

APPROVED AS TO FORM AND LEGALITY

  
CITY ATTORNEY'S OFFICE

## OAKLAND CITY COUNCIL

RESOLUTION NO. \_\_\_\_\_ C.M.S.

INTRODUCED BY COUNCILMEMBER FIFE

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**RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO 1) SUBMIT AN APPLICATION AND ENTER INTO AN AGREEMENT WITH THE STATE OF CALIFORNIA DEPARTMENT OF TRANSPORTATION FOR THE SPONSORSHIP AND MAINTENANCE OF THE “OAKLAND SUPER HEROES MURAL NO. 5,” PROJECT FOR MARKET STREET UNDER INTERSTATE 580 - WEST WALL, AS PROPOSED BY ATTITUDINAL HEALING CONNECTION; AND 2) ENTER INTO AN AGREEMENT WITH ATTITUDINAL HEALING CONNECTION FOR INSTALLATION OF THE MURAL PROJECT AND ONGOING MAINTENANCE**

**WHEREAS**, the Oakland-based nonprofit organization Attitudinal Healing Connection (doing business as The Center for ArtEsteem) has sponsored a large-scale mural revitalization program, completing four projects to-date, to realize a series of five murals at various locations below the Interstate 580 freeway in West Oakland, collectively called the Oakland Super Heroes Mural Project; and

**WHEREAS**, the City Council originally authorized the proposal by ArtEsteem for a series of murals under Interstate 580 between West Street and San Pablo Avenue, per Oakland Redevelopment Agency Resolution No. 2011-0047 C.M.S. on June 7, 2011; and

**WHEREAS**, ArtEsteem’s “Oakland Super Heroes Mural No. 5” is planned for the western abutment wall of Market Street, and is designed by local youth from the 2019-20 and 2020-21 cohorts of ArtEsteem’s Oakland Legacy Project after-school program, working with creative originator Amana Harris, art director David Burke and Lead Artist Pancho Pescador; and

**WHEREAS**, the City of Oakland Public Art Advisory Committee at its meeting of March 1, 2021 reviewed the design and has recommended that the City Council accept the proposal by ArtEsteem for the “Oakland Super Heroes Mural No. 5” on the western abutment wall on Market Street below the Interstate 580 freeway; and

**WHEREAS**, ArtEsteem has agreed to maintain the mural after its completion for a period to be determined within the scope of the Caltrans agreement; and

**WHEREAS**, the State of California Department of Transportation (“Caltrans” or “State”) requires that the City of Oakland sponsor, and take responsibility for, all artwork authorized by Caltrans for placement on Caltrans property within the Oakland city limits through a Transportation Art Maintenance Agreement; and

**WHEREAS**, as a condition to approving the installation of artwork on Caltrans facilities, Caltrans requires a resolution from the City Council in support of the project and an agreement with the City of Oakland stating that the City will assume responsibility for maintenance and upkeep of artwork on Caltrans facilities within the Oakland city limits at City’s expense; and

**WHEREAS**, section 504(1) of the City Charter authorizes the City Administrator to enter into intergovernmental agreements subject to City Council approval; and

**WHEREAS**, the proposed agreement with Caltrans requires that the City maintain the artwork including, but not limited to: routine inspections of the artwork; maintenance, repair, and cleaning of the artwork, as well as the restoration of damaged artwork; graffiti removal; and the removal of dirt, debris, vegetation growth, and weeds surrounding or obscuring the artwork, for the proposed lifespan of the artwork; and

**WHEREAS**, Caltrans requires that all work by or on behalf of the City will be done at no cost to State; and

**WHEREAS**, Caltrans requires that the City and ArtEsteem apply for and obtain encroachment permits as may be required by law to perform the obligations under the agreement, at no cost to the City; and

**WHEREAS**, the proposed agreement with Caltrans requires that the City shall remove artwork whenever, in the opinion of State, it creates a maintenance or operational concern, and states that in the event the City fails to remove artwork in a timely manner, the State may remove artwork and will bill the City for all costs of its removal and for the restoration of State owned areas to their original condition; and

**WHEREAS**, the State requires that any artists, or any party the City contracts with for the artwork, enter into an agreement to convey to the State a) a waiver of any and all rights in the artwork under 17 U.S.C. section 106A and related laws, b) physical ownership of and right to possess the artwork, and c) a nonexclusive license to reproduce and use the artwork for non-commercial purposes; and

**WHEREAS**, it is the City’s practice that gifts of art and community-initiated artwork projects may be accepted only on the terms that the artwork sponsor or donor make provision for ongoing maintenance of the artwork, which entails entering into agreements with artists and organizations establishing the artist/donor’s agreement and responsibility to provide maintenance and upkeep; and

**WHEREAS**, the City proposes to enter into an Agreement with Attitudinal Healing Connection requiring the organization to assume all maintenance responsibilities specific to the artwork as stipulated by the State, and comply with all City and State permit requirements for the installation of the mural; now, therefore, be it

**RESOLVED:** That the City Administrator is hereby authorized to submit an artwork proposal, and enter into an Agreement with Caltrans for the sponsorship and maintenance of the mural referred to as “Oakland Super Heroes Mural No. 5,” by Attitudinal Healing Connection, for the western abutment wall of Interstate 580 at Market Street, between 35th and 36th Streets, at Post Mile 45.567; and be it

**FURTHER RESOLVED:** That the City Administrator or designee is hereby authorized to enter into an agreement with Attitudinal Healing Connection to install the mural at the location and require Attitudinal Healing Connection to assume all maintenance responsibilities specific to the artwork; and be it

**FURTHER RESOLVED:** That the City Administrator is authorized to conduct all negotiations, execute and submit all documents, including but not limited to applications, permits, agreements, amendments, modifications, and related actions which may be necessary for the above-referenced agreements and the Oakland Super Heroes Mural No. 5; and be it

**FURTHER RESOLVED:** That said agreements shall be reviewed as to form and legality by the Office of the City Attorney and copies will be filed in the Office of the City Clerk.

IN COUNCIL, OAKLAND, CALIFORNIA,

PASSED BY THE FOLLOWING VOTE:

AYES - FIFE, GALLO, JENKINS, KALB, KAPLAN, RAMACHANDRAN, REID, AND  
PRESIDENT FORTUNATO BAS

NOES –

ABSENT –

ABSTENTION –

3341654v3/MJM

ATTEST: \_\_\_\_\_  
ASHA REED  
City Clerk and Clerk of the Council of the  
City of Oakland, California