

**City and County of San Francisco
Arts Commission
401 Van Ness Avenue, Suite 325
San Francisco, California 94102**

**Third Amendment to Agreement between the
City and County of San Francisco and Tomie Arai**

This Third Amendment to the Agreement (this “Amendment”), dated for convenience as January 19, 2021, in San Francisco, California, by and between Tomie Arai (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency (“SFMTA”) and its Arts Commission (“Commission”), for the purposes and on the terms and conditions set forth below.

RECITALS

WHEREAS, City and Contractor have entered into the Agreement (as defined below); and

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth;

NOW, THEREFORE, Contractor and the City agree as follows:

SUMMARY OF THIRD AMENDMENT

As more particularly described below, this Amendment modifies the Agreement to extend the term two additional years. The term extension is necessary because the construction of the Central Subway Project is delayed, and the Project will require Contractor’s services through and for a short period following the completion of construction.

In addition, this Amendment also adds contract requirements mandated by federal procurement laws.

THIRD AMENDMENT OF AGREEMENT

The Agreement is modified as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term “Agreement” shall mean the Agreement dated **June 1, 2011** between Contractor and City, and the First Amendment, Second Amendment and this Third Amendment to the Agreement.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights

Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division (“CMD”). Wherever “Human Rights Commission” or “HRC” appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean “Contract Monitoring Division” or “CMD” respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modification to the Agreement. The Agreement is hereby modified as follows:

2a. Section 2. Term of the Agreement

The Term of the Agreement is extended to **December 31, 2021**.

Section 2 is hereby deleted and replaced in its entirety to read as follows:

2. Term of Agreement

The term of this Agreement shall be from March 1, 2011 to December 31, 2021, unless extended by subsequent contract modification pursuant to the contract modification requirements in this Agreement.

3. Effective Date. This Amendment shall be effective when fully executed (that is, signed by all parties); each of the modifications set forth in Section 2 shall be effective as of December 31, 2020, without interruption or suspension from that date to the date the parties execute 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.

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IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

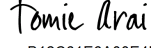
CITY

CONTRACTOR

Recommended by:

Tomie Arai

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Ralph Remington
Director of Cultural Affairs
San Francisco Arts Commission

Tomie Arai
245 West 107th Street, 12H
New York, NY 10025

Supplier Number: 0000009360

APPROVED:

SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY




Jeffrey Tumlin
Director of Transportation

Authorized By:

Municipal Transportation Agency Board of
Directors

Resolution No: 210504-063

Adopted: May 4, 2021

Attest: 

Secretary, Board of Directors

Approved as to Form:

Dennis J. Herrera
City Attorney
By:



Robert K. Stone
Deputy City Attorney

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SAN FRANCISCO
MUNICIPAL TRANSPORTATION AGENCY
BOARD OF DIRECTORS

RESOLUTION NO. 210504-063

WHEREAS, The SFMTA's Central Subway Project, which is Phase 2 of the Third Street Light Rail Project, is constructing a new subway line in San Francisco, which runs approximately 1.6 miles from 4th and Brannan Streets, north under Fourth Street to Stockton Street, and north under Stockton Street into Chinatown; and,

WHEREAS, In 2011, the San Francisco Arts Commission and the SFMTA awarded contracts to artists Catherine Wagner, Paramedia, White Light, Tomie Arai, and Yumei Hou to design and consult on the fabrication and installation of works of art to be displayed in the Central Subway stations (collectively the Artists' Contracts); and,

WHEREAS, Each of the Artists' Contracts have been amended several times to address various changes in stations designs and to extend the terms of the Artists' Contracts to conform to delays and schedule changes in the Project construction schedule; and,

WHEREAS, Due to staff error, the terms of the contracts with Paramedia and Catherine Wagner, respectively, were inadvertently previously extended beyond the ten-year limit requiring Board of Supervisors' approval under Charter 9.118(b), which these contract modifications will remedy; and,

WHEREAS, Due to staff error, the terms of contracts with Yumei Hou, White Light, and Tomie Arai, each inadvertently expired, which the parties did not intend, and by these approvals the SFMTA Board of Directors affirms said contracts continued in full force without interruption, and further approves of all actions, expenditures and payments that the SFMTA has made to date in furtherance of those contracts; and,

WHEREAS, Due to delay to the Central Subway Project construction, the terms of each of the Artists' Contracts must be further extended so that the artists will remain available to consult on the fabrication and the installation of their respective artworks in the Central Subway Stations; and,

WHEREAS, The San Francisco Civil Service Commission approved the Artists' Contracts under Civil Service Commission Notice of Action for Contract No. 4062-10/11, dated January 3, 2011; and,

WHEREAS, The SFMTA's Contract Compliance Office has previously determined that due to the proprietary nature of the Artists' Contracts, there are no subcontracting opportunities for Small Business Enterprises those contracts; and,

WHEREAS, The Central Subway Final Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report (Central Subway SEIS/SEIR) evaluated the environmental impacts of the Central Subway Project, including construction of the subway stations; on August 7, 2008, the San Francisco Planning Commission certified the Final SEIR (Case No. 1996.281E); on August 19, 2008, the SFMTA Board of Directors approved Resolution 08-150 adopting Central Subway Project Alternative 3B as the Locally Preferred Alternative, the California Environmental Quality Act (CEQA) Findings, Statement of Overriding Considerations, and the Mitigation Monitoring and Reporting Plan; and,

WHEREAS, The modification of the Artists' Contracts as described herein comes within the scope of the Central Subway SEIS/SEIR; and,

WHEREAS, The Central Subway SEIS/SEIR is on file with the SFMTA Board of Directors and may be found in the records of the Planning Department at <https://sfplanning.org/> and 49 South Van Ness Avenue, Suite 1400 in San Francisco, and is incorporated herein by reference; now therefore, be it

RESOLVED, That the SFMTA Board of Directors has reviewed and considered the Central Subway Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report and record as a whole, and finds that the Central Subway Supplemental Environmental Impact Statement/Supplemental Environmental Impact Report is adequate for the Board's use as the decision-making body for the actions taken herein relative to construction of the Project, and incorporates the California Environmental Quality Act findings by this reference as though set forth in this Resolution; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors retroactively approves Contract Modifications Nos. 3 and 4 and approves Contract Modification No. 5 to the Agreement between the City and the County of San Francisco and Catherine Wagner LLC to provide artwork for the Central Subway Project (Wagner Contract) to design and consult on the fabrication and installation of artwork to be displayed in the Central Subway, for a total contract amount not to exceed amount \$328,376, and to extend the term of that contract to December 31, 2021 to accord with modified Project construction deadlines; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors requests the Board of Supervisors to retroactively approve Contract Modifications Nos. 3 and 4 and approve Contract Modification No. 5 to the Wagner Contract to extend the term of that contract to December 31, 2021; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors retroactively approves Contract Modification No. 2 and approves Contract Modification No. 3 to the Agreement between the City and County of San Francisco and Paramedia, LLC to provide artwork for the Central Subway Project (Paramedia Contract) to design, fabricate and consult on the installation of artwork to be displayed in the Central Subway, to extend the term of that contract to December 31, 2021, to accord with modified Project construction deadlines, with no increase to the contract amount, and be it

FURTHER RESOLVED, That the SFMTA Board of Directors requests the Board of Supervisors to approve Contract Modification Nos. 2 and 3 to the Paramedia Contract to extend the term of that Contract to December 31, 2021; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors retroactively approves Contract Modification No. 4 to the Agreement between the City and the County of San Francisco and White Light Inc. and Werner Klotz Public Art Inc. to provide artwork for the Central Subway Project (White Light Contract), to design and consult on the fabrication and installation of artwork to be displayed in the Central Subway, to extend the term of that contract to December 31, 2021 to accord with modified Project construction deadlines, with no increase to the contract amount; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors requests the Board of Supervisors to approve Contract Modifications No. 4 to the White Light Contract to extend the term of that contract to December 31, 2021; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors approves Contract Modification No. 3 to the Agreement between the City and the County of San Francisco and Tomie Arai to provide artwork for the Central Subway Project (Arai Contract) to design and consult on the fabrication and installation of artwork to be displayed in the Central Subway, to extend the term of that contract to accord with modified Project construction deadlines, with no increase to the contract amount; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors requests the Board of Supervisors to approve Contract Modification No. 3 to the Arai Contract to the extend the term of that Contract to December 31, 2021; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors approves Contract Modification No. 2 to the Agreement between the City and County of San Francisco and Yumei Hou to provide artwork for the Central Subway Project (Hou Contract) to design and consult on the fabrication and installation of artwork to be displayed in the Central Subway, to extend the term of that contract to accord with modified Project construction deadlines, with no increase to the contract amount; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors requests the Board of Supervisors to approve Contract Modification No. 2 to the Hou Contract to the extend the term of that Contract to December 31, 2021; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors approves all actions and expenditures made by the SFMTA and the Arts Commission concerning the aforesaid contracts; and be it

FURTHER RESOLVED, That the SFMTA Board of Directors authorizes the Director of Transportation, in consultation with the City Attorney, to take such action as the Director deems necessary to effect the intent and purposes of this Resolution.

I certify that the foregoing resolution was adopted by the San Francisco Municipal Transportation Agency Board of Directors at its meeting of May 4, 2021.



Secretary to the Board of Directors
San Francisco Municipal Transportation Agency