



**San Leandro Improvement Association  
PUBLIC ART CONTRACT  
“Girl Blowing Planets Project”**

THIS CONTRACT is by and between the San Leandro Improvement Association, San Leandro, CA. (“SLIA”), a public-benefit corporation whose address is 384 W. Estudillo Ave. 94577, and Andrew Johnstone, founder of the Big Picture Program. The location of the property in which the “Girl Blowing Planets” will be placed, is at the northwestern parcel of the intersection of E. 14<sup>th</sup> Street and Juana Avenue, along the E. 14<sup>th</sup> or East side of the white brick building (parcel # 75-545-22-1). The owner of this property is Jackie Montero Flynn.

**WHEREAS**, the SLIA District Identity and Streetscape Improvement Committee (“DISI”) has selected a work by the Artist to be installed and displayed (the “Project”) in accordance with the terms of this Contract, as detailed in Appendix A.

**WHEREAS**, the Artist is willing to complete the Project based on the following terms and conditions.

**NOW, THEREFORE**, it is agreed by and between the Parties as follows:

1. This Contract is comprised of this the following:
  - a. Public Art Contract, and
  - b. Appendix A.

All provisions of Appendix A are material terms of this contract and are incorporated herein.

2. Artist agrees to design, fabricate, deliver, and install the Project as set forth in the SCOPE OF WORK and SCHEDULE, as set forth in Appendix A.
3. No significant changes in the scope, design, color, size, material, or texture of the Project not in substantial conformity with the Proposal, and as set forth in Appendix A, may be made without the prior written approval of the San Leandro Improvement Assoc.
4. The SLIA agrees to pay the Artist as set forth in the PAYMENT section of Appendix A.

5. The Project will be completed and installed on the Installation Date. The Installation Date is set forth in SCHEDULE on Appendix A. The Installation Date may be extended in the event of a delay by the SLIA, or due to delays caused by events beyond the control of the Artist, with prior approval in writing by the SLIA District Manager.
6. Risk of damage or loss to the Project shall remain with the Artist until Final Acceptance of the Project by the SLIA.
7. The SLIA will inspect the Project within 10 days of installation to ensure the Project conforms to the terms of the Contract. Following inspection, the SLIA shall either (1) issue written notice to the Artist indicating that the Project is not complete, or (2) on the condition that the Project fully conforms to the terms of Contract documents, accept the Project ("Final Acceptance").
8. At the time of Final Payment, all rights, interests and title, including but not limited to the Intellectual property rights, in and to the Project shall automatically transfer to the SLIA except as provided herein. Artist shall retain copyright in the content identified in the Scope of Work except that Artist, in recognition that the SLIA is entering into this contract with the intent and purpose of publicly displaying the content identified in the Scope of Work, irrevocably grants the SLIA the right to publicly display the work. Artist shall further retain all rights pursuant to U.S.C.A. §106A subject to any additional limitations set forth in the Appendix. However, Artist unconditionally and irrevocably grants SLIA the following rights:
  - a. In all materials produced by the SLIA, or its assigns, including but not limited to advertising brochures, digital or social media, and catalogs or other similar publications, the SLIA or its assigns may make, publish and distribute two-dimensional reproductions of the Project at the sole discretion of the SLIA subject to the Attribution as provided herein.
  - b. Attribution. The San Leandro Improvement Association, will use its best efforts to attribute, consistent with the foregoing paragraph, credit to the Artist in the following form: Artist name, year created, and associated organizations.
9. The Artist guarantees the Project shall be free from defects in materials and workmanship, and warrants the Project, for a period of two (2) years after installation and Final Acceptance of the Project. During such periods of time, Artist will replace any defective parts or rework any defective craftsmanship in a timely fashion at no cost to the SLIA.
10. The Artist shall not be responsible or held liable for any damage to the Project, its surface or environment by SLIA personnel, visitors or others that are beyond the control of the Artist.
11. The Project shall be designed to be relatively maintenance free, however, the SLIA or its assigns, assumes responsibility for all repair and maintenance, including periodic cleaning as necessary to remove the buildup of dust, dirt and grime, in order that the Project does

not become an eyesore to its environment or a detriment to the good reputation of the Artist.

12. The Artist shall provide maintenance recommendations to the SLIA in writing no later than the time of Final Acceptance.
13. The Artist is responsible for all costs for delivery, materials, and workmanship for the delivered finished Project.
14. The Artist shall maintain insurance as follows:
  - a. The Artist shall not begin any work on the Project until the Artist proves to the SLIA that the Artist has obtained, at his/her own expense, all required insurance, as described in subparagraph "b" below. The insurance must have the approval of the SLIA as to coverage limits and form. All policies must be of the occurrence form, unless approved by the SLIA's District Manager. Deviation from this requirement obligates the Artist to submit complete copies of proposed claims made policy endorsements with the certificate of insurance.
  - b. The Artist shall obtain and maintain for the full period of the contract Commercial General Liability Insurance including property damage, personal injury contractual liability, currently at \$2,000,000.00. The policy shall name the San Leandro Improvement Association, its Directors, officers and staff, as the sole beneficiary.
  - c. As evidence of the insurance coverage required by this Contract, prior to the effective date of this Contract, Artist shall furnish a certificate of insurance to:

San Leandro Improvement Association  
384 W. Estudillo Ave.  
San Leandro, CA. 94577
  - d. The Certificate will name the SLIA as an Additional Insured and must require thirty (30) days' notice to the Additional Insured before non-renewal or cancellation. Insurance coverage required under this Contract shall be obtained from insurance companies authorized to do business in the State of California.
  - e. Nothing contained in these insurance requirements is to be construed as limiting the extent of the Artist's responsibility for payment of damages resulting from Artist's operation under this Contract.
15. The Artist shall perform all work under this contract as an independent contractor and not as an agent or employee of the SLIA. The Artist shall not be supervised by any employee or official of the SLIA nor shall the Artist exercise supervision over any employee or official of the SLIA. The Artist shall not represent she/he is an employee or agent of the SLIA in any capacity. **The Artist is not entitled to SLIA worker's compensation benefits and is obligated to pay state and federal income tax on**

**money earned pursuant to this Contract.** This Contract is not exclusive; the Artist may contract with other parties.

16. The administrator for this contract shall be the District Manager for the San Leandro Improvement Association, California.
17. The Artist shall obey all federal, state, and local laws and regulations applicable to the performance of the Artist's services under this Contract.
18. No alteration, change, amendments, or modification of the terms of this Contract shall be valid unless made in writing and signed by both parties and approved by appropriate action of the SLIA.
19. The Artist shall not assign this contract without the prior written consent of the SLIA. The Artist is in a unique position and cannot be replaced. As such the Artist cannot be substituted or replaced.
20. This Contract, regardless of where executed or performed, shall be governed by and construed per the laws of California the Parties consent to the jurisdiction of the state of California. Any action concerning this Contract, including the enforcement or interpretation thereof, shall be brought in Alameda County, California. No legal action brought concerning this Contract may be brought in or removed to a federal court. In any action to enforce or interpret this Contract, including declaratory judgment actions, the prevailing Party shall be entitled to reasonable attorney's fees.
21. None of the terms or conditions in this Contract shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the SLIA or the Artist receiving services or benefits under this Contract shall be only an incidental beneficiary.
22. The provisions of the Contract shall be construed as to their fair meaning, and not for or against any party based upon any attributes to such party of the source of the language in question.
23. No representations, agreements, covenant, warranties, or certifications, expressed or implied, exist as between the parties, except as specifically set forth in the Contract.
24. All notices, requests, demands, and other communications which are required or permitted to be given under this Contract shall be in writing and shall be duly given upon delivery, if delivered personally or sent by certified mail, return receipt requested, postage prepaid, to those persons identified in REPRESENTATIVES FOR NOTICE PROVISIONS as set forth in Appendix A.
23. No waiver of any breach or default under the Contract is a waiver of any other or subsequent breach or default.
24. Should the Project not be completed, installed and accepted by the SLIA in accordance with this Agreement, then the SLIA, in addition to any other remedies to which it is entitled, after ten (10) calendar days' notice, shall be entitled to a refund of sums paid to

the Artist by the SLIA, on a percentage basis, relative to the amount of work delivered. The SLIA may secure another contractor to complete the artwork. In such an instance, the Artist shall forfeit all rights retained pursuant to 17 U.S.C.A. §101, *et seq.*, and any other rights retained as specified within this Contract. If the Artist promptly refunds all sums paid by the SLIA, the Artist shall be under no further obligations under this Contract. If the Artist fails to promptly refund sums paid, the SLIA shall be entitled to all costs and attorney's fees for any action taken to recover such refund

25. Time is of the essence. In the event delivery is delayed where solely the cause of the Artist, Artist will be responsible for all reasonable costs to install the Project, which may include but not be limited to truck rental, traffic control and other costs deemed necessary by the SLIA to assist the Artist.

## **26. COMPLIANCE WITH C.R.S. § 8-17.5-101**

- a. By signing this Agreement, the ARTIST certifies that at the time of the Certification, it does not knowingly employ or contract with any illegal alien who will perform work under this contract.
- b. By signing this Agreement, the ARTIST certifies that it shall not knowingly employ or contract with any illegal aliens to perform work under this contract; nor enter into a contract with any sub-contractor that knowingly employs or contracts with an illegal alien to perform work under this contract.
- c. The ARTIST is prohibited from using the E-Verify program or the Department of Labor and Employment Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
- d. By signing this agreement the ARTIST affirmatively acknowledges that if the contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:
  - i. notify the subcontractor and the contracting state agency or political subdivision within three days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
  - ii. terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to sub-subparagraph (i) of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- e. The Artist shall comply with all reasonable requests made in the course of an investigation by the California Department of Labor and Employment. If the ARTIST fails to comply with any requirement of this provision or

f. If Artist violates any provision of this Contract pertaining to the duties imposed by Subsection 8-17.5-102, C.R.S. the SLIA may terminate this Contract. If this Contract is so terminated, Artist shall be liable for actual and consequential damages to the SLIA arising out of Contractor's violation of Subsection 8-17.5102, C.R.S.

g. By signing this Agreement, the Artist certifies that it shall in all respects comply with the provisions of C.R.S. § 8-17.5-101, *et seq.*

29. This Contract shall be binding upon, and shall inure to the benefit of the parties hereto, their successors and assigns.

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Gordon Galvan  
President

THE SAN LEANDRO IMPROVEMENT ASSOCIATION, CALIFORNIA

## APPENDIX A

**SCOPE OF WORK:** The Scope of Work shall include:

Project description: The SLIA is commissioning Andrew Johnstone, muralist and founder of Big Picture Arts, to design and produce a mural intended to be placed on a visible property in Downtown San Leandro. Artist has agreed to arrange to have San Leandro High School students contribute to the creation of the mural at a capacity measured at his discretion. (See attached sample and size of art piece including colors)

Obligations of Artist: Design, produce, transport, and install mural on agreed upon site in Downtown San Leandro.

Obligations of SLIA: Negotiate installation logistics with property owner; payment to artist for services rendered.

### **PAYMENT**

SLIA shall make payment to Artist in accordance with the following schedule and subject to the following conditions:

1. The total payments to Artist by SLIA shall not exceed: \$3,000.00
2. SLIA shall make a total of two payments to Artist.
3. The first payment will be made to Artist upon execution of the Contract in the amount of \$2,000.00.
4. The final payment of \$1,000.00 will be made to the Artist upon completion and installation of the Project.

### **SCHEDULE**

The Installation Date shall be Spring [Q2] of 2017, unless otherwise modified consistent with the Contract documents. Artist acknowledges that this date is subject to change as the project is contingent on property owner approval of installation logistics.

### **REPRESENTATIVES FOR NOTICE PROVISIONS**

For the San Leandro Improvement Association:      For the Artist:

District Manager  
Dominic Li Mandri

Founder/CEO, Big Picture Arts  
Andrew Johnstone

ADDITIONAL TERMS AND CONDITIONS

1. Full size reproductions, multiples, restrikes or facsimiles of the Project shall not be created, or caused to be created, in any form by the SLIA or the Artist.