminate this Agreement prior to completion of the Services for which Contractor has been retained, unless Contractor has not been paid amounts due and owing under this Agreement and such non-payment has continued for thirty (30) days following demand of such payment by Contractor.

Such section is hereby **amended and restated** in its entirety to read as follows:

13) Termination. SFMOMA or City College may elect to terminate this Agreement at any time, for its convenience, and for any reason by giving written notice to Contractor, **including, but not limited to, if SFMOMA determines that (i) the Mural is being subject to undo risk during the deinstallation and removal process; (ii) if unforeseen complications are discovered during the deinstallation process that adversely impact the Project schedule or budget; and (iii) the costs of completing the Project exceed the maximum payable amount under this Agreement. In the event the Contractor discovers any information or fact previously unknown or anticipated by the Parties that could result in any delay (including weather), increase in risk to the Mural, increase in cost, the Contractor must immediately stop work (and cause its subcontractors to stop work) and notify SFMOMA and City College before work can proceed under mutual agreement.** SFMOMA or City College may also terminate this Agreement immediately upon written notice if Contractor breaches this Agreement in any material respect. Should this Agreement be terminated prior to the completion of the Services hereunder, Contractor shall, promptly deliver to SFMOMA any completed Work Product or Work Product in progress in complete accurate, detailed, and up-to-date order. Contractor also agrees that upon termination of this Agreement, all property (including Confidential Information) furnished to, obtained by, used by, or prepared by Contractor in the course of or incident to its work with SFMOMA belongs to SFMOMA and shall be returned promptly to SFMOMA and City College upon termination of this Agreement. Contractor may not terminate this Agreement prior to completion of the Services for which Contractor has been retained, unless Contractor has not been paid amounts due and owing under this Agreement and such non-payment has continued for thirty (30) days following demand of such payment by Contractor, **other than good faith disputes regarding any invoices submitted by Contractor.**

In the event of termination by SFMOMA or City College after the deinstallation of the Mural has begun and prior to the completion of the Services hereunder, SFMOMA will work with CCSF to find a mutually agreeable solution, within the constraints of SFMOMA's allocated budget, for reinstallation of any removed components of the Artwork, to the extent necessary for the security of the Artwork and consistent with its prior installation. If, as a consequence of the work already done, the Artwork cannot be reinstalled, in consultation with CCSF, SFMOMA will be

responsible for packing the deinstalled components of the Artwork and sending them to storage in a mutually agreeable location with all necessary storage-related expenses for the deinstalled components to be covered by SFMOMA until September 1, 2023 (or an alternative date mutually agreed between CCSF and SFMOMA), and subject to the constraints of SFMOMA's allocated budget for this Project. SFMOMA reserves the right to determine and contract any additional contractors needed.

- k) **Section 20 (Safety and Access; Compliance)** of the Agreement currently reads as follows:

20) Safety and Access; Compliance. Contractor acknowledges that under the Americans with Disabilities Act (“ADA”) and state and local laws, programs, services and other activities provided by the Museum to the public, whether directly or through Contractor, must be accessible to members of the public with disabilities. Contractor shall provide the Services specified in this Agreement, and the Work Product created under this Agreement in a manner that complies with the ADA and state and local disability access requirements. Contractor shall ensure that the Contractor’s work is accessible to individuals with disabilities and meets all applicable statutory and regulatory requirements, particularly with respect to the elimination of both architectural and programmatic barriers. Such cooperation shall include assisting with modifications to the work, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the Work Product. If requested by Museum, Contractor shall engage a consultant, to review the work for compliance with the ADA.

Contractor shall also be responsible for complying with the Museum’s safety and security guidelines (including any directions regarding performance of Services in or near Collections or gallery spaces), as well as with any directions or requirements of the San Francisco Police Department, Health Department, and Fire Department, including any permit requirements and restrictions on hazardous materials, open flames, or other materials or devices.

20(A). Safe Scaffolding and Working Conditions. Contractor, in using or providing scaffolding or any other equipment or services under this Agreement warrants that such equipment is safe for ongoing use during the term of this Agreement, that any prior equipment failures have been fully corrected, and shall ensure that such equipment and services meet all structural, health, and safety requirements to protect Contractor, CCSF, SFMOMA and any other subcontractors or other individuals working at or near the site of the Services throughout the duration of the Services. Contractor shall ensure that all individuals working with scaffolding or other equipment are appropriately trained by Contractor on the safe use of such equipment and that such scaffolding and equipment is inspected each day for ongoing structural safety and compliance. Contractor acknowledges that there are inherent hazards in construction/deconstruction work and will take all necessary steps consistent with the highest professional standards to ensure safe conditions for the Parties or any other individuals at or near the site of the Services.

All parties using Atthowe’s equipment (including scaffolding and scissor lifts) must sign SFMOMA’s and Atthowe’s Release and Waiver of Liability (see Exhibit A) before using the equipment. Atthowe is not responsible for any adjustments to the scaffolding that are made by an unauthorized person.

Such section is hereby **amended and restated** in its entirety to read as follows:

20) Safety and Access; Compliance.

~~Contractor acknowledges that under the Americans with Disabilities Act (“ADA”) and state and local laws, programs, services and other activities provided by the Museum to the public,~~

~~whether directly or through Contractor, must be accessible to members of the public with disabilities. Contractor shall provide the Services specified in this Agreement, and the Work Product created under this Agreement in a manner that complies with the ADA and state and local disability access requirements. Contractor shall ensure that the Contractor's work is accessible to individuals with disabilities and meets all applicable statutory and regulatory requirements, particularly with respect to the elimination of both architectural and programmatic barriers. Such cooperation shall include assisting with modifications to the work, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the Work Product. If requested by Museum, Contractor shall engage a consultant, to review the work for compliance with the ADA.~~

Contractor shall **also** be responsible for complying with and require subcontractors (of every tier) to comply with, the Museum's safety and security guidelines (including any directions regarding performance of Services in or near Collections or gallery spaces and any health and safety protocols established related to COVID-19), as well as with any directions or requirements of the San Francisco Police Department, Health Department, and Fire Department, including any permit requirements and restrictions on hazardous materials, open flames, or other materials or devices. If Contractor chooses to follow different protocols and guidelines, they shall be at least as stringent as those required by the Museum.

20A) Safe Scaffolding and Working Conditions. Contractor, in using or providing scaffolding or any other equipment or services under this Agreement warrants that such equipment is safe for ongoing use during the term of this Agreement, that any prior equipment failures have been fully corrected, and shall ensure that such equipment and services meet all structural, health, and safety requirements to protect Contractor, CCSF, SFMOMA and any other subcontractors or other individuals working at or near the site(s) of the Services throughout the duration of the Services. Contractor shall ensure that all individuals working with scaffolding or any other equipment provided by Contractor are appropriately trained by Contractor on the safe use of such equipment and that such scaffolding and/or equipment is inspected each day for ongoing structural safety and compliance prior to use. Contractor acknowledges that there are inherent hazards in construction/deconstruction work and will take all necessary steps consistent with the highest professional standards to ~~to~~ ensure safe conditions for the Parties or any other individuals at or near the site of the Services. The parties acknowledge that the Contractor is not responsible for any adjustments to the scaffolding that are made by an unauthorized person.

~~All parties using Atthowe's equipment (including scaffolding and scissor lifts) must sign SFMOMA's and Atthowe's Release and Waiver of Liability (see Exhibit A) before using the equipment. Any individuals who will be working at any of the sites where the Services are being performed, or otherwise present at or around any of the sites (including those using any of Contractor's equipment) must sign the Rivera Worksite Release and Waiver of Liability attached hereto as Exhibit E prior to coming on site, even if such individual has already executed a waiver in the form attached as Exhibit A to the Prior Amendment. Contractor shall cause each of its subcontractors and sub-subcontractors at every tier (including any individuals working on behalf of any such Contractor or subcontractor) to sign the Rivera Worksite Release and Waiver of Liability prior to commencement of any of the Services under this Agreement and promptly provide signed copies to the Museum. The Rivera Worksite Release and Waiver of Liability supersedes the waiver attached as Exhibit A to the Prior Amendment.~~

- I) **Exhibit A-1 (Scope of Work #2 – Mural Deinstallation and Relocation)** is hereby **added** to the Agreement and incorporated by reference in the form attached hereto as **Attachment A** to this Amendment.

- m) **Exhibit B-1 (Deliverables and Payment Schedule for Scope of Work #2 – Mural Deinstallation and Relocation)** is hereby **added** to the Agreement and incorporated by reference in the form attached hereto as **Attachment B** to this Amendment.
 - n) **Exhibit D (Pre-Approved Subcontractors)** is hereby **added** to the Agreement and incorporated by reference in the form attached hereto as **Attachment C** to this Amendment.
 - o) **Exhibit E (Rivera Worksite Release and Waiver of Liability)** is hereby **added** to the Agreement and incorporated by reference in the form attached hereto as **Attachment D** to this Amendment.
3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.
4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to the Agreement to be duly executed as of the date first written above.

SFMOMA:

Neal Benezra

Name: Neal Benezra
Title: Helen and Charles Schwab Director
San Francisco Museum of Modern Art

Contractor:

Scott C Atthowe

Name: Scott Atthowe
Title: Owner
Atthowe Fine Art Services

CCSF:

Rajen Vurdien

Name: Dr. Rajen Vurdien
Title: Chancellor
City College of San Francisco

[Attachment A]**Exhibit A-1 to the Agreement**

(Scope of Work #2 – Mural Deinstallation and Relocation)

The project (detailed below) encompasses multiple phases of work including research, design, preparation, fabrication, deinstallation, transportation, installation, and clean-up as follows:

1. Research

- 1.1. Planning, design, project management

2. Design and Engineering

- 2.1. Includes design and structural engineering of 10 panel mounts, travel frames, attachment systems, hoisting systems, lifting beams, specialized tools and attachments, and stamped drawings

3. Building Preparation

- 3.1. Remove Diego Rivera Theater Atrium North wall and replace with temporary portal. Will include building a temporary portico and installing roll-up; any necessary remediation.
- 3.2. Core drill approximately (40) access holes & refill as needed - includes set-up, materials, labor, equipment operation, clean-up, and remediation. This aspect of the work is ongoing throughout the move
- 3.3. Roof scanning and drilling
- 3.4. Support labor, scaffolding installation, mural edge protection - assist conservators
- 3.5. Contract firm for asbestos abatement (fully certified with Cal/OSHA to work with asbestos) and installation of furring strips on ceiling
- 3.6. Materials and supplies including rental equipment

4. Fabrication

- 4.1. Panel mounts
- 4.2. Travel frames, including vibration mitigation
- 4.3. Hoisting beams, specialized tools, and attachments
- 4.4. Cleats with lifting system
- 4.5. Delivery to site

5. Deinstallation

- 5.1. Crane equipment and operators
- 5.2. Rigging labor - Connect tiebacks, jacks, lift tables, cables, shims, and other equipment; extract panel and lower to floor; assemble and fit with reinforcing panel mounts; Install mural panels into travel frames
- 5.3. Equipment rental
- 5.4. Tools and materials
- 5.5. On-site welder and helper

5.6. Other duties and equipment as needed based on real-time discovery

6. Transportation

- 6.1. Flatbed trucks and crane for loading and unloading mural panels
- 6.2. All necessary city and traffic permits
- 6.3. Rigging night crew
- 6.4. Traffic control labor
- 6.5. Materials and supplies

7. Installation

- 7.1. Floor protection and prep
- 7.2. Assemble display wall, cleat, and hoist system
- 7.3. Rigging labor, install panels
- 7.4. Equipment rental

8. Clean up

- 8.1. Clean up at CCSF (including any repairs to be performed by Atthowe in accordance with Section 10 in the Agreement), which will be consistent with the specifications set forth in Section 2B of the Loan Agreement and referenced below.)
- 8.2. Trash disposal
- 8.3. Clean up at SFMOMA

For purposes of Section 8 (Clean up) of this Scope of Work, and as set forth in Section 2B of the Loan Agreement, the Parties agree that the clean up at CCSF and any repair work of the lobby area where the Artwork is currently installed will consist of restoring the lobby area to a functional condition for lobby gathering purposes, consistent with its condition immediately prior to removal of the Artwork. Functionality shall be defined as being weathertight with any holes or openings required as part of the deinstallation, including any glass openings, to be closed and sealed. Finishes may vary from those of the original building (e.g. stucco may be substituted for concrete) so long as the previous conditions are met. Where possible, any broken or open glass doors or windows will be replaced with glass of a similar condition and quality. SFMOMA and the Contractor are not responsible for correcting any conditions that currently exist in the building (including accessibility issues and/or deteriorated building systems) or for any electrical changes or upgrades, or for making any further improvements or changes.

Additionally, the Parties agree that any protective barriers for the Artwork that existed in the lobby area prior to its deinstallation need not be restored as a part of the Clean up and repair work at CCSF.

The Parties agree that the maximum budget for restoring the CCSF lobby area to a functional condition shall not exceed \$370,145 (an amount that is included in the Maximum Payment Amount under this Agreement) and SFMOMA is not responsible for any additional costs beyond such amount.

For greater clarity, the Parties agree that the additional work required to deinstall the Artwork from SFMOMA and return to CCSF is outside of the scope of this Agreement and will be covered under a separate agreement.

Key Project Personnel Present During Scope of Work #2 (Mural Deinstallation and Relocation)

Atthowe:

- Scott Atthowe
- Bryan Cain
- Alexander Jackson

CCSF:

- Alberto Vasquez, Interim Associate Vice Chancellor, Facilities and Capital Construction
- Leslie Milloy, Chief of Staff, Office of the Chancellor

SFMOMA:

- Michelle Barger, Head of Conservation
- Tina Garfinkel, Head of Registration
- Brandon Larson, Installation Manager
- Paco Link, Rivera Project Coordinator
- Jessica Woznak, Co-Director of Exhibitions

Others:

- Kiernan Graves, Lead Conservator, Site & Studio
- Anne Rosenthal, Conservator 1
- Alejandro Ramirez Reivich, Director of Centro de Ingenieria Avanzada (CIA), UNAM

[Attachment B]**Exhibit B-1 to the Agreement****Deliverables and Payment Schedule (Scope of Work #2 – Mural Deinstallation and Relocation)**

SFMOMA shall pay to Contractor as follows for performing the Services:

Milestone	Target Date	Payment %	Amount
Initial down payment upon signing of Agreement	10/21/2020	20	\$493,526
Completion of SOW item #4 (fabrication)	12/15/2020	10	\$246,763
Completion of preparation for deinstallation (SOW items #1 through #5)	1/4/2021	15	\$370,145
Deinstallation of first two Mural panels	2/1/2021	10	\$246,763
Installation of first six Mural panels at SFMOMA	2/15/2021	15	\$370,145
Installation of all Mural panels at SFMOMA	3/15/2021	15	\$370,145
Final lobby repairs and restoration at CCSF	4/1/2021	15	\$370,145
	TOTAL	100%	\$2,467,630

SFMOMA will pay the Contractor, within 30 days and upon receipt of a detailed and itemized invoice in a form and substance acceptable to SFMOMA, after the completion of the scope of work (as detailed in Exhibit A-1). Atthowe will be responsible for paying all subcontractors directly unless otherwise expressly indicated.

In no event shall Services performed under Exhibit A-1 to this Agreement exceed more than the total sum of \$2,467,630, absent prior written approval by SFMOMA's Chief Financial Officer or his or her designee.

[Attachment C]

Exhibit D to the Agreement

(Pre-Approved Subcontractors)

1. Holmes Structures
2. Nichols Concrete Cutting
3. Oliver and Company
4. Restoration Management Co.
5. Sheedy Drayage Co.

[Attachment D]

Exhibit E to the Agreement

(Rivera Worksite Release and Waiver of Liability)

Important: Each Participant must have a signed “Release and Waiver of Liability” on file and shall provide a copy of each signed form to SFMOMA. Please complete this form prior to entering the Project site(s) or the commencement of any Project work.

Please print all information in blanks provided.

PLEASE READ CAREFULLY! THIS IS A LEGAL DOCUMENT!

DIEGO RIVERA MURAL PROJECT

Background:

City College of San Francisco (“CCSF”) has agreed to loan its Diego Rivera “Pan American Unity Mural” (the “Artwork”) to the San Francisco Museum of Modern Art (“SFMOMA”) for exhibition at SFMOMA beginning Spring 2021. Atthowe Transportation Company, Inc., dba Atthowe Fine Arts Services (“Atthowe”), SFMOMA, and CCSF have entered into agreements to investigate how to safely deinstall the Artwork at CCSF, assess the Artwork’s condition, and provide appropriate and necessary conservation services to ensure the safe removal of the Artwork and its subsequent move to SFMOMA (hereafter the “Project”).

To access all areas on and around the Artwork, which is 72’ by 22’, including the exterior walls of the building in which the Artwork is attached, Atthowe, a licensed contractor, has erected and/or provided scaffolding, electronic lifts, ladders, and other related equipment or heavy machinery (collectively, “Equipment”) at the Project site(s).

For the purpose of this Release and Waiver of Liability, “Participants” are all persons who will be working at the Project site, including but not limited to, employees of Atthowe or any subcontractor.

Nothing in this Waiver and Release of Liability limits or modifies Atthowe’s and any of its subcontractors’ responsibility to provide the required insurance coverage, including Worker’s Compensation coverage for their employees, under their respective agreements with SFMOMA (and CCSF, if applicable), or if a subcontractor, with Atthowe.

RIVERA WORKSITE RELEASE AND WAIVER OF LIABILITY

This Release and Waiver of Liability (the "Release") is executed on this ____ day of _____, 20__ by _____ (the "Participant") in favor of Atthowe Transportation Company, Inc. dba Atthowe Fine Arts Services, ("Atthowe"), City College of San Francisco ("CCSF"), and the San Francisco Museum of Modern Art ("SFMOMA"), and each of their respective officers, directors, employees, and agents.

I, the Participant, desire to access the Project sites and work on the Project on a short-term basis and/or engage in any activities related to the Project. I understand that the activities may include, but are not limited to, my use of the Equipment in the process of, or in facilitation or observation of, installing, examining, conserving, maintaining, or removing the Artwork from the building to which it is attached and its subsequent installation at SFMOMA. I acknowledge that Atthowe has provided the Equipment for the purpose of fulfilling the terms of its agreement with SFMOMA and CCSF; and that I cannot carry out my duties on the Project without using the Equipment or otherwise being in presence of the Equipment. SFMOMA and CCSF have allowed me access to the Project sites, and Atthowe has agreed, if applicable to my work, to allow me to access/use the Equipment for my work on the Project on condition that I agree to waive and release any claim I might have, now or in the future, against the Parties arising out of (i) the use of any Equipment for the Project or (ii) my presence at any Project site while work is underway.

- 1. Waiver and Release. To the fullest extent permitted by applicable law, I, the Participant, hereby knowingly and willingly, for myself, my heirs, personal representatives and assigns, fully release and forever discharge and hold harmless the Parties and their respective successors and assigns from any and all liability, claims and demands of whatever kind or nature, either in law or in equity, which arise or may hereafter arise from my activities related to the Project, including but not limited to the observation, installation, examination, conservation, maintenance, or removal of the Artwork. I understand and acknowledge that this Release discharges the Parties from any liability or claim that I, the Participant, may have against the Parties with respect to any bodily injury, illness, death, property damage, loss, invasion of privacy, right of publicity, defamation, or any other causes of action that may result directly or indirectly from my travel, participation, and activities in connection with the Project or around the Project sites. Nothing in this Release limits, modifies, or is intended to change any Party's (or their subcontractor's) obligations owed under law to its employees or in any way change the employer-employee relationship, including but not limited to the employer's responsibility to provide required insurance coverage Worker's Compensation coverage for its employees (including for the Participant, if applicable).
2. Insurance and Medical Treatment. I, the Participant, understand that, except as otherwise agreed to by the Parties in writing, the Parties do not carry or maintain health, medical, or disability insurance coverage for any Participant who is not an employee of one of the Parties. This will confirm that the Parties do not assume any responsibility for or obligation to provide financial assistance or other assistance, including, but not limited to, medical, health, or disability insurance, in the event of injury, illness, death or property damage. To the extent applicable, nothing in this Release shall limit my, or my company's indemnification or insurance obligations under any existing agreements with the Parties. I hereby release and forever discharge the Parties from any claim, liability, cost, or expense whatsoever which arises or may hereafter arise on account of any health care or medical services rendered to me before, during, or after the completion of this Project, including, but not limited to, first-aid or emergency treatment.
3. COVID-19 Protocols. I, the Participant, agree to comply with all required health and safety protocols at the Project sites at all times while on premises.
4. Assumption of the Risk. I understand that my participation with the Project may involve activities that could be hazardous to me. I understand that specific risks vary from one activity to another, and that the risks may include, but are not limited to, the use of scaffolding and any other related equipment. Therefore, I recognize and understand that my participation in the Project may, in some situations, involve inherently dangerous activities. I hereby expressly and specifically assume the risk of illness, injury or harm in participation of this Project, and I hereby release the Parties from all liability for injury, death, or property damage resulting from my participation in the Project.
5. Film/Photograph Release. I understand that certain portions of the Project may be documented and that my appearance in any media is optional. I hereby give the Parties, including any professional photographers/videographers present on the Project sites, permission to use my name, likeness, image, or voice and to photograph, film, or record my activities and participation in the Project. I also give the Parties my permission to use, reproduce, license, and publicly display my activities, in any and all media (including online and on third party social media sites), in its discretion, for any purpose, including but not limited to, any educational, archival, marketing, or promotional purposes. I waive any rights to approve the photographs, films or recordings of my activities and understand that I will not be compensated for such appearance.
6. Other. I expressly agree that this Release is intended to be as broad and inclusive as permitted by the laws of the State of California in the United States of America, and that this Release shall be governed by and interpreted in accordance with the laws of the State of California. I agree that in the event that any clause or provision of this Release shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision of this Release shall not otherwise affect the remaining provision of this Release which shall continue to be enforceable.

I have fully read and understood this Release, am over 18 years old, and hereby freely and voluntarily, without duress, execute this Release:

PARTICIPANT:

WITNESS:

Signature: _____

Email: _____

Signature: _____

Print Name: _____

Date: _____

Print Name: _____

EXHIBIT 3



2nd Amendment to Vendor Agreement

This **Second Amendment** (this “Amendment”), dated **December 4, 2020** amends the Vendor Agreement dated **May 22, 2019** (the “Original Agreement”), as previously amended on **October 2, 2019** by the Letter Addendum to Vendor Agreement (the “Prior Amendment” and together with the Original Agreement, the “Agreement”), by and between the San Francisco Museum of Modern Art, a non-profit organization, organized under the laws of the state of California having its principal place of business at 151 Third Street, San Francisco, California 94103 (hereinafter “SFMOMA” or “Museum”), Site and Studio Conservation, LLC, a limited liability company whose address is 10686 Alyssum Lane, #202, Ventura, CA 93004 (hereinafter “Contractor”, “Vendor” or “Site and Studio”), and City College of San Francisco, an educational institution whose address is 50 Phelan Ave., San Francisco, CA 94112 (hereafter “City College”, “Property Owner” or “CCSF”).

Recitals

WHEREAS, SFMOMA, City College, and the Contractor (collectively, the “Parties”) desire to execute this Amendment to update their existing Agreement;

WHEREAS, as of the date hereof, the work outlined in Phase I (Assessment, Investigations and Treatment Testing) and Phase II (Mural Treatment and Stabilization) in the Original Agreement and the Prior Amendment, respectively, have been completed by the Parties; and

WHEREAS, the Parties wish to proceed with the next phase of the project and amend the existing Agreement to:

- (i) Confirm and approve the remainder of the conservation plan for (i) the monitoring and protection of the Mural during its relocation and (ii) treatment and ongoing condition monitoring after its installation at SFMOMA as Scope of Work #2 (Conservation Phase III), including all subcontractors to be hired by the Contractor thereunder;
- (ii) Set forth the insurance and other requirements for each subcontractor contracted by the Contractor;
- (iii) Increase the maximum amount payable under the Agreement; and
- (iv) Accordingly extend the term of the Agreement through June 30, 2022 to permit completion of the supplemental Scope of Work #2.

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

1. **Definitions.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.
2. **Amendments to the Agreement.** The Agreement is hereby modified as follows: (Modifications to the existing language are noted below: deletions are in strikethrough and additions are in bolded text.)
 - a) **Section 1 (Services; Purchases)** of the Agreement currently reads as follows:

1) Services; Purchases. The services ("Services") and deliverables ("Deliverables") that Contractor is engaged to perform under this Agreement are described in Exhibit A – Scope of Work attached and incorporated by reference herein. The services and deliverables are collectively referred to as the "Work Product". To the extent that SFMOMA's relationship with Contractor hereunder, in addition to the performance of Services, involves purchase of goods from Contractor, then such purchases shall be made pursuant to and governed by SFMOMA's form of Purchase Order and associated SFMOMA Terms and Conditions. The granting of any payment by SFMOMA, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor regarding unsatisfactory Work Product, or any obligations to remedy or repair such unsatisfactory Work Product, although the unsatisfactory character of such Work Product, equipment, or materials, may not have been apparent or detected at the time such payment was made.

Such section is hereby **amended and restated** in its entirety to read as follows:

1) Services; Purchases. The services ("Services") and deliverables ("Deliverables") that Contractor is engaged to perform under this Agreement are described in Exhibit A – Scope of Work **and Exhibit A-1 (SOW #2 – Conservation Phase III)** attached and incorporated by reference herein. The services and deliverables are collectively referred to as the "Work Product" **and are to be performed consistent with the professional skill and care ordinarily provided by consultants and contractors practicing under the same or similar circumstances.** To the extent that SFMOMA's relationship with Contractor hereunder, in addition to the performance of Services, involves purchase of goods from Contractor, then such purchases shall be made pursuant to and governed by SFMOMA's form of Purchase Order and associated SFMOMA Terms and Conditions. The granting of any payment by SFMOMA, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor regarding unsatisfactory Work Product, or any obligations to remedy or repair such unsatisfactory Work Product, although the unsatisfactory character of such Work Product, equipment, or materials, may not have been apparent or detected at the time such payment was made.

b) Section 2 (Compensation; Maximum Payment Amount) of the Agreement currently reads as follows:

2) Compensation; Maximum Payment Amount. SFMOMA agrees to pay Contractor for performing the Work Product as described in this Agreement on (i) Contractor's satisfactory performance of the Services, (ii) in accordance with the deliverable deadlines specified on Exhibit B – Deadlines and Deliverables, which is attached and incorporated by reference herein and (iii) SFMOMA's acceptance of the Work Product. The payment shall not exceed \$168,162.00, absent prior written approval by SFMOMA's Deputy Director of Finance and Administration or his or her designee. SFMOMA, rather than City College, is solely responsible for all costs incurred in connection with the Scope of Work to be performed under this agreement.

Such section is hereby **amended and restated** in its entirety to read as follows:

2) Compensation; Maximum Payment Amount. SFMOMA agrees to pay Contractor for performing the Work Product as described in this Agreement on (i) Contractor's satisfactory perform a rice of the Services, (ii) in accordance with the deliverable deadlines specified on Exhibit B – Deadlines and Deliverables and Exhibit B-1, which is attached and incorporated by reference herein and (iii) SFMOMA's acceptance of the Work Product. The payment shall not exceed \$168,162.00 **for work performed under Exhibit A (Phase I and II), \$404,300.00 for work performed under Exhibit A-1 (not including any applicable late payment fees incurred by SFMOMA in accordance with the terms set forth on Exhibit B-1), and cumulatively \$572,462.00,** absent prior written approval by SFMOMA's **Chief Financial Officer Deputy Director of Finance**

~~and Administration~~ or his or her designee. SFMOMA, rather than City College, is solely responsible for all costs incurred in connection with the SOWs to be performed under this Agreement.

- c) **Section 3 (Effective Date)** of the Agreement currently reads as follows:

3) Effective Date. This Agreement commences on the earlier of Effective Date and the date upon which Contractor commenced performance of the Services and will continue in full force and effect through October 6, 2019 or earlier upon completion of the Contractor's duties under this Agreement or termination as provided below in Section 13. Any extensions to this date to be mutually agreed to by City College and SFMOMA. After October 6, 2019, SFMOMA, the Contractor, and City College will work together to identify any additionally required working hours and equipment set up that allows for City College's planned meetings to take place in the space. Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 shall survive termination of this Agreement.

Such section is hereby **amended and restated** in its entirety to read as follows:

3) Effective Date. This Agreement commences on the earlier of Effective Date and the date upon which Contractor commenced performance of the Services and will continue in full force and effect through June 30, 2022 ~~October 6, 2019~~ or earlier upon completion of the Contractor's duties under this Agreement or termination as provided below in Section 13. Any extensions to this date to be mutually agreed to by City College and SFMOMA. ~~After October 6, 2019, SFMOMA, the Contractor, and City College will work together to identify working hours and equipment set up that allows for City College's planned meetings to take place in the space.~~ Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27 and 28 shall survive termination of this Agreement.

- d) **Section 4 (Performance)** of the Agreement currently reads as follows:

4) Performance. Contractor shall be solely responsible for the method, details and means by which the conservation work performed under this Agreement, as described in Exhibit A, is to be accomplished and all expenses incurred related to its performance hereunder. Support equipment, like scaffolding, to be provided by another vendor, and subject to a separate agreement.

Such section is hereby **amended and restated** in its entirety to read as follows:

4) Performance. Contractor shall be solely responsible for the method, details and means by which the conservation work performed under this Agreement, as described in Exhibit A, is to be accomplished and all expenses incurred related to its performance hereunder. Support equipment, like scaffolding, are to be provided by another vendor (whose selection, approval, and payment is the responsibility of SFMOMA) and subject to a separate agreement.

- e) **Section 4A (City College Authorization and Access)** of the Agreement currently reads as follows:

4A) City College Authorization and Access. City College hereby authorizes SFMOMA and Contractor to have access to the Mural site at City College during the July 1 - October 6, 2019 period to execute Phase II of the Conservation project, and shall cooperate in the work to be performed pursuant to Contractor's Work Plan and the examination to be conducted by SFMOMA's conservators. City College shall cooperate with SFMOMA and Contractor to schedule on-site work and related activities at the City College premises. City College via Michael

Almaguer or his designee, shall provide any necessary access or parking permits to facilitate the services under this Agreement.

If additional investigative work is necessary to best serve the purposes of this Agreement, or to return the building to its original condition, City College will have staff available to approve additional work by either Contractor or SFMOMA deemed appropriate and necessary by City College and authorized by SFMOMA.

Such section is hereby **amended and restated** in its entirety to read as follows:

4A) City College Authorization and Access. City College hereby authorizes SFMOMA and Contractor to have access to the Mural site at City College during the **July 1, 2019 to June 30, 2021** ~~July 1 – October 6, 2019~~ period to execute **Phase III** ~~Phase II~~ of the Conservation project, and shall cooperate in the work to be performed pursuant to Contractor's Work Plan and the examination to be conducted by SFMOMA's conservators. City College shall cooperate with SFMOMA and Contractor to schedule on-site work and related activities at the City College premises. City College via Michael Almaguer or **his another City College** designee, shall provide any necessary access or parking permits to facilitate the services under this Agreement.

In light of the the critical stages of the Mural relocation taking place between November 2020 and March 2021, City College agrees to provide further assurances that as a result of the safety, security, and timing needs of the Project, City College shall designate a qualified point person (either an existing staff member or a SFMOMA approved consultant hired by City College) who is authorized to act and make decisions on behalf of City College as the responsible and accountable project manager for this Project and primary daily contact for City College. Additionally, the qualified point person:

- i. **Shall be designated and required to respond to SFMOMA and Site & Studio within 2 hours for emergencies and within 24 hours for all other matters;**
- ii. **Will be readily available for weekly calls and daily calls during SFMOMA and Site & Studio's designated critical project points and shall be on-site in the morning every work day of the Project until the Mural is safely installed at SFMOMA;**
- iii. **Has access to all needed supplies, locks, and facility, security, and operations contacts; and**
- iv. **Shall also be readily available and provide any additional liaison and reasonable daily project coordination assistance as specified by SFMOMA and Site & Studio.**

If additional investigative work is necessary to best serve the purposes of this Agreement, or to return the building to its original condition, City College will have staff available to approve additional work by either Contractor or SFMOMA deemed appropriate and necessary by City College and authorized by SFMOMA.

f) **Section 6 (Contractor's Hires)** of the Agreement currently reads as follows:

6) Contractor's Hires. Contractor has, and hereby retains, full control over, and sole and exclusive responsibility for, the employment, direction, compensation and discharge of any and all persons whom Contractor may employ from time to time to assist Contractor in performing Services under this Agreement. Contractor shall be fully responsible for all matters relating to the payment of such employees, including compliance with social security, withholding tax, workers' compensation, overtime, minimum wage, and all other applicable laws and regulations. Notwithstanding the foregoing, Contractor shall not subcontract or delegate any of its

obligations hereunder to any third party without the prior written consent of SFMOMA and City College.

Such section is hereby **amended and restated** in its entirety to read as follows:

6) Contractor's Hires. Contractor has, and hereby retains, full control over, and sole and exclusive responsibility for, the employment, direction, compensation and discharge of any and all persons whom Contractor may employ from time to time to assist Contractor in performing Services under this Agreement. Contractor shall be fully responsible for all matters relating to the payment of such employees, including compliance with social security, withholding tax, workers' compensation, overtime, minimum wage, and all other applicable laws and regulations. ~~Notwithstanding the foregoing,~~ Contractor shall not subcontract or delegate any of its obligations hereunder to any third party without the prior written consent of SFMOMA and City College; **provided, however, that SFMOMA and City College consent to Contractor's engagement of the subcontractors set forth on Exhibit D hereto, such consent not to be unreasonably withheld or delayed. Notwithstanding receipt of approval from SFMOMA and City College as to any subcontractor, Contractor shall be fully liable to SFMOMA and City College for the timeliness and quality of all work performed and materials and equipment furnished in connection with the Services and Deliverables, whether the work, materials, and equipment are performed and furnished by Contractor or through subcontractors, sub-subcontractors (of all tiers), and suppliers; provided however, that Contractor shall not be responsible for delays caused solely by SFMOMA, City College, or Force Majeure. The term "Force Majeure" shall mean an act of God, fire, flood, earthquake, explosion, war on American soil, act of terrorism on the Project, civil disturbance, labor strikes, state or local public health order that prohibits Contractor for performing the Services, an unusually severe storm designated as a 50-year storm or greater by the National Climate Data Center, or an unavoidable casualty beyond Contractor's control, where any such event is not caused by the negligent act or omission of Contractor, any subcontractor of any tier, or someone else for whom Contractor is responsible. Contractor assigns to SFMOMA and City College each subcontract agreement for any portion of the Work Product, provided that such assignment is effective only in the event that SFMOMA and City College terminate this Agreement with Contractor, and SFMOMA and/or City College notify Contractor and any such subcontractor that they intend to assume such subcontract agreement. Notwithstanding the lien rights of such subcontractors, if SFMOMA and/or City College elect to assume any subcontract agreement, SFMOMA and City College will not be liable to the applicable subcontractor for amounts not properly paid by Contractor to such subcontractor prior to the date SFMOMA and/or City College assume such subcontract agreement. SFMOMA and/or City College may further assign such subcontract agreements to a successor direct contractor or other person or entity. Contractor will require each direct subcontractor to include an equivalent assignment to SFMOMA and City College in each subcontract agreement of any subsequent tier.**

All subcontract agreements at every tier shall be in a form reasonably acceptable to SFMOMA and City College. Before each subcontractor commences their on-site work as assigned by the Contractor, Contractor will provide SFMOMA and City College with true, correct, and complete copies of the existing subcontract agreement(s) between Contractor and such subcontractor relating to said subcontractor's performance under this Agreement, and will promptly thereafter provide SFMOMA and City College with true, correct, and complete copies of all additional subcontract agreements and modifications to or terminations of existing subcontract agreements entered into thereafter in accordance with this Agreement with such subcontractor. Contractor will require each direct subcontractor, to the extent of the Work Product to be performed by such subcontractor, to be bound to Contractor by the terms of this Agreement, and to assume toward Contractor all the obligations and responsibilities, including the responsibility for safety of such subcontractor's portion of the Work Product, which Contractor

assumes toward SFMOMA and City College. Each subcontract agreement will preserve and protect SFMOMA's and City College's rights under this Agreement with respect to the portion of the Work Product to be performed by such subcontractor so that subcontracting thereof will not prejudice such rights. Contractor shall require each direct subcontractor to enter into similar agreements with sub-subcontractors of any tier. Contractor will make available to each proposed direct subcontractor, prior to the execution of the subcontract agreement, copies of this Agreement. Direct subcontractors will similarly make copies of applicable portions of the Agreement available to their respective proposed sub-subcontractors. Subcontract agreements at every tier will provide that SFMOMA and City College are third-party beneficiaries of such subcontract, and that SFMOMA and City College may assert claims directly against the subcontractor for breach of contract, breach of express warranties, breach of implied warranties including warranties of merchantability and of fitness for a particular purpose, negligence, and other claims arising out of or related to the Work Product. Subcontract agreements at every tier will also provide that the subcontractor agrees to the contingent assignment of the subcontract to SFMOMA and City College pursuant to this Section 6.

- g) **Section 7(a) (Ownership and Assignment of Copyright; Restrictions on Use of SFMOMA's Marks)** of the Agreement currently reads as follows:

7) Ownership & Assignment of Copyright; Restrictions on Use of SFMOMA's Marks. (a) SFMOMA Ownership and Copyright. All deliverables and other works of authorship, designs, inventions, improvements, technology, developments, discoveries, and trade secrets conceived, made, or discovered by Contractor during the period of this Agreement, solely or in collaboration with others, that arise from or otherwise relate to the Services under this Agreement in any format or embodiment (collectively, "Works"), and all intellectual property rights therein will be the sole property of SFMOMA, and Contractor will promptly deliver and assign such Works to SFMOMA. Accordingly, Contractor agrees to assign (or cause to be assigned) and does hereby irrevocably assign fully to SFMOMA all right, title, and interest, including intellectual property rights, in and to the Works, and to the extent permissible pursuant to applicable law, waives and agrees to not assert against SFMOMA or any of its partners, suppliers, licensors, customers, affiliates, employees, advisors or directors, any moral rights, 'droit moral' or other similar rights arising under the laws of any jurisdiction. City College shall receive copies of any images or recordings made by Contractor, and shall have the rights to use such images or recordings, in any media, in whole or in part, for any City College purpose. Contractor shall also have the rights to use such images or recordings, in any media, in whole or in part, for purposes related to professional sharing information with colleagues encountering similar projects.

Such section is hereby **amended and restated** in its entirety to read as follows:

7) Ownership & Assignment of Copyright; Restrictions on Use of SFMOMA's Marks. (a) SFMOMA Ownership and Copyright. All deliverables and other works of authorship, designs, inventions, improvements, technology, developments, discoveries, and trade secrets conceived, made, or discovered by Contractor during the period of this Agreement, solely or in collaboration with others, that arise from or otherwise relate to the Services under this Agreement in any format or embodiment (collectively, "Works"), and all intellectual property rights therein will be the sole property of SFMOMA, and Contractor will promptly deliver and assign such Works to SFMOMA. Accordingly, Contractor agrees to assign (or cause to be assigned) and does hereby irrevocably assign fully to SFMOMA all right, title, and interest, including intellectual property rights, in and to the Works, and to the extent permissible pursuant to applicable law, waives and agrees to not assert against SFMOMA or any of its partners, suppliers, licensors, customers, affiliates, employees, advisors or directors, any moral rights, 'droit moral' or other similar rights arising under the laws of any jurisdiction. City College shall receive copies of any images or recordings

made by Contractor, and shall have the rights to use such images or recordings, in any media, in whole or in part, for any City College purpose. Contractor shall also have the rights to use such images or recordings **taken by Contractor**, in any media, in whole or in part, for purposes related to **education and** information sharing with colleagues encountering **other conservators handling similar projects and for archival purposes as a record of Contractor's work; provided that, (i) such images or recordings are approved in advance by SFMOMA and (ii) such use occurs after the conclusion of the Mural's exhibition at SFMOMA. To the extent SFMOMA creates or has taken any images or recordings of the Project relevant to Contractor's work, SFMOMA agrees to grant a limited, non-exclusive, license to Consultant to use, display, and perform such images for Consultant's archival and educational purposes. For any such images or recordings, whether taken by Contractor or SFMOMA, Contractor is solely responsible for acquiring any image rights related to the underlying artwork with the rights holder for Contractor's use, and such rights are not included in the limited license from SFMOMA above.**

h) **Section 10 (Damages to Facility)** of the Agreement currently reads as follows:

10) Damages to Facility. Contractor shall promptly, at its sole cost, restore and pay to repair any and all damage to City College's facilities and any personal property to the same conditions received by Contractor, with exceptions as called out in Exhibit A. Accordingly, where Contractor damages City College's facilities or any personal property, any final repair costs shall be determined by CCSF in its sole discretion. In addition, City College shall approve the contractors that will conduct any repair work at City College, in City College's sole discretion. The City College Facility Manager may consult with any other applicable contractors or experts in determining the final repair costs. Repair costs approved by City College will be billed to the Contractor and shall be paid by Contractor within ten (10) calendar days of receipt of such invoice.

Such section is hereby **amended and restated** in its entirety to read as follows:

10) Damages to Facility. Contractor shall promptly, at its sole cost, restore and pay to repair any and all damage **Contractor causes** to City College's **or SFMOMA's** facilities and any personal property to the same conditions received by Contractor, with exceptions as called out in Exhibit A. Accordingly, where Contractor damages City College's **or SFMOMA's** facilities or any personal property, any final repair costs shall be determined by **City College or SFMOMA, as applicable**, in its sole discretion. In addition, City College shall approve the contractors that will conduct any repair work at City College, in City College's sole discretion, **and SFMOMA shall approve the contractors that will conduct any repair work at SFMOMA, in SFMOMA's sole discretion.** The City College Facility Manager **and SFMOMA** may consult with any other applicable contractors or experts in determining the final repair costs **at City College's or SFMOMA's facilities, as applicable.** Repair costs approved by City College **or SFMOMA** will be billed to the Contractor and shall be paid by Contractor within ten (10) calendar days of receipt of such invoice.

i) The following paragraph (A) is added to **Section 11 (Indemnification)** of the Agreement as follows:

11A) Hazardous Materials and Conditions Waiver.

SFMOMA shall not be liable or responsible in any way for, and City College and Site and Studio each hereby waives all claims, whether in contract or tort, against SFMOMA and its directors, officers, employees, and agents with respect to or arising out of: (a) any death or any injury of any nature whatsoever that may be suffered or sustained by City College, Site and Studio, or any employee, agent, contractor, or subcontractor of either of them from any causes whatsoever that do not arise solely from SFMOMA's and/or its directors', officers', employees', and agents' gross negligence or willful misconduct, or (b) any loss or damage or injury to any property

belonging to City College, Site and Studio, or any employees, agents, contractors or subcontractors of either of them that do not arise solely from SFMOMA's and/or its directors', officers', employees', and agents' gross negligence or willful misconduct. Without limiting the generality of the foregoing, SFMOMA shall not be liable for any damage to City College's facilities during the removal of the Mural from City College's facilities, including the discovery or release of asbestos containing materials or any other hazardous substances in connection with the Services.

- j) **Section 12 (Liability Insurance Requirements)** of the Agreement currently reads as follows:

12) Liability Insurance Requirements. Contractor represents that it has and will comply with SFMOMA's insurance requirements as specified on Exhibit C (SFMOMA Insurance Requirements for Vendors/Independent Contractors). Contractor acknowledges that any insurance claims related to the Work Product will be made against its own insurance policies and not against any insurance policies of SFMOMA.

Such section is hereby **amended and restated** in its entirety to read as follows:

12) Liability Insurance Requirements. Contractor represents that it has and will comply, and will cause each of its subcontractors and sub-subcontractors (of every tier) to comply, with SFMOMA's insurance requirements as specified on Exhibit C (SFMOMA Insurance Requirements for Vendors/Independent Contractors). Contractor acknowledges, and shall cause each of its subcontractors and sub-subcontractors (of every tier) to acknowledge, that any insurance claims related to the Work Product will be made against its Contractor's or such subcontractor's or sub-subcontractor's own insurance policies and not against any insurance policies of SFMOMA. Insurance coverage by Contractor's subcontractors must begin no later than the date when such subcontractor commences work on the Project. Proof of such insurance coverage must be provided as soon as available, but no later than prior to when such subcontractor commences work on the Project.

- k) **Section 12A (Fine Arts Insurance)** of the Agreement currently reads as follows:

12A) Fine Arts Insurance. For the work performed pursuant to this agreement, SFMOMA shall provide Fine Arts Insurance to the agreed value of the Mural, [REDACTED] for any loss of value and cost to repair arising from or in connection to the work of SFMOMA and its contracted parties, including the Contractor, under this Agreement. Loss of value shall be determined by a subsequent appraisal at time of loss utilizing similar evaluation methods as used in the 2016 appraisal which resulted in the [REDACTED] valuation. SFMOMA agrees to name Site and Studio Conservation as an additional insured, and City College as an additional insured and loss payee under SFMOMA's policy and will provide City College and Site and Studio Conservation with a certificate of insurance evidencing such coverage. In the event of loss or damage to the Mural arising out of the Services under this Agreement or any SFMOMA or Contractor activities in connection with the Mural, City College's sole recovery shall be the amount payable, if any, by under SFMOMA's fine arts insurance to City College as the loss payee.

For future projects, fine arts insurance coverage for the Mural from the time the Contractor begins detaching the Mural from the City College site prior to packing at the Lender's premises, while in transit and on exhibition at SFMOMA, and until the Mural is condition checked after reinstallation at the Lender's premises, shall be insured by SFMOMA under the terms of a separate written loan agreement between the parties.

Such section is hereby **amended and restated** in its entirety to read as follows:

12A) Fine Arts Insurance. For the work performed pursuant to this agreement, SFMOMA shall provide **“all risk” fine arts insurance with standard exclusions, including, but not limited to, loss or damage resulting from gradual and natural deterioration, wear and tear, inherent vice, etc. (“Fine Arts Insurance”)** to the agreed value of the Mural, [REDACTED] for any loss of value and cost to repair arising from or in connection to the work of SFMOMA and its contracted parties, including the Contractor, under this Agreement. **The coverage period extends from the condition checking immediately prior to de-installation preparation and de-installation of the Artwork at City College, while in transit, during the installation and exhibition at SFMOMA, through the deinstallation, condition checking and packing at SFMOMA, and return transit to City College or a storage facility. City College will insure the Artwork upon arrival on its premises or storage facility. Loss of value shall be determined by a subsequent appraisal at time of loss utilizing similar evaluation methods as used in the 2016 appraisal which resulted in the [REDACTED] valuation.** SFMOMA agrees to name Site and Studio Conservation as an additional insured, and City College as an additional insured and loss payee under SFMOMA’s **Fine Arts Insurance** policy and will provide City College and Site and Studio Conservation with a certificate of insurance evidencing such coverage. In the event of loss or damage to the Mural arising out of the Services under this Agreement or any SFMOMA or Contractor activities in connection with the Mural, City College’s sole recovery shall be the amount payable, if any, ~~by~~ under SFMOMA’s Fine Arts Insurance to City College as the loss payee. **The terms of this section regarding Fine Arts Insurance are consistent with the Loan and Partnership Agreement by and between SFMOMA and City College, dated September 13, 2019 (the “Loan Agreement”).**

~~For future projects, fine arts insurance coverage for the Mural from the time the Contractor begins detaching the Mural from the City College site prior to packing at the Lender’s premises, while in transit and on exhibition at SFMOMA, and until the Mural is condition checked after reinstallation at the Lender’s premises, shall be insured by SFMOMA under the terms of a separate written loan agreement between the parties.~~

- I) **Section 13 (Termination)** of the Agreement currently reads as follows:

13) Termination. SFMOMA or City College may elect to terminate this Agreement at any time, for its convenience, and for any reason by giving written notice to Contractor; SFMOMA or City College may also terminate this Agreement immediately upon written notice if Contractor breaches this Agreement in any material respect. Should this Agreement be terminated prior to the completion of the Services hereunder, Contractor shall promptly deliver to SFMOMA any completed Work Product or Work Product in progress in complete accurate, detailed, and up-to-date order. Contractor also agrees that upon termination of this Agreement all property (including Confidential Information) furnished to, obtained by, used by, or prepared by Contractor in the course of or incident to its work with SFMOMA belongs to SFMOMA and shall be returned promptly to SFMOMA and City College upon termination of this Agreement. Contractor may not terminate this Agreement prior to completion of the Services for which Contractor has been retained, unless Contractor has not been paid amounts due and owing under this Agreement and such non-payment has continued for thirty (30) days following demand of such payment by Contractor.

Such section is hereby **amended and restated** in its entirety to read as follows:

13) Termination. SFMOMA or City College may elect to terminate this Agreement at any time, for its convenience, and for any reason by giving written notice to Contractor, **including, but not limited to, if SFMOMA determines that (i) the Mural is being subject to undo risk during the deinstallation and removal process; (ii) if unforeseen complications are discovered during the deinstallation process that adversely impact the Project schedule or budget; and (iii) the costs**

of completing the Project exceed the maximum payable amount under this Agreement. In the event the Contractor discovers any information or fact previously unknown or anticipated by the Parties that could result in any delay (including weather), increase in risk to the Mural, increase in cost, the Contractor must immediately stop work (and cause its subcontractors to stop work) and notify SFMOMA and City College before work can proceed under mutual agreement. SFMOMA or City College may also terminate this Agreement immediately upon written notice if Contractor breaches this Agreement in any material respect. Should this Agreement be terminated prior to the completion of the Services hereunder, Contractor shall promptly deliver to SFMOMA any completed Work Product or Work Product in progress in complete accurate, detailed, and up-to-date order. Contractor also agrees that upon termination of this Agreement, all property (including Confidential Information) furnished to, obtained by, used by, or prepared by Contractor in the course of or incident to its work with SFMOMA belongs to SFMOMA and shall be returned promptly to SFMOMA and City College upon termination of this Agreement. Contractor may not terminate this Agreement prior to completion of the Services for which Contractor has been retained, unless Contractor has not been paid amounts due and owing under this Agreement and such non-payment has continued for thirty (30) days following demand of such payment by Contractor, **other than good faith disputes regarding any invoices submitted by Contractor. SFMOMA shall inform Contractor of the basis for any such good-faith dispute in writing no later than forty-five (45) days after receipt of written demand for payment by Contractor for Services that have been fully completed as required and approved. Failure to give notice of good-faith dispute within the prescribed time shall constitute a knowing and intentional waiver of SFMOMA's right to assert a good-faith dispute with regard to the demand for payment at issue.**

In the event of termination by SFMOMA or City College after the deinstallation of the Mural has begun and prior to the completion of the Services hereunder, SFMOMA will work with CCSF to find a mutually agreeable solution, within the constraints of SFMOMA's allocated budget, for reinstallation of any removed components of the Artwork, to the extent necessary for the security of the Artwork and consistent with its prior installation. If, as a consequence of the work already done, the Artwork cannot be reinstalled, in consultation with CCSF, SFMOMA will be responsible for packing the deinstalled components of the Artwork and sending them to storage in a mutually agreeable location and to the extent necessary for the safety and preservation of the Mural as determined by SFMOMA, SFMOMA will engage Site and Studio to assess and treat the Mural for storage purposes, each subject to the constraints of SFMOMA's allocated budget for this Project. SFMOMA reserves the right to determine and contract any additional contractors needed.

m) **Section 20 (Safety and Access; Compliance)** of the Agreement currently reads as follows:

20) Safety and Access; Compliance. Contractor acknowledges that under the Americans with Disabilities Act ("ADA") and state and local laws, programs, services and other activities provided by the Museum to the public, whether directly or through Contractor, must be accessible to members of the public with disabilities. Contractor shall provide the Services specified in this Agreement, and the Work Product created under this Agreement in a manner that complies with the ADA and state and local disability access requirements. Contractor shall ensure that the Contractor's work is accessible to individuals with disabilities and meets all applicable statutory and regulatory requirements, particularly with respect to the elimination of both architectural and programmatic barriers. Such cooperation shall include assisting with modifications to the work, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the Work Product. If requested by Museum, Contractor shall engage a consultant, to review the work for compliance with the ADA.

Contractor shall also be responsible for complying with the Museum's safety and security guidelines (including any directions regarding performance of Services in or near Collections or gallery spaces), as well as with any directions or requirements of the San Francisco Police Department, Health Department, and Fire Department, including any permit requirements and restrictions on hazardous materials, open flames, or other materials or devices.

Such section is hereby **amended and restated** in its entirety to read as follows:

20) Safety and Access; Compliance.

~~Contractor acknowledges that under the Americans with Disabilities Act ("ADA") and state and local laws, programs, services and other activities provided by the Museum to the public, whether directly or through Contractor, must be accessible to members of the public with disabilities. Contractor shall provide the Services specified in this Agreement, and the Work Product created under this Agreement in a manner that complies with the ADA and state and local disability access requirements. Contractor shall ensure that the Contractor's work is accessible to individuals with disabilities and meets all applicable statutory and regulatory requirements, particularly with respect to the elimination of both architectural and programmatic barriers. Such cooperation shall include assisting with modifications to the work, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the Work Product. If requested by Museum, Contractor shall engage a consultant, to review the work for compliance with the ADA.~~

Contractor shall **also** be responsible for complying with **and require subcontractors (of every tier) to comply with**, the Museum's safety and security guidelines (including any directions regarding performance of Services in or near Collections or gallery spaces **and any health and safety protocols established related to COVID-19**), as well as with any directions or requirements of the San Francisco Police Department, Health Department, and Fire Department, including any permit requirements and restrictions on hazardous materials, open flames, or other materials or devices. If Contractor chooses to follow different protocols and guidelines, they shall be at least as stringent as those required by the Museum.

- n) The following paragraph (A) is added to **Section 20 (Safety and Access; Compliance)** of the Agreement as follows:

20(A) Safe Scaffolding and Working Conditions. Contractor, in using or providing scaffolding or any other equipment or services under this Agreement warrants that such equipment is safe for ongoing use during the term of this Agreement, that any prior equipment failures have been fully corrected, and shall ensure that such equipment and services meet all structural, health, and safety requirements to protect Contractor, CCSF, SFMOMA and any other subcontractors or other individuals working at or near the site(s) of the Services throughout the duration of the Services. Contractor shall ensure that all individuals working with scaffolding or any other equipment provided by Contractor or Atthowe are appropriately trained by Contractor on the safe use of such equipment and that such scaffolding and/or equipment is inspected each day for ongoing structural safety and compliance prior to use. Contractor acknowledges that there are inherent hazards in construction/deconstruction work and will take all necessary steps consistent with the highest professional standards to ensure safe conditions for the Parties or any other individuals at or near the site of the Services.

Any individuals who will be working at any of the sites where the Services are being performed, or otherwise present at or around any of the sites (including those using any of Atthowe's or Contractor's equipment) must sign the Rivera Worksite Release and Waiver of Liability attached hereto as Exhibit E prior to coming on site, even if such individual has already executed a waiver in

the form attached as Exhibit A to the Prior Amendment. Contractor shall cause each of its subcontractors and sub-subcontractors at every tier (including any individuals working on behalf of any such Contractor or subcontractor) to sign the Rivera Worksite Release and Waiver of Liability prior to commencement of any of the Services under this Agreement and promptly provide signed copies to the Museum. The Rivera Worksite Release and Waiver of Liability supersedes the waiver attached as Exhibit A to the Prior Amendment.

- o) **Exhibit A-1** (Scope of Work #2 – Conservation Phase III) is hereby **added** to the Agreement and incorporated by reference in the form attached hereto as **Attachment A** to this Amendment.
 - p) **Exhibit B-1** (Deliverables and Payment Schedule for Scope of Work #2 – Conservation Phase III) is hereby **added** to the Agreement and incorporated by reference in the form attached hereto as **Attachment B** to this Amendment.
 - q) **Exhibit D** (Pre-Approved Subcontractors) is hereby **added** to the Agreement and incorporated by reference in the form attached hereto as **Attachment C** to this Amendment.
 - r) **Exhibit E** (Rivera Worksite Release and Waiver of Liability) is hereby **added** to the Agreement and incorporated by reference in the form attached hereto as **Attachment D** to this Amendment.
3. **Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after the date of this Amendment.
4. **Legal Effect.** Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to the Agreement to be duly executed as of the date first written above.

SFMOMA:

Neal Benezra

Name: Neal Benezra
Title: Helen and Charles Schwab Director
San Francisco Museum of Modern Art

Contractor:

Kiernan Graves

Name: Kiernan Graves
Title: Owner
Site and Studio Conservation, LLC

CCSF:

Name: Dr. Rajen Vurdien
Title: Chancellor
City College of San Francisco

IN WITNESS WHEREOF, the parties hereto have caused this Second Amendment to the Agreement to be duly executed as of the date first written above.

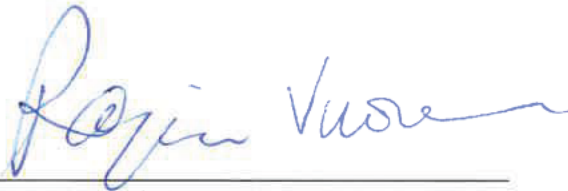
SFMOMA:

Name: Neal Benezra
Title: Helen and Charles Schwab Director
San Francisco Museum of Modern Art

Contractor:

Name: Kiernan Graves
Title: Owner
Site and Studio Conservation, LLC

CCSF:



Name: Dr. Rajen Vurdien
Title: Chancellor
City College of San Francisco

[Attachment A]**Exhibit A-1 to the Agreement**

(Scope of Work #2 – Conservation Phase III)

The Consultant will:

1. **Visually monitor:**
 - a. the construction and/or deconstruction work to take place at CCSF that has the potential to negatively impact the condition of the Mural, such as
 - i. the application of the furring strips in the ceiling of the lobby;
 - ii. construction of the north wing wall;
 - iii. deconstruction of the north wall; and
 - iv. drilling of the holes in the ceiling or exterior east wall;
 - b. the deinstallation of the Mural panels at CCSF;
 - c. the transportation of the Mural from CCSF to SFMOMA; and
 - d. the installation of the Mural at SFMOMA.
2. **Install protection** to prevent unwanted damage during the construction, deconstruction, deinstallation, transportation, and installation work that has the potential to impact the condition of the Mural (see above).
3. **Remove protection** from the Mural panels once safely installed at the museum. Protection materials are compositionally designed to be completely reversible. Oversee and/or perform the removal of the grout drips on the steel frame of the Mural panels.
4. **Prepare the mural panels for exhibition** using conservation grade materials that subscribe to the AIC Code of Ethics—prioritizing minimal intervention, preserving artist intention and reversibility—by
 - a. Performing any necessary repairs due to damage during deinstallation, transport and installation
 - b. Aesthetic reintegration
 - c. Clean surface
5. If additional conservation treatment is needed at any point after completion of #4 above (the Initial Treatment), perform the treatments and prepare and deliver a conservation treatment update after each subsequent treatment.
6. Condition checks for the full Mural at the following points (Prior to completion of the installation):
 - a. Immediately prior to the initiation of any work on the Mural by any party (including protection and preparation);
 - b. before and after each panel has been (i) removed, (ii) transported, and (iii) installed at SFMOMA; and
 - c. any other checks as required by SFMOMA and/or City College.
7. Prepare a final report. A final report with all of the conservation-related information compiled will be delivered 10 weeks after the final installation of the panels and will include the two month condition assessment results.
8. Conduct Mural condition assessment training for SFMOMA conservation staff.

9. Perform a two-month condition check after completion of installation at SFMOMA, including updated graphic documentation and report.
10. Perform a one-year condition check after completion of installation at SFMOMA, including updated graphic documentation and report.
11. Perform maintenance during two-month and one-year condition checks as necessary.
12. Attend required administrative meetings and other functions as requested by SFMOMA.

For greater clarity, the Parties agree that any additional conservation or preparation work required after return of the Artwork to CCSF and for installation at CCSF is outside of the scope of this Agreement and will be covered under a separate agreement as needed.

Key Project Personnel Present During Scope of Work #2 (Conservation Phase III)

Site and Studio:

Kiernan Graves, Lead Conservator, Site & Studio

Anne Rosenthal, Conservator 1

Atthowe:

Scott Atthowe

Bryan Cain

Alexander Jackson

CCSF:

Leslie Milloy, Chief of Staff, Office of the Chancellor

Alberto Vasquez, Interim Associate Vice Chancellor, Facilities and Capital Construction

SFMOMA:

Michelle Barger, Head of Conservation

Tina Garfinkel, Head of Registration

Brandon Larson, Installation Manager

Paco Link, Rivera Project Coordinator

Jessica Woznak, Co-Director of Exhibitions

Olga Charyshyn, Head Preparator

Others:

Alejandro Ramirez Reivich, Director of Centro de Ingenieria Avanzada (CIA), UNAM

[Attachment B]**Exhibit B-1 to the Agreement****Deliverables and Payment Schedule (Scope of Work #2 – Conservation Phase III)**

SFMOMA shall pay to Contractor as follows for performing the Services:

Milestones or Deliverables	Estimated Date of Completion	Payment	Contingency (Up to)
Execution of this Amendment	December 4, 2020	\$45,000	n/a
Upon completion of protection of all Mural Panels (Item #2 in SOW #2)	February 15, 2020	\$100,000	\$23,000
Upon completion of all Mural Panels installed at SFMOMA (Item #3 in SOW #2)	May 15, 2021	\$58,250	\$11,650
Upon completion of conservation treatment on all Mural Panels and delivery of final treatment report (Items #4-7 in SOW #2)	June 30, 2021	\$94,300	\$23,400
Upon completion of all tasks (Items #1-12 SOW #2)	June 30, 2022	\$48,700	n/a
	Total	\$346,250	\$58,050
	Grand Total	\$404,300	

Contingency payments may only be payable to the Contractor to the extent needed for additional time and materials required due to specific delays in the project timeline out of Contractor's or its subcontractors' direct control and as approved by SFMOMA in writing (i.e., email) in each event.

SFMOMA will pay the Contractor, within 30 days and upon receipt of a detailed and itemized invoice in a form and substance acceptable to SFMOMA, after the completion of the scope of work (as detailed in Exhibit A-1). Absent written notice of a good faith dispute, given in accordance with paragraph 13 of the Agreement, as amended, regarding any invoice submitted by Contractor, any invoice not paid within forty-five (45) days of receipt of such invoice by SFMOMA (the "Late Payment Date") shall accrue interest, which SFMOMA hereby agrees to pay Contractor, on a daily basis at a rate equal to two (2) percent above the then-applicable reference rate of CitiBank, N.A. San Francisco, California (or the maximum amount permitted by law, if less), on outstanding amounts from the Late Payment Date until paid. Contractor will be responsible for paying all subcontractors directly unless otherwise expressly indicated.

In no event shall Services performed under Exhibit A-1 to this Agreement exceed more than the total sum of \$404,300.00 and the total for all Services performed under all SOWs under this Agreement exceed \$572,462.00 in the aggregate, not including any applicable late payment fees incurred by SFMOMA in accordance with the terms set forth above, absent prior written approval by SFMOMA's Chief Financial Officer or his or her designee.

[Attachment C]

Exhibit D to the Agreement

(Pre-Approved Subcontractors)

1. Anne Rosenthal
2. Alina Remba
3. Ria German-Carter
4. Alejandro Reyes Vizzuett
5. Evelyn Bird
6. Jessica Moreno

[Attachment D]

Exhibit E to the Agreement

(Rivera Worksite Release and Waiver of Liability)

Important: Each Participant must have a signed "Release and Waiver of Liability" on file and shall provide a copy of each signed form to SFMOMA. Please complete this form prior to entering the Project site(s) or the commencement of any Project work.

Please print all information in blanks provided.

PLEASE READ CAREFULLY! THIS IS A LEGAL DOCUMENT!

DIEGO RIVERA MURAL PROJECT

Background:

City College of San Francisco ("CCSF") has agreed to loan its Diego Rivera "Pan American Unity Mural" (the "Artwork") to the San Francisco Museum of Modern Art ("SFMOMA") for exhibition at SFMOMA beginning Spring 2021. Atthowe Transportation Company, Inc., dba Atthowe Fine Arts Services ("Atthowe"), Site and Studio Conservation, LLC ("Site and Studio"), SFMOMA, and CCSF have entered into agreements to investigate how to safely deinstall the Artwork at CCSF, assess the Artwork's condition, and provide appropriate and necessary conservation services to ensure the safe removal of the Artwork and its subsequent move to SFMOMA (hereafter the "Project").

To access all areas on and around the Artwork, which is 72' by 22', including the exterior walls of the building in which the Artwork is attached, Atthowe, a licensed contractor, has erected and/or provided scaffolding, electronic lifts, ladders, and other related equipment or heavy machinery (collectively, "Equipment") at the Project site(s). Site and Studio will provide some tools and materials of the trade for conservation purposes.

For the purpose of this Release and Waiver of Liability, "Participants" are all persons who will be working at the Project site, including but not limited to, employees of Atthowe, Site and Studio, or any subcontractor of either party.

Nothing in this Waiver and Release of Liability limits or modifies Atthowe's, Site and Studio's and any of their subcontractors' responsibility to provide the required insurance coverage, including Worker's Compensation coverage for their employees, under their respective agreements with SFMOMA (and CCSF, if applicable), or if a subcontractor, with Atthowe or Site and Studio.

RIVERA WORKSITE RELEASE AND WAIVER OF LIABILITY

This Release and Waiver of Liability (the "Release") is executed on this ____ day of _____, 20__ by _____ (the "Participant") in favor of Atthowe Transportation Company, Inc. dba Atthowe Fine Arts Services, ("Atthowe"), Site and Studio Conservation, LLC, City College of San Francisco ("CCSF"), and the San Francisco Museum of Modern Art ("SFMOMA"), and each of their respective officers, directors, employees, and agents.

I, the Participant, desire to access the Project sites and work on the Project on a short-term basis and/or engage in any activities related to the Project. I understand that the activities may include, but are not limited to, my use of the Equipment in the process of, or in facilitation or observation of, installing, examining, conserving, maintaining, or removing the Artwork from the building to which it is attached and its subsequent installation at SFMOMA. I acknowledge that Atthowe has provided the Equipment for the purpose of fulfilling the terms of its agreement with SFMOMA and CCSF; and that I cannot carry out my duties on the Project without using the Equipment or otherwise being in presence of the Equipment. SFMOMA and CCSF have allowed me access to the Project sites, and Atthowe has agreed, if applicable to my work, to allow me to access/use the Equipment for my work on the Project on condition that I agree to waive and release any claim I might have, now or in the future, against the Parties arising out of (i) the use of any Equipment for the Project or (ii) my presence at any Project site while work is underway.

- 1. **Waiver and Release.** To the fullest extent permitted by applicable law, I, the Participant, hereby knowingly and willingly, for myself, my heirs, personal representatives and assigns, fully release and forever discharge and hold harmless the Parties and their respective successors and assigns from any and all liability, claims and demands of whatever kind or nature, either in law or in equity, which arise or may hereafter arise from my activities related to the Project, including but not limited to the observation, installation, examination, conservation, maintenance, or removal of the Artwork. I understand and acknowledge that this Release discharges the Parties from any liability or claim that I, the Participant, may have against the Parties with respect to any bodily injury, illness, death, property damage, loss, invasion of privacy, right of publicity, defamation, or any other causes of action that may result directly or indirectly from my travel, participation, and activities in connection with the Project or around the Project sites and which does not arise from such released Party's own gross negligence or willful misconduct. **Nothing in this Release limits, modifies, or is intended to change any Party's (or their subcontractor's) obligations owed under law to its employees or in any way change the employer-employee relationship, including but not limited to the employer's responsibility to provide required insurance coverage Worker's Compensation coverage for its employees (including for the Participant, if applicable).**
- 2. **Insurance and Medical Treatment.** I, the Participant, understand that, except as otherwise agreed to by the Parties in writing, the Parties do not carry or maintain health, medical, or disability insurance coverage for any Participant who is not an employee of one of the Parties. This will confirm that the Parties do not assume any responsibility for or obligation to provide financial assistance or other assistance, including, but not limited to, medical, health, or disability insurance, in the event of injury, illness, death or property damage. To the extent applicable, nothing in this Release shall limit my, or my company's indemnification or insurance obligations under any existing agreements with the Parties. I hereby release and forever discharge the Parties from any claim, liability, cost, or expense whatsoever which arises or may hereafter arise on account of any health care or medical services rendered to me before, during, or after the completion of this Project, including, but not limited to, first-aid or emergency treatment.
- 3. **COVID-19 Protocols.** I, the Participant, agree to comply with all required health and safety protocols at the Project sites at all times while on premises.
- 4. **Assumption of the Risk.** I understand that my participation with the Project may involve activities that could be hazardous to me. I understand that specific risks vary from one activity to another, and that the risks may include, but are not limited to, the use of scaffolding and any other related equipment. Therefore, I recognize and understand that my participation in the Project may, in some situations, involve inherently dangerous activities. I hereby expressly and specifically assume the risk of illness, injury or harm in participation of this Project, and I hereby release the Parties from all liability for injury, death, or property damage resulting from my participation in the Project, which does not arise from such released Party's own gross negligence or willful misconduct.
- 5. **Film/Photograph Release.** I understand that certain portions of the Project may be documented and that my appearance in any media is optional. I hereby give the Parties, including any professional photographers/videographers present on the Project sites, permission to use my name, likeness, image, or voice and to photograph, film, or record my activities and participation in the Project. I also give the Parties my permission to use, reproduce, license, and publicly display my activities, in any and all media (including online and on third party social media sites), in its discretion, for any purpose, including but not limited to, any educational, archival, marketing, or promotional purposes. I waive any rights to approve the photographs, films or recordings of my activities and understand that I will not be compensated for such appearance.
- 6. **Other.** I expressly agree that this Release is intended to be as broad and inclusive as permitted by the laws of the State of California in the United States of America, and that this Release shall be governed by and interpreted in accordance with the laws of the State of California. I agree that in the event that any clause or provision of this Release shall be held to be invalid by any court of competent jurisdiction, the invalidity of such clause or provision of this Release shall not otherwise affect the remaining provision of this Release which shall continue to be enforceable.

I have fully read and understood this Release, am over 18 years old, and hereby freely and voluntarily, without duress, execute this Release:

PARTICIPANT:

Signature: _____

Email: _____

Print Name: _____

Date: _____

WITNESS:

Signature: _____

Print Name: _____

CONTRACT - S&S - CCSF - SFMOMA (Rivera) 2nd Amendment to Vendor Agreement (FINAL FOR SIGNATURES 12-4-20)

Final Audit Report

2020-12-10

Created:	2020-12-10
By:	Mei Li (mli@SFMOMA.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAD6Uqlhnpya7KWrfUFWXZzw9anCAponcoc

"CONTRACT - S&S - CCSF - SFMOMA (Rivera) 2nd Amendment to Vendor Agreement (FINAL FOR SIGNATURES 12-4-20)" History









-  Document created by Mei Li (mli@SFMOMA.org)
2020-12-10 - 8:22:52 PM GMT- IP address: 174.53.179.146
-  Document emailed to Neal Benezra (nbenezra@sfmoma.org) for signature
2020-12-10 - 8:24:16 PM GMT
-  Document emailed to Kiernan Graves (kiernan@siteandstudio.com) for signature
2020-12-10 - 8:24:16 PM GMT
-  Email viewed by Kiernan Graves (kiernan@siteandstudio.com)
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-  Email viewed by Neal Benezra (nbenezra@sfmoma.org)
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-  Document e-signed by Neal Benezra (nbenezra@sfmoma.org)
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-  Document e-signed by Kiernan Graves (kiernan@siteandstudio.com)
Signature Date: 2020-12-10 - 8:36:38 PM GMT - Time Source: server- IP address: 107.185.62.254
-  Agreement completed.
2020-12-10 - 8:36:38 PM GMT

EXHIBIT 4

From: Leslie Simon <lsimon@ccsf.edu>
Sent: Thursday, December 16, 2021 1:55 PM
To: Neal Benezra <nbenezra@SFMOMA.org>
Cc: David Martin <dmartin@ccsf.edu>; John Rizzo <jrizzo@ccsf.edu>
Subject: A message on behalf of City College Chancellor David Martin and Trustee John Rizzo

You don't often get email from lsimon@ccsf.edu. [Learn why this is important](#)

Dear Director Benezra,

As a long-time faculty member at City College of San Francisco, whose most recent assignment included the college's "Introduction to Museum Studies" course, I was thrilled to experience the stunning restoration and installation of Diego Rivera's Pan American Unity Mural at SFMOMA. Thank you.

The college is currently making plans for the construction of its new Performing Arts and Education Center/Diego Rivera Theater (PAEC/DRT), at the Ocean Campus on Frida Kahlo Way, where the mural will return after its loan to SFMOMA. But we are concerned that the building will not be ready to receive the mural at the currently planned end of its exhibition at SFMOMA in September 2023.

Chancellor Martin and Trustee Rizzo would like to engage you in a conversation about the possibility of extending the mural's stay at SFMOMA. I have offered to assist them in setting up this conversation.

Please write back to me at your earliest convenience, or call me at 415-377-5330, the number I left on your voicemail this afternoon, to let me know if this conversation, and consideration, is possible.

Thank you again for taking such good care of City College's most prized art object.

Sincerely,
Leslie Simon
Cell: 415-377-5330

Leslie Simon
Pronouns: *she/her/hers*
Interdisciplinary Studies
City College of San Francisco
50 Frida Kahlo Way, SF 94112
Mailbox: Mission
Office: Mission 264
Voice: 415-920-6023
[Groundswell](#)
[Frida Kahlo Way](#)
[The Divine Comic](#)
lesliesimonwriter.com

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