

**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 White Light Inc. and Werner Klotz Public Art**

This **Third Amendment** to the Agreement (this “Amendment”), dated for convenience as **November 5, 2019**, in San Francisco, California, by and between White Light Inc. and Werner Klotz Public Art (“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 Third Amendment modifies the Agreement to extend the term one additional year. The term extension is necessary because the construction of the Central Subway Project is delayed, and the Project will require Contractor’s services through the completion of construction. This Amendment also modifies the agreement to allow for additional engineering services necessary for the Project.

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, as amended by the First Amendment to the Agreement, dated **April 30, 2016**, and amended by the Second Amendment to the Agreement dated **November 29, 2018**, 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 **June 29, 2020** due to extended date of installation of artwork, received from the SFMTA Contractor.

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

2. Term of Agreement

The initial term of this Agreement shall be from June 3, 2013 to June 29, 2020, unless extended by subsequent contract modification pursuant to the contract modification requirements in this Agreement. Notwithstanding the above, this Agreement may be extended by mutual written agreement of the parties for a period not to exceed two years beyond the initial term, provided that such extension does not create a contract with a total aggregate term of more than ten years.

2b. Section 5. Compensation of the Agreement

The Contract Amount is increased from **\$435,723.00** to an amount not to exceed **\$458,823.00** to compensate Contractor for Additional Work, as set out below. This increase is due to increase in Contractors fee for additional scope. None of the increase will be put towards direct costs.

Sections 5.a and 5.b are hereby deleted and replaced in their entirety to read as follows:

5. Compensation.

a. Total Amount.

(1) The Total Amount payable to Artist under this Agreement (the "Contract Sum") for all Work performed by Artist, shall not exceed **FOUR HUNDRED FIFTY EIGHT THOUSAND SIX HUNDRED TWENTY THREE DOLLARS (\$458,823.00)**, unless this Agreement is amended as provided herein. Payment of the full Contract Sum is not guaranteed; to receive the full Contract Sum the Artist shall fully perform all Work described in this Agreement in compliance with the standards of performance described herein. All compensation due to Artist for Work performed under this Agreement shall made in accordance with Appendices C and D, attached hereto.

(2) The Contract Sum is inclusive of the Artist's Fee and all Reimbursable Expenses, including but not limited to direct labor costs, other direct costs and indirect costs for all Work performed under this Agreement, subject only to authorized adjustments as specifically provided in this Agreement. In the event the Artist incurs costs in excess of the Contract Sum (as adjusted) that is not due to actions or directives of the City or the City's engineering consultants or contractors, the Artist shall pay such excess from the Artist's Fee or its own funds, and City shall not be required to pay any part of such excess, and the Artist shall have no claim against City on account thereof. Out of the total Contract Sum, Artist shall be responsible for paying all of Artist's costs and expenses associated with the Work, including Overhead, the costs of suppliers, subcontractors, fees, taxes, permits, insurance, transportation to and from meetings, and all other Reimbursable Expenses associated with the scope of the Work specified in this Agreement.

b. Reimbursable Expenses. In addition to the Artist's Fee, as set forth below, Artist shall be reimbursed up to **TWO HUNDRED SEVENTY THREE THOUSAND SIX HUNDRED TWENTY THREE DOLLARS (\$273,823.00)** for Reimbursable Expenses based on the submittal of original receipts or invoices. The breakdown of Reimbursable Expenses associated with this Agreement appears in Appendix C, attached hereto and incorporated by reference as though fully set forth herein. Artist shall be entitled to reimbursement only to the extent Artist has actually incurred such costs, and City shall retain all funds remaining or saved from the costs set out in Appendix C and in the Budget as required in Appendix B (Phase I – Design) and as approved by the Commission. Further, notwithstanding any other provision of this Agreement, the City will reimburse Artist for only those expenses that are allowed under the principles set out in the Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" and as specifically authorized therein and as allowed under the compensability standards set out in 48 C.F.R. parts 31.105, 31.2, 31.6 and the Cost Accounting Standards set out in 48 C.F.R. part 9904 et seq. Reimbursable Expenses are as follows:

- (1) Actual direct salaries paid by Artist and subconsultants as shown in Attachment C; Overhead of Artist and subconsultants as shown in Attachment C (Summary of Fees), and as described herein.
- (2) Actual costs or prices of approved Reimbursable Expenses for the Artist and subconsultants at any tier, net of any discounts, rebates, refunds, or other items of value received by Artist or any of its subconsultants that have the effect of reducing the cost or price actually incurred. Compensation for materials and expenses shall be at direct cost, without any mark-ups.
- (3) Artist shall not "mark-up" or request additional compensation for Work performed by subconsultants.
- (4) Costs for which Artist seeks compensation must be necessary in order to accomplish the Work, reasonable for the services performed, and approved by Commission in the Budget.

2c. Appendix B

In addition to the work set forth in Appendix B, the Artist shall also subcontract with a Structural Engineering firm to conduct a fatigue analysis of the secondary rod assembly, and redesign of the lower support brackets, and other necessary structural engineering

services.

2d. Appendix C.

Appendix C is modified to compensate Artist for additional structural engineering added to the Agreement with this Third Amendment to Agreement, for a total contract amount not to exceed \$458,723.00 as set out below.

Appendix C is hereby deleted and replaced in its entirety with the following:

Central Subway Artist Budget Modification	Appendix C - Contract		
Contractor White Light Inc. and Werner Klotz Public Art Inc.			
	Artist Fee	Reimbursable Expenses	Total
Design Phase (Phase 1a Conceptual Design, 1b Design Development & 1c Final Design)			
ARTIST FEE			
Phase 1a Contractor Fee (Artist Team)	\$25,000.00		
Phase 1b Contractor Fee (Artist Team)	\$35,000.00		
Fly-through animation	\$5,000.00		
Phase 1 c Contractor Fee (Artist Team)	\$55,000.00		
Campbell studio assistant	\$5,000.00		
REIMBURSABLE EXPENSES			
Drawings, Graphics		\$32,287.00	
Engineering Subrizi		\$35,875.00	
Consultants		\$10,582.00	
Travel (artist team)		\$8,930.00	
Models		\$55,631.00	
Studio space rental (temporary)		\$18,242.00	
Materials research		\$19,257.00	
Insurance		\$60.00	
Revised Structural Engineering Design Phase Arup		\$37,759.00	
Phase II Fabrication Consultation			
Contractor Fee (Artist Team)			
Artist Team	\$45,000.00		
Subconsultants			
Engineering Arup		\$34,700.00	
Architect		\$1,500.00	
Other direct costs			
Travel (Artist Team)		\$5,000.00	
Phase III Installation Consultation			
Contractor Fee (Artist Team)			

Contractor	\$10,000.00		
Studio assistant	\$5,000.00		
Subconsultants			
Engineering Arup		\$7,500.00	
Architect		\$1,500.00	
Other direct costs			
Travel		\$5,000.00	
TOTAL	\$185,000.00	\$273,823.00	\$458,823.00

2e. Appendix D. Such section is hereby amended in its entirety to read as follows:

WHITE LIGHT & WERNER KLOTZ	Artist Fee	Reimbursable Expenses	*Submittal Deadline
Payment 1: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to drawings, data, specifications, samples, mock-ups, required to the SFMTA's 65% construction documents. Subcontracts and documentation subcontractors and other pre-approved expenditures have been paid.	\$25,000	\$9,650	Paid in multiple split payments
Payment 2: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to, additional drawings, data, specifications, samples, mock-ups required for the SFMTA's 100% construction documents. Subcontracts and documentation all subcontractors and other pre-approved expenditures have been paid.	\$40,000	\$14,750	Paid in multiple split payments
Payment 3: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to, artwork drawings, construction documents, specifications, data, shop drawings, material samples, material data sheets, mock-ups, required tests for ease of maintenance and durability required for final approval and fabrication of the artwork.	\$60,000	\$167,691	Paid in multiple split payments
Payment 4: Invoice may be submitted upon approval of completed fabrication of the artwork by the SFAC and SFMTA, and approval of all required documents, and documentation that all subcontractors have been paid.	\$45,000	\$67,732	Artwork shall be delivered to City no later than February 1, 2020

Payment 5: Invoice may be submitted upon approval of transported and installed artwork by the SFAC and the SFMTA, and approval of all remaining required submittals, and documentation that all subcontractors have been paid.	\$15,000	\$14,000	TBD
TOTALS	\$185,000	\$273,823	\$458,823

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 retroactive to June 1, 2011.

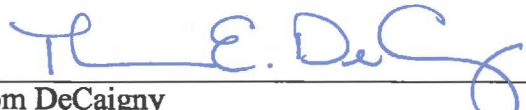
4. Legal Effect. Except as expressly modified by this Amendment, all of the terms and conditions of the Agreement shall remain unchanged and in full force and effect.

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


CITY

Recommended by:



Tom DeCaigny
Director of Cultural Affairs
San Francisco Arts Commission

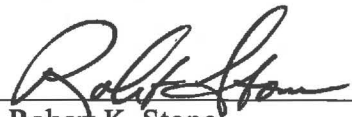
APPROVED:

SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY


~~Thomas G. Maguire Interim~~ Director of
Transportation
JEFFREY TUMLIN

Approved as to Form:

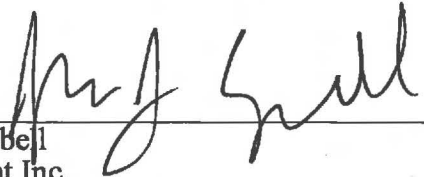
Dennis J. Herrera
City Attorney

By: 


Robert K. Stone
Deputy City Attorney

CONTRACTOR

**White Light Inc. and Werner Klotz Public
Art**



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City vendor number: 83573



Werner Klotz
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