

**CITY AND COUNTY OF SAN FRANCISCO  
GIFT AGREEMENT BY AND BETWEEN  
THE SAN FRANCISCO ARTS COMMISSION  
AND  
JULIE LEPINARD AND JSLH FOUNDATION  
FOR THE GIFT OF THE SCULPTURE  
LA ROSE DES VENTS AND ASSOCIATED COSTS**

**GIFT AGREEMENT**

THIS GIFT AGREEMENT, dated as of 4<sup>TH</sup> day of **APRIL, 2019** for reference purposes only is made in the City and County of San Francisco, State of California, by and between **JULIE LEPINARD AND JSLH FOUNDATION 800 GESSNER, SUITE 1260 HOUSTON, TX 77024** hereinafter referred to as "Donor" and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Arts Commission (the "Commission"), for the purposes and on the terms and conditions set forth below.

**Recitals**

- A. WHEREAS, Donor has written to the Arts Commission a letter of intent to donate ***LA ROSE DES VENTS*** ("Artwork"), a large scale kinetic artwork fabricated in aluminum and gilded in gold leaf, by **JEAN-MICHEL OTHONIEL** ("Artist") to the City, and
- B. WHEREAS Recreation and Parks Dept. ("Client"), a City agency has approved the placement of the Artwork in the garden in front of the Conservatory of Flowers in Golden Gate Park.. ("Site"), property under the jurisdiction of the Client, and
- C. WHEREAS the Arts Commission, a City agency responsible for approving the placement of artwork on city property under authority of Charter Section 5.101 and 5.103, has agreed under **RESOLUTION NO. 1002-17-295** to accept the gift on behalf of the City upon the terms and conditions set forth herein, and
- D. Whereas Donor is proposing the donation of an existing artwork created by the Artist and consulted has with the Arts Commission regarding the Artwork's design;
- E. WHEREAS the parties enter into this Agreement for the purpose of the gift and associated costs of the Artwork:

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

**AGREEMENT**

**1. Recitals**

The foregoing recitals are true and correct and are incorporated herein by this reference.

**2. Definitions**

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement or the Contract Documents, it shall have the meaning set forth below:

- a. "ADA" shall mean the Americans with Disabilities Act (including all rules and regulations thereunder), Title 24 (California Building Code) and all other applicable federal, state and local disabled access legislation, as the same may be amended, modified or supplemented from time to time.
- b. "Agreement" shall mean this agreement, including all addenda, appendices and modifications, whether created now or in the future.
- c. "Artist" shall mean **JEAN-MICHEL OTHONIEL** the creative designer of the Artwork.
- d. "Artwork" shall mean **LA ROSE DES VENTS**, a sculpture with base created by **JEAN-MICHEL OTHONIEL** that Donor proposes to gift to the City under this Agreement.
- e. "City" shall mean City and County of San Francisco, a municipal corporation.
- f. "Client" shall mean the San Francisco Recreation and Parks Department, the City Department where the Artwork is located.
- g. "Commission" shall mean the San Francisco Arts Commission.
- h. "Commission Costs" shall mean the Maintenance Endowment and other costs incurred by the Commission for work performed on behalf of the Gift by any of the Commission's contractors, vendors or other direct costs to the Commission related to the Gift, and Commission's direct and indirect administrative costs associated with the costs of administration and coordination of the Gift and supervision of Commission contractors involved in any work associated with the Gift including the creation, delivery, installation and maintenance of the Artwork. Commission Costs shall also include staff time and agency overhead required to coordinate all of the above.
- i. "Committee" shall mean the Visual Arts Committee of the Commission.
- j. "Conceptual Design" shall mean drawings (in plan and elevation) and/or 3-dimensional models, a written description, proposed materials and samples and cost estimates at 30% design completion. The information provided in Conceptual Design shall be complete enough to fully illustrate the design intent of the Artwork.
- k. "Construction Documents" shall mean final and complete architectural, structural, mechanical and engineering drawings, written specifications, structural and engineering calculations at 100% design completion, prepared by Artist or Artist's subcontractors, or Contractor and Contractor's subcontractors, setting forth in detail the design and specifications of the Artwork. Construction Documents shall describe and fix the location, size, materials and character of the Artwork with respect to architectural, structural engineering, mechanical and electrical systems, materials, colors, method of attachment and fabrication methods, and other such elements as may be appropriate. Construction Documents must be signed and stamped by design professionals licensed in the State of California as required by the California Building Code and any local amendments thereto.
- l. "Contract Documents" shall mean any work, including but not limited to, Design and Construction Documents, Shop Drawings, Mock-ups, models, engineering calculations, approved installation plans, and all material samples and product data, project budget, and any and all additional documents and submittals produced under this Agreement that the Commission has approved and to which the completed Artwork is expected to conform.
- m. "Conservation Report" shall mean a report prepared by a Fine Arts Conservator that evaluates the durability of the proposed materials for the Artwork, and provides an estimated annual and long term

estimation of the cost of maintaining and conserving the Artwork. Such report shall be used as a basis for developing the Maintenance Endowment.

n. "Design Development Documents" shall mean presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, proposed signage text, feasibility studies and final cost estimates at design completion. When used in reference to the proposed Artwork, Design Development Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate.

o. "Director of Cultural Affairs" shall mean the Director of Cultural Affairs for the Commission.

p. "Donor" shall mean the **JULIE LEPINARD AND JSLH FOUNDATION**, the person(s) or organization making the Gift to the City and County of San Francisco. The portions of the Gift that are being donated by each Donor (and certain portions donated by Artist) are stated in Appendix C to this Agreement.

q. "Gift" or "Gift of Artwork" shall mean the Artwork that Donor proposes to gift to the City and the costs to the City associated with the gift of such Artwork as set forth herein.

r. The "Maintenance Endowment" or "Endowment" shall mean the contribution by the Donor to the Arts Commission intended to cover the estimated annual and long term maintenance and conservation costs estimated to be necessary to conserve the Artwork for a minimum of 20 years. The Endowment shall include both estimated direct and indirect costs for such conservation and maintenance, including Arts Commission staff time and associated agency overhead. The Maintenance Endowment is based on the Conservation Report, commissioned by the Donor for the purpose of evaluating the maintenance and conservation requirements for the Artwork and the projected costs associated with the long term care of the work.

s. "Mock-ups" or "Samples" shall mean illustrations such as standard schedules, performance charts, instructions, brochures, diagrams, and physical samples of all or any portion of the Work, and other information furnished by Artist or other contractors to illustrate materials or equipment for all or any portion of the Work. The purpose of the Mock-ups and Samples is to provide physical examples that illustrate materials, equipment or workmanship and establish the standards by which the Work will be judged.

t. "Proposal" shall mean the proposed visual, aesthetic, and artistic intent and design of the Artwork. The most recent design approved by the Commission is incorporated herein as Appendix A of the Contract Documents and is binding unless changes are approved by resolution of the Commission.

u. "Public Work" shall have the same meaning as under San Francisco Administrative Code Section 6.1(I), as currently written or as may be amended from time to time.

v. "Project Costs" shall mean all costs associated with the completion of all Work under this Agreement, as estimated in Appendix C, including all modifications. Project Costs shall include, but are not limited to the costs for all Artist and other design fees including preliminary and final signed stamped engineering documents, engineering peer review, soil testing, lighting designers, project managers and other consultants; costs associated with attending Arts Commission and other City meetings required for the approval and implementation of the Artwork; materials and labor for fabrication, transportation, storage and installation of the Artwork, including any necessary permits

and licenses; required insurance; sales tax if required; post-installation maintenance. Project Costs include the Commission Costs, as defined above.

w. "Shop Drawings" shall mean drawings, diagrams and other data specifically prepared by Donor, Donor's subcontractors, Artist or Artist's subcontractors, fabricators, manufacturers, suppliers, or distributors illustrating in detail exactly how the Work, or any element thereof, is to be fabricated and installed. Shop Drawings shall be signed and stamped by a licensed design professional unless this requirement is specifically waived by the Commission.

x. "Site" shall mean the garden in front of the Conservatory of Flowers in Golden Gate Park. The exact location of the Site is depicted in the Location Map set forth as Attachment A to this Agreement.

y. "Work" shall mean the work performed by the Donor pertaining to providing the Commission with the services and deliverables as required under Paragraph 3, Services and Appendix B of this Agreement. In addition to all other services and deliverables required herein, Work shall include the design, fabrication and delivery of the Artwork.

z. Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the Commission. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the Commission. The words "approval," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Commission, unless otherwise indicated by the context. The terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation."

### 3. Gift of Artwork and Payment of All Project Costs

The Donor hereby agrees to transfer title to the Artwork to the City in accordance with Paragraph 15, Title Transfer, Ownership of Documents and Risk of Loss, and give sole and unconditional ownership of the Artwork (described in Exhibit A, attached hereto and incorporated by reference as though fully set forth herein), subject to the conditions stated herein, to the City and County of San Francisco. The Artwork shall be under the jurisdiction of the San Francisco Arts Commission, an agency of the City and County of San Francisco. The Donor further agrees to perform the Services, as defined below, described in this Agreement. The estimated fair market value of the Gift is \$560,000, and the Project Costs are estimated to be: \$576,743 The Donor agrees to be responsible for the payment of all Project Costs associated with the Gift. Project Costs are itemized in Appendix C, Project Costs, attached hereto and incorporated by reference as though fully set forth herein.

a. **Donor Direct Payment.** Donor agrees to pay all costs associated with the Conservator's Report, including repair of the Artwork, design, including architectural fees and structural engineering for attachments and footings, fabrication of the base and protective fencing, , storage and transportation of the Artwork to and from the site, site preparation and on site installation and all other costs associated with this gift, directly to the vendors contracted by the Donor to perform this work.

b. **Donor's Payment to Arts Commission.** Donor agrees to pay the Arts Commission the Commission Costs including all costs associated with the Maintenance Endowment.

c. **Commission Costs.** Commission Costs are estimated to be \$190,322 Payment of Commission Costs shall be made in a lump sum payment and is due prior to the Commission issuing the Letter of Conditional Acceptance of the Gift as per Paragraph 14(a) and authorizing delivery of the Artwork to the Site.

#### 4. Services

Pending Arts Commission approval and any other necessary City approvals, including approval by the Board of Supervisors to accept and expend the gift and to place the Artwork in Golden Gate Park, Donor agrees to enter into an agreement with the Artist to transfer title to the Artwork to the Donor, to pay all costs related to the design, conservation, storage, transportation and installation of the Artwork and its base as itemized in Appendix C, in accordance with all approved Contract Documents.

a. **Services.** Donor agrees to perform the Services provided for in Appendix B, "Services to be Provided by Donor," attached hereto and incorporated by reference as though fully set forth herein, as well as any scope of services included in any subsequent modification to this Agreement.

b. **Procedure for Execution of Work.**

(1) It is the general intent of the parties that the Donor shall provide the Commission with the services outlined in this Agreement, provided that City determines, in its sole discretion, to go forward with the acceptance of the gift. The work shall be completed in separately defined, successive stages ("Phases"). Each Phase shall be governed by this Agreement, and by any modifications to this Agreement setting forth specific terms and conditions governing each Phase of Work

(2) By authorizing any particular Phase, the Commission is not obligated to authorize any subsequent Phase. Subject to the limitations contained in this Agreement, the Commission may terminate this Agreement at any time and is under no obligation to modify the Agreement to include subsequent Phases.

(3) Donor shall not commence any Phase nor incur any expense in anticipation of commencing any Phase unless the Commission has given prior written authorization. Prior to beginning each Phase, Donor shall obtain the necessary approval of the previous Phase. In no event shall City be liable for any claims or damages arising from Donor's, Artist's or other contractors' unauthorized actions.

(4) All work performed by Donor or Donor's representatives and contractors must be coordinated in advance with the Client.

(5) Donor shall ensure compliance with the following standards in executing the work in order to protect the Site:

- i. Donor shall bear all costs or expenses of any kind or nature in connection with its use of the Site, including payment to all contractors and professionals involved in the work, and shall keep the Site free and clear of any liens or claims of lien arising out of or in any way connected with its use of the Site.
- ii. Donor shall provide evidence satisfactory to the City of the acknowledgment of contractors executing the work that the City is not financially liable, and shall not be invoiced, for any costs incurred in performing any work related to the Site, except as expressly approved by the City in writing.
- iii. Donor shall coordinate with the Client to determine appropriate start and finish date and time for performance of the work that does not interfere with Client's regular work, permits, and reservations in the Park. Client shall establish the start and finish

date in its sole discretion. Donor shall not authorize any contractor to commence work until Client has approved the start date(s) and time(s) in writing.

- iv. **Exercise of Due Care.** Donor shall use, and shall cause its contractors to use, due care at all times to avoid any damage or harm to City's property and to native vegetation and natural attributes of the Site. Donor shall cause its contractors to take such soil and resource conservation and protection measures with the Site as City may request. City shall have the right to approve and supervise any excavation work. Donor shall ensure that under no circumstances shall any contractor damage, harm or take any rare, threatened or endangered species on or about the Site. Donor shall cause Contractor to do everything reasonably within its power, both independently and upon request by City, to prevent and suppress fires on and adjacent to the Site attributable to Donor's use hereunder.
- v. **Covenant to Maintain Site.** In connection with its use hereunder, Donor shall at all times, at its sole cost, maintain the Site in a good, clean, safe, secure, sanitary and slightly condition, so far as the Site may be affected by Donor's or its contractors' activities hereunder.
- vi. **Restoration of Site.** Immediately following completion of Donor's work, Donor shall cause its contractors to remove all debris and any excess dirt and restore the Site to its condition immediately prior to Donor's and Contractor's use hereunder, to the satisfaction of the City.
- vii. **Repair of Damage.** If any portion of the Site or any property of City located on or about the Site is damaged by any of the activities conducted by Donor or its contractor hereunder, Donor shall immediately, at its sole cost, repair or cause such contractors to repair any and all such damage and restore or cause such contractors to restore the Site or property to its previous condition.

c. **Consultation.** Donor agrees to cooperate in good faith with the Commission and to be available as reasonably necessary for consultation with the Commission, Artist, Client, and City's Contractors during all stages of the Work. Commission agrees to facilitate cooperation and arrange for and coordinate all necessary consultation among the Commission, Artist, Client, and City's Contractors.

(1) Donor shall copy Commission on all correspondence between Donor, Artist, Client, other City Departments or other City Contractors in which Commission is not a party. Donor shall notify Commission in writing of any verbal agreements and/or understandings that are arrived at in conversations or meetings between Donor, Artist, Client, or other City Contractors to which Commission is not a party. Donor understands that failure to inform Commission of such agreements, and failure to confirm such agreements in writing with Commission may result in such agreements not being honored.

## 5. Legally Binding Commitment

Donor acknowledges the City, and Commission's reliance on promised payment of Project Costs including Commission Costs. Donor's agreement to pay Project Costs is an integral part of this Agreement and acceptance of the Artwork. Donor understands that such promise is a binding commitment on the Donor and on all of its successors and assigns.

## 6. Signage and Recognition Plaque

The Commission and Donor hereby agree to identify the Artwork as **LA ROSE DES VENTS**, for all publicity purposes. As part of the Project Cost, Donor shall include in payment to the Commission the cost of an identification plaque ("Plaque"), which the Donor shall fabricate in conformity to the Commission specifications regarding font, size, material and placement. The final text of the plaque shall be agreed upon between the parties and approved by the Commission in its sole discretion.

## 7. Taxes

a. Any taxes levied upon the Agreement, the transaction, or the equipment or services delivered under this Agreement, including possessory interest taxes, California sales and use taxes and any tax due to Artist under state, federal or local law shall be borne by Donor.

## 8. Insurance

a. **Required Insurance.** Without in any way limiting Donor's liability pursuant to Section 16, the "Indemnification and General Liability" section of this Agreement, Donor shall maintain, or cause to be maintained, in force insurance in the following amounts and coverages, or as modified in Appendix B. Donor shall obtain such insurance on or before the time specified below; if no time is specified below, Donor shall obtain such insurance when required to do so by Appendix B or a modification to this Agreement. Donor shall maintain all required insurance continuously from the time originally specified, throughout the term of this Agreement until Final Acceptance of the Work by resolution of the Arts Commission. The Director of Cultural Affairs, with the approval of the City's Risk Manager, may authorize in writing the release of an interest in such insurance at an earlier date.

(1) **Workers Compensation**, in statutory amounts with Employers' Liability limits not less than \$1,000,000 each accident, injury or illness. Donor shall obtain such insurance prior to certification of this Agreement. To the extent Donor warrants, in writing, that Donor is not an employer and has no employees as defined by the California Labor Code Sections 3351-3351.1, Donor need not provide to the City proof of Workers Compensation insurance.

(2) **Professional Liability Insurance** for all design professionals (such as architects, landscape architects or engineers), applicable to contractor's profession, who provide *Donor and/ or Artist* with signed stamped drawing or calculations. Such insurance shall have limits not less than \$1,000,000 each claim with respect to negligent acts, errors and omissions. *Donor or Artist* shall obtain such insurance when *Donor or Artist* subcontracts for any work from such a design professional, and prior to the submittal of Construction Documents. Any design professional required to obtain professional liability insurance shall maintain such insurance, and proof thereof, for the term of this Agreement.

(3) **Commercial General Liability Insurance**, with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations. Donor shall obtain such insurance prior to commencing the fabrication of the Artwork and shall maintain through the transportation and installation of the Work at the Site.

(4) **Automobile Liability Insurance:** If Donor is an *individual*, Personal Automobile Liability Insurance with limits not less than \$100,000/\$300,000 each occurrence. If Donor is a *corporation or other legal entity*, Commercial Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable, unless a lesser amount is approved by City's Risk Manager. Donor shall obtain such insurance prior to certification of this Agreement.

(5) **Fine Arts Insurance or other insurance against loss** may be required at the Commission's discretion on a case by case basis. Such insurance shall be for an amount equal to the value of the Artwork being transported, installed, de-installed or stored.

(6) Transportation and/or Installation Coverage, as necessary and appropriate.

**b. Required Policy Language.**

(1) Commercial General Liability and Commercial Automobile Liability Insurance shall be endorsed to provide:

i. Endorse the policy to name as Additional Insured the City and County of San Francisco, its Officers, Agents, and Employees;

ii. State that such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought, but the inclusion of more than one insured shall not operate to increase the insurer's limits.

iii. Regarding Workers' Compensation, Donor hereby agrees to waive subrogation which any insurer of Donor may acquire from Donor by virtue of the payment of any loss. Donor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by the Donor, its employees, agents and subcontractors.

(2) All policies shall provide thirty days' advance written notice to the City of reduction or nonrenewal of coverages or cancellation of coverages for any reason. Notices shall be sent to the following address:

**SUSAN PONTIOUS**  
San Francisco Arts Commission  
401 Van Ness Avenue, Suite 325  
San Francisco, CA 94102

**c. Miscellaneous Insurance Requirements:**

(1) All insurance policies required under this Agreement shall be issued by insurance companies reasonably acceptable to City and authorized to do business in the State of California. Before commencing any operations under this Agreement, Donor shall do the following: (a) furnish to City certificates of insurance, and additional insured policy endorsements with insurers with ratings comparable to A-, VIII or higher, and that are satisfactory to City, in form evidencing all coverages set forth above, and (b) furnish complete copies of policies promptly upon City request.

(2) Should any of the required insurance be provided under a claims-made form, Donor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of four years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies. This tail coverage requirement may be waived by the City's Risk Manager in writing where appropriate.

(3) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.



(4) Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until City receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

(5) Approval of the insurance by City shall not relieve or decrease the liability of Donor hereunder.

(6) In the event of loss or damage and where any insurance proceeds are paid to City, the Commission shall make a determination, in its sole discretion, as to whether the Work shall be restored, reconstructed or abandoned. If the Commission determines that Donor shall restore or reconstruct the Work, all insurance proceeds received by City shall be paid to Donor to the extent the proceeds are used for such restoration or re-construction.

(7) If a subcontractor will be used to complete any portion of this agreement, the Donor shall ensure that the subcontractor shall provide all necessary insurance and shall name the City and County of San Francisco, its officers, agents and employees and the Donor listed as additional insureds.

## **9. Indemnification**

Donor agrees to defend, indemnify and hold harmless the City and County of San Francisco, its officers, employees and agents, from any and all acts, claims, omissions, liabilities and losses by whomever asserted arising out of acts or omissions of Donor in the performance of the scope of work, except those arising by reason of the sole negligence of the City and County of San Francisco, its officers, employees and agents.

City and County of San Francisco agrees to defend, indemnify and hold harmless Donor, its officers, employees and agents, from any and all acts, claims, liabilities and losses by whomever asserted arising out of acts or omissions of the City and County of San Francisco in its obligations under this Agreement except those arising by reason of the sole negligence of Donor, its officers, employees and agents.

Each party to this Agreement shall be responsible for its own defense and defense costs of all claims and liabilities of any type which arise out of the sole acts or omissions of the respective party. In the event of concurrent negligence of the City, its officers, employees and agents and the Donor, its officers, employees and agents, each party shall be responsible for its own defense and defense costs, and the liability for any and all claims for injuries or damages to persons or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

## **10. Donor's Warranties**

- a. **Warranty of Title.** Donor represents and warrants that the Artist is the sole owner of any and all copyrights pertaining to the Artwork, and that the Artist has sole authority for granting license for the use of the Artwork image, and that nothing in any written agreements the Donor has with the Artist will conflict with the City's Agreement with Artist, incorporated herein by reference, which grants the City a non-exclusive intellectual property license for use of the Artwork and Artwork image.
- b. **Freedom from Liens.** Donor represents and warrants that the Artwork is free and clear of any liens or other claims and that there are no outstanding disputes in connection with property rights, intellectual property rights or any other rights in the Artwork or any parts of the Artwork.

- c. **Warranty of Workmanship.** Donor represents and warrants that, for a period of one year after Final Acceptance, the Artwork will be free of defects in workmanship or materials, and that the Artwork will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at the Site, and that the Donor shall follow the fabrication recommendations contained in any Conservation Report commissioned for this project, Attached as Appendix D and incorporated herein by reference. Any degradation or fading will not include any tendency to deteriorate that is specifically identified in the Contract Documents, or quality within a material that is affirmatively recommended in the Conservation Report.

Donor shall be responsible for paying all costs and expenses associated with remedial work to repair any defects in workmanship or materials that appear **within one (1) year** of Final Acceptance of the Artwork by City under Section 14(b) of this Agreement. Any repair costs shall be determined by the Arts Commission in its sole discretion and the City shall select and approve the contractors that will conduct any repair work to the Artwork. **Such costs shall be considered as being over and above what the City should have reasonably expected based on the Donor's representation of the Artwork to the Commission and the maintenance identified in the Conservation Report.**

- d. **Warranty of Public Safety.** Donor represents and warrants that the Work as fabricated and installed will not pose a danger to public health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement.
- e. **Warranty of Acceptable Standard of Display and Operation.** Donor represents and warrants that:

The Artwork as fabricated will conform to all Contract Documents approved by the Commission and will conform to the recommendations of the Conservation Report. The parties anticipate that the City should be able to adequately maintain the Artwork for at least 20 years with the Maintenance Endowment provided by the Donor under this Agreement.

Occasional or minimal cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display;

Except for any damage that arises directly or indirectly from seismic activity, foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display; and

With general routine cleaning, repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

- f. **Manufacturer's Warranties.** In the event the Artwork incorporates products covered by a manufacturer's warranty, Donor shall provide copies of such warranties to the City.

## 11. Instructions for Maintenance; Variable Media Guidelines; Anticipated Life Span of Artwork

- a. **Instructions for Maintenance.** Unless specifically provided in this Agreement, Donor shall not be responsible for ongoing maintenance of the Artwork. Donor shall provide the Commission and Client with a Conservation Report that will include a general maintenance plan for the Artwork, with a detailed description of future anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating the Artwork and the frequency of such staff involvement; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork. Artist shall also provide Commission and Client with a description of all equipment and or machinery needed to operate the project (if applicable) and any anticipated or required staffing, supervision or operational needs. The Artwork shall be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Donor shall ensure that all maintenance requirements will be reasonable in terms of time and expense.
- b. **Artwork with Variable Media:** With respect to Artwork involving or incorporating electronic, digital, video, mechanical, living, variable, moving or other dynamic components ("Variable Media"), the Donor shall ensure that the Commission is also provided with written recommendations for translating the Artwork into new media or replacing elements of the Artwork in the event that the original medium, components and/or the Artist's installation plan become obsolete ("Variable Media Guidelines"). Although the City is not required to comply with such Variable Media Guidelines, the City may take such Guidelines into account when maintaining the Artwork or trying to preserve the integrity of the Artwork.
- c. **Arts Commission Maintenance of the Artwork:** The Arts Commission will be exclusively responsible for the maintenance of the Artwork and shall maintain the Artwork in its sole discretion. Although City strives to maintain the Civic Art Collection in good repair and condition, City is not required by this Agreement to maintain the Artwork to any particular standard. City may determine to allow the Artwork to deteriorate in accordance with the Artwork's temporary life span, if deemed appropriate by City or if City lacks sufficient funds for required maintenance and/or conservation. If the Artwork suffers deterioration, City shall have sole discretion to determine whether to remove the Artwork from display as a result of deterioration, whether to replace any portion of the Artwork or translate any component into new media, or whether to maintain the Artwork on display despite its deteriorated condition. The term "maintenance of the Artwork" shall be deemed to include maintenance of the foundations, footings, and fence of the Artwork.
- d. **Anticipated Lifetime of Artwork:** The anticipated life span of the Artwork is 25 years from the date of final acceptance by the Commission. After that time, the Commission in its sole discretion may re-evaluate the Artwork to determine if it retains its identity as a work of art and, if not, whether to take appropriate action, including the possibility of destroying the Artwork. If no life span is specified above or pursuant to a subsequent contract modification, the anticipated life span of the Artwork shall be 25 years. If the Commission decides to keep the Artwork on the Site after the Endowment has been expended, the Commission shall continue to maintain the Artwork as specified in Section 11(c) above with its own budget.

## 12. City's Ownership Rights; Removal and Relocation; Notice

The Commission intends to display the Artwork at the Site as originally created by Artist and as intended by the Donor and to maintain the Artwork in good condition. However, if the Artwork is integrated into the Site so that it cannot be removed without alteration or destruction to the Artwork, the City, must preserve complete flexibility to operate and manage City property in the public's interest.

Therefore, City retains the absolute right to Alter the Artwork in City's sole judgment. For example, City may Alter the Artwork to eliminate hazard, to comply with the ADA, to otherwise aid City in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, City finds the Site to be inappropriate, City has the right to install the Artwork at an alternate location that City chooses in its sole discretion. If the Artwork is free-standing such that it can be removed without significant damage to the Artwork or the Site, and if the Commission authorizes the removal of the Artwork, the Commission shall take reasonable precautions to minimize Alteration of the Artwork during removal.

### **13. Intellectual Property and Artist(s) Rights Waiver**

As a precondition of this Agreement, Donor shall require the Artist to sign the attached Agreement between the Artist and the City and County of San Francisco (**City's Agreement with the Artist**) attached hereto as **Exhibit D**, and incorporated by reference as though fully set forth herein.

The Donor hereby waives any and all claims that the Donor may have under the federal Visual Artists Rights Act (17 U.S.C. 987 et seq.), and any other local, state, federal or international laws that convey the same or similar rights ("Moral Rights Laws"), with respect to the Artwork, its display, removal from display, exhibition, installation, conservation, storage, study, alteration and any other activities conducted by the Arts Commission, the City and County of San Francisco, its officers, employees, agents, contractors, licensees, successors or assigns.

Likewise, the Donor shall not enter into any agreement with the Artist limiting the City's intellectual property and publicity rights granted to the City by the Artist in City's Agreement with Artist for the use of the Artwork as detailed in Paragraph 5 of the City's Agreement with Artist.

### **14. Commission Approvals:**

Commission shall review and must approve the Artwork by Resolution at each major project milestone as specified in Scope of Work, Appendix B, prior to accepting the Gift. Each Phase must be approved by the Commission prior to the Donor proceeding to the next Phase.

a. **Letter of Conditional Acceptance.** The Arts Commission shall issue a letter of Conditional Acceptance to the Donor upon 1) the Arts Commission's receipt of all funding due for Commission Costs, and 2) upon notice that the Artwork is complete and ready to be delivered; and 3) upon verification by the Arts Commission that the Artwork is fabricated in accordance with the Construction and Contract Documents, and that the Donor has obtained all necessary regulatory approvals, and 4) upon submission to the City copies of all Agreements, Collections Forms, and Contract Documents as required, and 5) upon certification by the Donor that the Donor holds title to the Artwork, free of any claims or liens and is free to transfer title to the Artwork to the City, and 6) upon authorization from the Board of Supervisors allowing the Arts Commission to accept a gift of artwork (for gifts over \$100,000 in value). Upon the Commission issuing a Letter of Conditional Acceptance, the Donor may proceed with delivering the Artwork to the Site.

b. **Final Acceptance.** Upon delivery and installation of the Artwork to the Site, and upon Arts Commission inspection of the Artwork and confirmation that the Artwork has been delivered without damage, the Arts Commission will, by Resolution, approve Final Acceptance of the Gift.

### **15. Title Transfer, Ownership of Documents; Risk of Loss; and Right of First Refusal**

a. **Title Transfer.** Title to the Artwork shall transfer from Donor to the City upon the Commission's approving Final Acceptance by Resolution. Title transfer shall be self-executing upon Commission's Final Acceptance. Donor will cooperate in providing to City any title transfer documents City may request or require during or after the Term of this Agreement.

b. **Risk of Loss.** The risk of loss or damage to the Artwork shall be borne solely by Donor until delivery of the Artwork to the Site. Donor shall take steps to protect the Artwork from loss or damage.

c. **Transfer of Documents.** Copies of drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files, subcontracts or other agreements, media or other documents prepared by Donor, Artist, or their subcontractors in connection with services to be performed under this Agreement, shall be transmitted to the City.

d. **Rights of First Refusal.** If the City desires to sell the Artwork and has an interested buyer who has proposed terms of sale ("Sale Terms"), the City shall first offer the Artwork to the Donor on the Sale Terms. If Donor desires to purchase the Artwork on the Sale Terms, Donor shall give the City written acceptance of the Sale Terms no later than thirty (30) days from the City's offer of the Artwork to Donor. Thereafter, Donor shall purchase the Artwork on the Sale Terms. If Donor does not desire to purchase the Artwork on the Sale Terms, the City shall offer the Artwork to Artist on the Sale Terms. If Artist desires to purchase the Artwork on the Sale Terms, Artist shall give the City written acceptance of the Sale Terms no later than thirty (30) days from the City's offer of the Artwork to Artist. Thereafter Artist shall purchase the Artwork on the Sale Terms. If neither Donor nor Artist has given written acceptance of the Sale Terms to the City within sixty (60) days from the City's offer of the Artwork to Donor, the City may accept any third party offer on the Sale Terms within six (6) months after the end of such sixty (60) days. If the City does not sell the Artwork to a third party within such six (6) month period, the right of first refusal in favor of Donor and Artist shall be reinstated.

#### **16. Event of Default**

Donor's failure or refusal to perform or observe any of the terms, covenants or conditions of this Agreement, or Donor's failure to provide for the Project Costs due under Section 3 and Detailed in Appendix C when due, shall constitute an immediate default under this Agreement, the City shall have the right to refuse to allow delivery of the Artwork and to refuse to accept the Artwork, and shall have the right, in its sole discretion, to seek enforcement of the terms and conditions of this Agreement, to terminate this Agreement or to exercise any of its rights or remedies available at law or in equity.

#### **17. Conflict of Interest**

Through its execution of this Agreement, Donor acknowledges that it is familiar with the provision of Section 15.103 of the City's Charter, Article III, Chapter 2 of City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitutes a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the term of this Agreement.

#### **18. Proprietary or Confidential Information of City**

Donor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Donor may have access to private or confidential information which may be owned or controlled by City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to City. Donor agrees that all information disclosed by City to Donor shall be held in confidence and used only in performance of the Agreement. Donor shall exercise the same standard of care to protect such information as a reasonably prudent Donor would use to protect its own proprietary data.

**19. Notices to the Parties; Department Liaison**

**a. Notices.** Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail or e-mail, and shall be addressed as follows:

To Commission:  
San Francisco Arts Commission  
401 Van Ness Avenue, Suite 245  
San Francisco, CA 94102  
Attn: **SUSAN PONTIOUS**  
Phone: (415) 252-2241  
Email: susan.pontious@sfgov.org

To Donor:  
**JULIE LEPINARD AND JSLH FOUNDATION**  
**800 GESSNER, SUITE 1260 HOUSTON, TX 77024**  
Phone: 713-627-2440  
Email: **JULIE@LEPINARD.NET**

Any notice of default shall be sent by registered mail. Either party may change the address to which notice is to be sent by giving written notice thereof to the other party. If email notification is used, the sender must specify a receipt notice.

**b. Department Liaison.** In performing the services provided for in this Agreement, Contractor's liaison with the Arts Commission will be **SUSAN PONTIOUS**.

**20. City Access to Artwork/Work and Inspection; Status Reports; Donor Availability**

City shall have the right to inspect the Artwork prior to the Commission approving any Phase of work under this Agreement. The Donor shall be responsible for facilitating City's prompt access to the location where the Artwork or portions of the Artwork are being fabricated or stored.

**21. Non-waiver of Rights**

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions thereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

**22. Tropical Hardwood and Virgin Redwood Ban**

Pursuant to San Francisco Environment Code section 804(b), City urges Donor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product in the performance of this Agreement.

**23. Resource Conservation**

Chapter 5 of the San Francisco Environment Code ("Resource Conservation") is incorporated herein by reference. Failure by Donor to comply with any of the applicable requirements of Chapter 5 will be deemed a material breach of contract.

#### **24. Compliance with Americans with Disabilities Act**

Donor acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through Donor, shall be accessible to the disabled public. Donor shall provide the services specified in this Agreement in a manner that complies with the ADA.

Donor shall cooperate with City and allow City to take reasonable steps to ensure that the Artwork is accessible to the disabled, with respect to the elimination of both architectural and programmatic barriers. Such cooperation shall include assisting with modifications to the Artwork, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the Artwork. If requested by City, Donor shall engage a consultant, as part of the Project Costs paid for by the Donor to review the Artwork for compliance with the ADA.

#### **25. Sunshine Ordinance**

Donor acknowledges that this Agreement and all records related to its formation, and Donor's performance of Services are subject to the California Public Records Act, (California Government Code §6250 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

#### **26. Preservative-treated Wood Containing Arsenic**

Donor may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Donor may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Donor from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

#### **27. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement.

- a. Internal Clarifications to Proposal and Scope of Services.** Notwithstanding the above provision regarding agreement modifications, the Commission and Donor, by mutual written agreement signed by both parties, may clarify the Appendix A ("Artists Proposal") and/or Appendix B ("Services to be Provided by Donor"), by further outlining, correcting, clarifying and refining the substance of each of the phases I through V, including the date(s) of deliverables (including modifying or changing the order of the due date(s) for deliverables), the costs associated with each Phase and the payment schedule. Such changes shall be kept on file at the Arts Commission.

**28. Agreement Made in California; Venue**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

**29. Construction**

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

**30. Entire Agreement**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 27, (Modification of Agreement).

**31. Compliance with Laws**

Donor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and shall at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

**32. Severability**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

**33. Cooperative Drafting.**

This Agreement has been drafted through a cooperative effort of both parties, and both parties have had an opportunity to have the Agreement reviewed and revised by legal counsel. No party shall be considered the drafter of this Agreement, and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

*Remainder of page intentionally left blank*



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**INSURE, TRANSPORT, INSTALL, DOCUMENT, PROVIDE SIGNAGE FOR AND TO MAINTAIN AND REPAIR ARTWORKS," AMONG OTHER SPECIFIED ARTS-RELATED PROFESSIONAL SERVICES. No additional signature required from Office of Contract Administration/Purchaser; See Also S.F. Admin. Code Section 21.04(a) (Direct Purchasing Authority of Departments)].**

**ATTACHMENTS:**

A: Location Map

**APPENDICES:**

A: Artist's Proposal & Construction Documents

B: Services to be Provided by Donor

C. Project Costs

D. City's Agreement with the Artist

E. Civic Art Collection Forms

F. Structural Engineering Inspection Form

**DONOR**

**SIGNATURES**

**CITY**

Recommended by:

\_\_\_\_\_  
Tom DeCaigny  
Director of Cultural Affairs  
Arts Commission

**Approved as to Form:**

Dennis J. Herrera  
City Attorney

By \_\_\_\_\_

Deputy City Attorney

**Approved: Lauren Curry**

**Approved:**

**[Note: APPROVAL GRANTED TO ARTS COMMISSION UNDER LETTER OF 12-15-2016 by JACI FONG, the DIRECTOR OF OFFICE OF CONTRACT ADMINISTRATION AND PURCHASER, FOR CONTRACTS TO "PLAN, DESIGN, FABRICATE,**

\_\_\_\_\_  
Authorized Signature

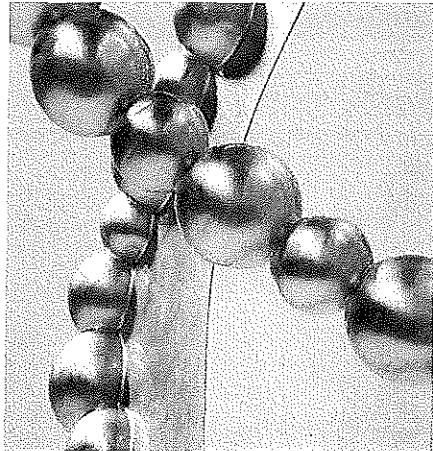
**JULIE LEPINARD**

**JULIE LEPINARD AND JSLH  
FOUNDATION  
800 GESSNER, SUITE 1260 HOUSTON,  
TX 77024  
PHONE: 713-627-2440  
EMAIL: JULIE@LEPINARD.NET**

**Appendix A**  
**Artist's Proposal**

1. "Proposal" shall mean the proposed visual, aesthetic, and artistic intent and design of the Artwork as approved by the Arts Commission. The most recent design approved by the Commission is incorporated herein by reference, and is binding unless or until changes are approved by resolution of the Commission.

a. Attached is Artist's Proposal at the time of the Agreement date. Artist's Proposal shall be automatically superseded by any Contract Documents that are later approved by the Commission



*La Rose des Vents*

A Monumental Sculpture  
for the Golden Gate Park, by Jean-Michel Othoniel

San Francisco, California



JEAN-MICHEL OTTHONIEL / *La Rose des Vents* / San Francisco 2015

## *La Rose des Vents*

*«When I first came to San Francisco in 1999 for my show at the Yerba Buena Center, I went to the Golden Gate park to visit the Conservatory of Flowers.  
I instantly fell in love with this wonderful historical place.» - Jean-Michel Othoniel*

*La Rose des Vents* is a kinetic sculpture made from gold and aluminum that pays homage to the compass rose, an ancient device used to gauge wind direction. Installed in front of the Conservatory of Flowers in Golden Gate Park, where it can shimmer in the sun and shifts with the breeze, the Rose appears as a golden flower among flowers, animating the earth with moving shadows or reflecting the sky with his golden mirror beads.

As for *The Beautiful Dances*, the fountain sculptures I created for the Water Theater grove redesigned by the French landscape designer Louis Benech for the gardens of the château de Versailles, I worked with gold to create *La Rose des Vents*. It is a very evocative material to me. The exceptional character and halo-like qualities of this instantly perceptible work are intensified by the special play of light created by the reflection of the metal.

This sculpture was inspired by the real flower and the desert rose, delicate crystal formations that appear in arid places as fragile as glass, my favourite materials since the 1990s. *La Rose des Vents* is a sculpture that embodies my longtime love for the symbolism of flowers and a contemplative approach to nature.

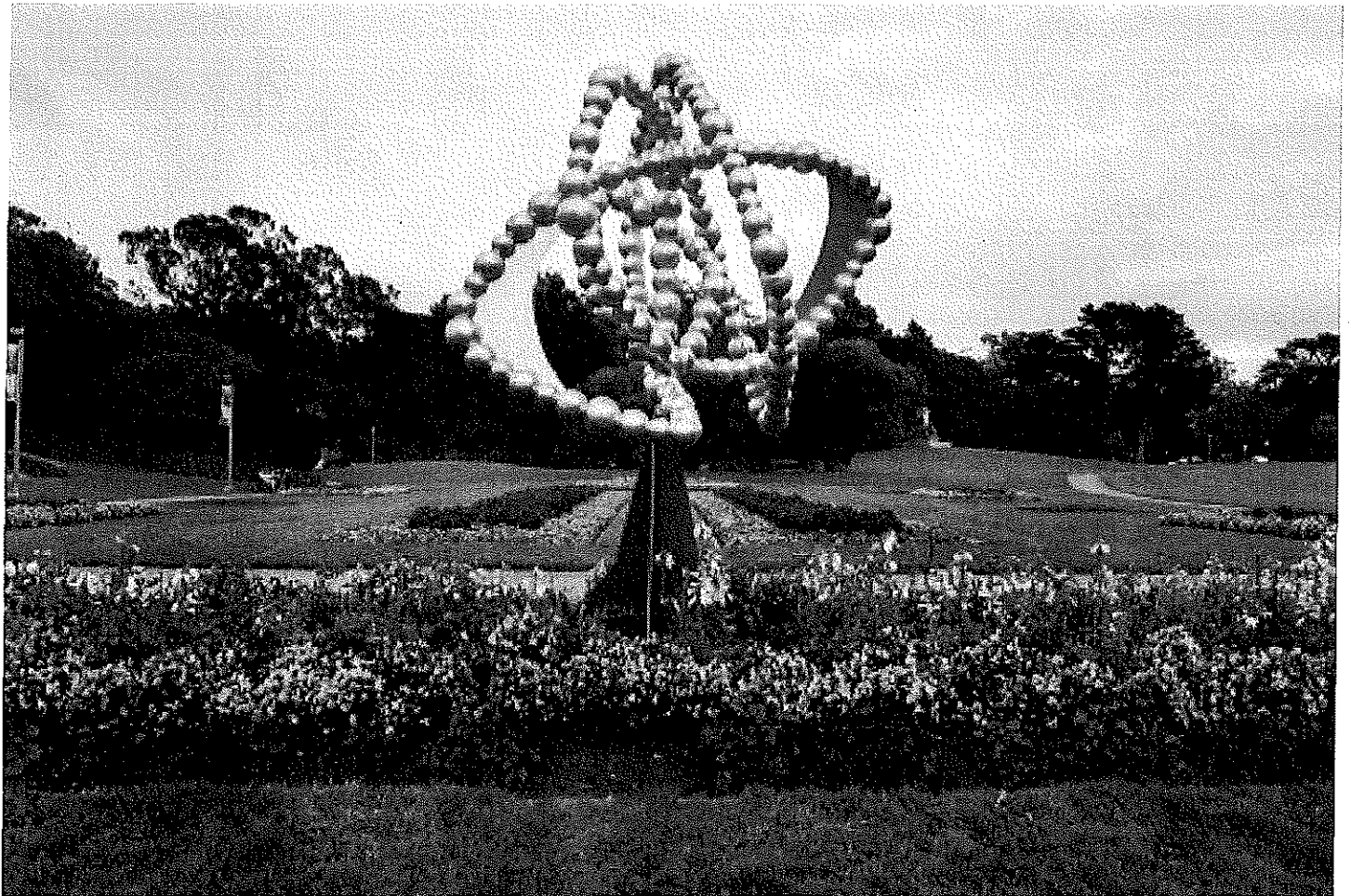
Flowers play an integral role in my work. My obsession with the hidden meanings of flowers and with their symbolism is a way of looking at the world and an expression of my desire to see the marvels that surround us; what is real is a continual source of wonder. Since my childhood, I have amassed a stock of notes on the history of plants and photographed the flowers and trees that I like. The rose is the symbol of beauty itself, of the power of love that conquers death.

And now, having the chance to show *La Rose des Vents* in this amazing location truly links my work to the city, connecting my sculpture with the history of flowers, the movement of the artwork with the changing weather of the bay, the golden surface of the sculpture with the spirit of the golden gate.

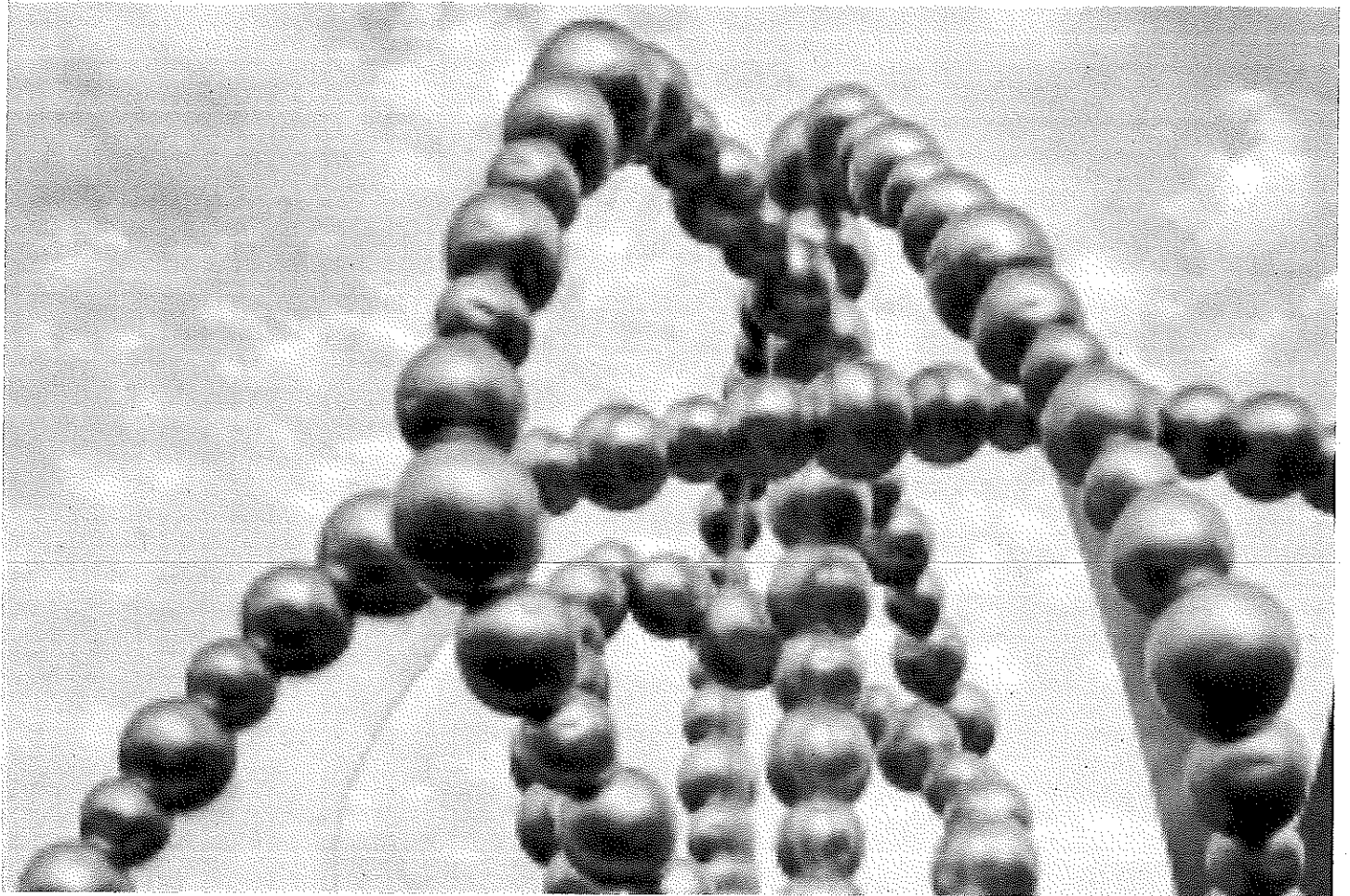
*Jean-Michel Othoniel, December 2015*



JEAN-MICHEL OTHONIEL / *La Rose des Vents* / San Francisco 2015

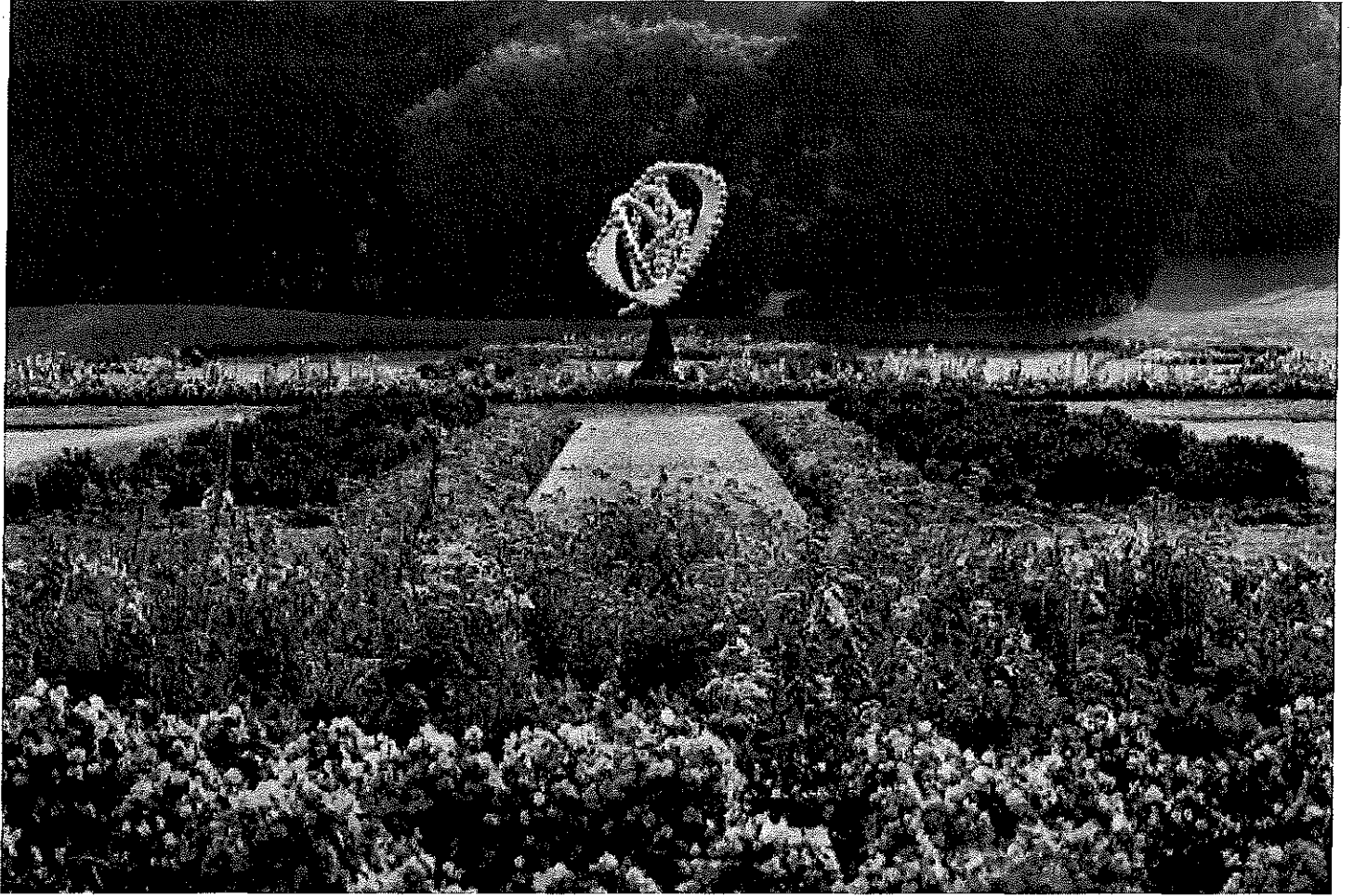


JEAN-MICHEL OTHONIEL / *La Rose des Vents* / San Francisco 2015

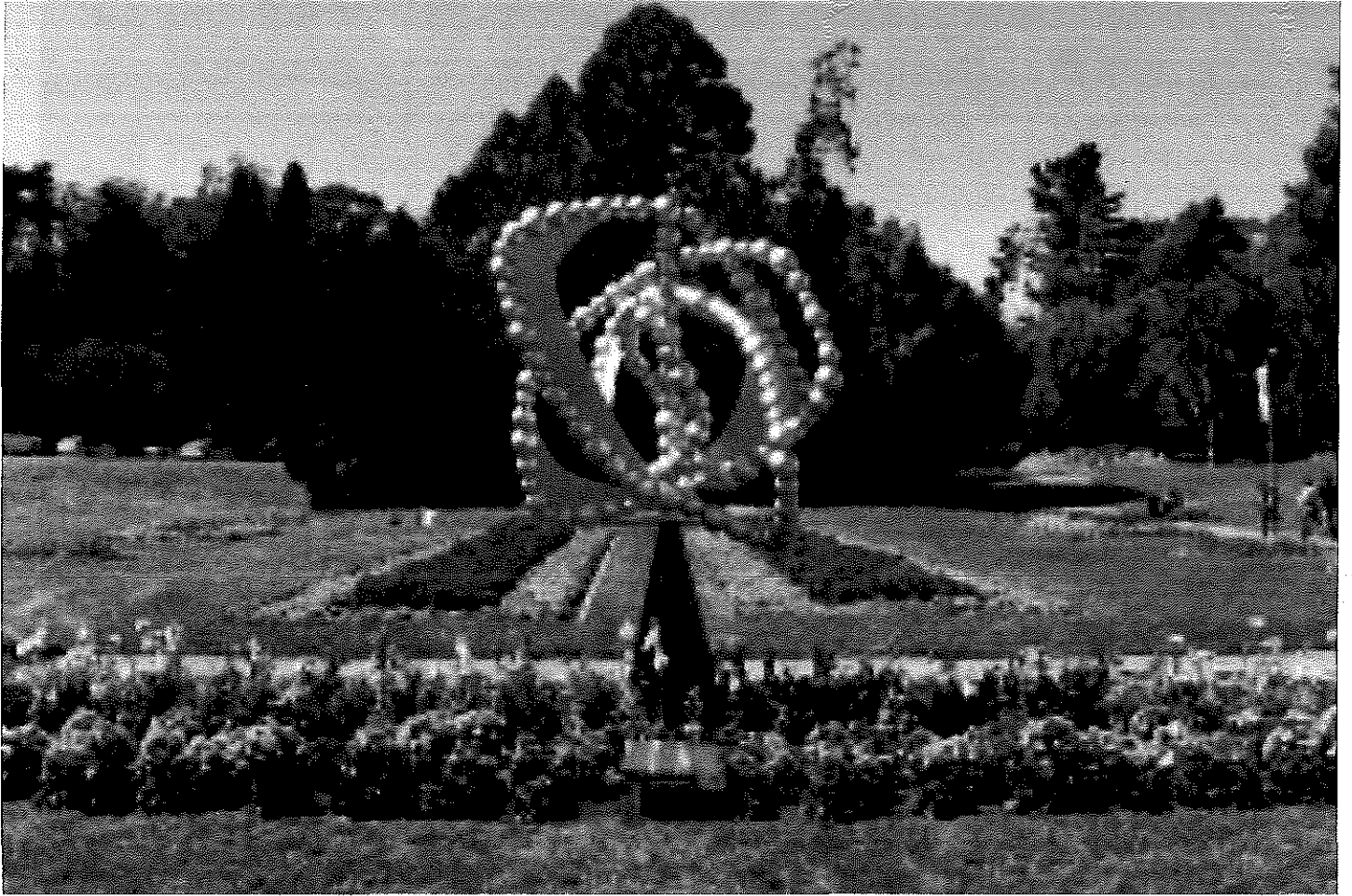


JEAN-MICHEL OTHONIER / *La Rose des Vents* / San Francisco 2015





JEAN-MICHEL OTHONIEL / *La Rose des Vents* / San Francisco 2015



JEAN-MICHEL OTHONIEL / *La Rose des Vents* / San Francisco 2015

## SELECTED PRESS



“The gardeners in charge of the floral arrangement even waited for *La Rose des Vents* to be installed to complete the flowerbed surrounding it. Gorgeous and harmonious.”

Lost in SF, Sep 8, 2015

“Don’t miss this truly remarkable work of public art. It’s France best gift to the States since the Statue of Liberty.”

7x7, Sep 10, 2015

“A new kind of rose is blooming in front of the San Francisco Conservatory of Flowers.”

Mary Jo Bowling, Curbed, Sep 25, 2015

“San Francisco will sparkle a little brighter this fall thanks to a pair of dazzling new artworks from renowned Parisian artist Jean-Michel Othoniel.”

Garrick Ramirez, 7x7, Sep 28, 2015

“A 12-foot high work by French sculptor Jean-Michael Othoniel— will be unveiled in front of the Conservatory of Flowers. Response was so favorable that officials are hoping to find a permanent home for it here.”

Leah Garchik, San Francisco Chronicle , Sep 24 2015

“San Francisco should count itself lucky that French artist Jean-Michel Othoniel — who recently opened *Les Belles Danses*, the first permanent installation at Versailles in several centuries — has not one but two pieces up, and each is lovely to see.”

Peter Lawrence Kane, San Francisco Weekly , Oct 7 2015

## PORTRAIT OF THE ARTIST, KEY MOMENTS AND WORKS

### Jean-Michel Othoniel

Born in 1964 in Saint-Étienne. Lives and works in Paris.

1997: Jean-Michel Othoniel hangs giant necklaces in the trees of the gardens of the Peggy Guggenheim Collection in Venice

2000: he carries out a public order for the first time, transforming the Paris subway station of Palais-Royal–Musée du Louvre into *Le Kiosque des Noctambules*

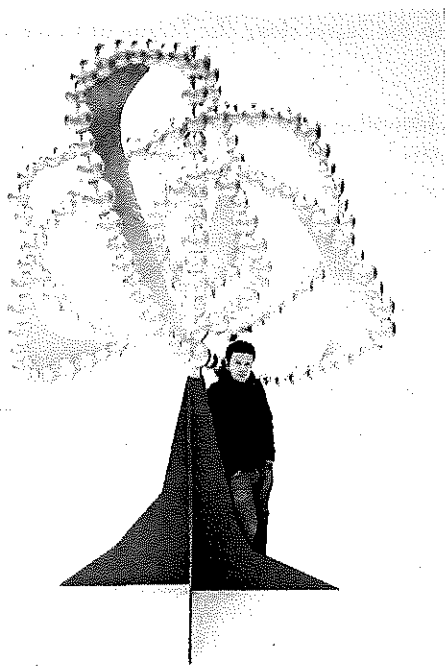
2003: for the exhibition “Crystal Palace” at the Fondation Cartier in Paris and the MoCA in Miami, Othoniel creates blown-glass enigmatic sculptures somewhere between jewelry, architecture, and erotic object

2004: for the exhibition “Contrepoint”, Jean-Michel Othoniel is invited by the Musée du Louvre to exhibit in the spectacular Mesopotamian courtyard

2011: his mid-career retrospective is held at the Centre Pompidou Paris presenting the entire gamut of his artistic practice retraced his career. This exhibition, “My Way”, was then staged at the Leeum Samsung Museum of Art/Plateau, Seoul, at the Hara Museum of Contemporary Art in Tokyo, at the Macao Museum of Art, Macao, and at the Brooklyn Museum of New York.

May 2015: Jean-Michel Othoniel revealed *The Beautiful Dances*, three fountain sculptures installed on the ponds of the new Water Theatre grove in the gardens of the Château de Versailles.

Sep 2015: After a 5 months exhibition at the Isabella Stewart Gardner Museum in Boston, the artworks of «Secret Flower Sculptures» are staged in a double exhibition in San Francisco: at the 836m Gallery on Montgomery Street and in the Golden Gate Park, unveiling the artist's latest monumental sculptures inspired by flowers.



Jean-Michel Othoniel with *La Rose des Vents*, 2015.





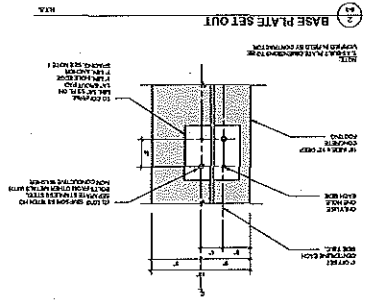
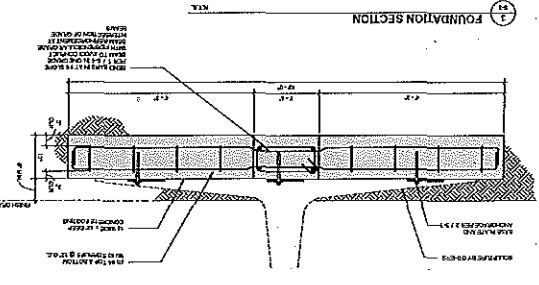
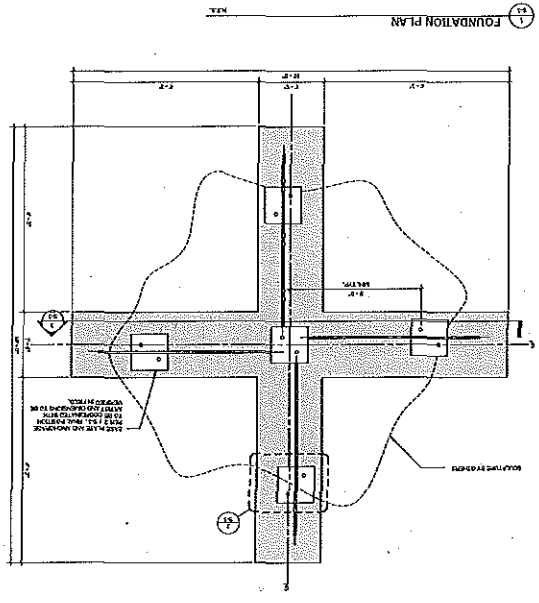
S-3

BASE PLAN, ELEVATION & SECTION

PROJECT NO.	DATE
REVISION NO.	DATE
BY	CHECKED
DATE	DATE
SCALE	SCALE
PROJECT NO.	DATE
REVISION NO.	DATE
BY	CHECKED
DATE	DATE

La Rose des Vents  
Sculpture  
Conservatory of Flowers  
San Francisco, CA

Professional Engineer  
  
 License No. 10000  
 State of California  
 Mechanical Engineering  

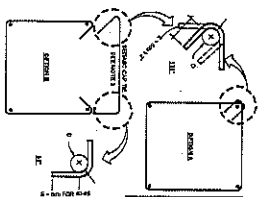


1. BAR SPACING IN CONCRETE



2. BAR SPACING IN CONCRETE

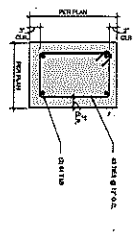
BAR SIZE	BAR #	BAR #	BAR #	BAR #	BAR #	BAR #	BAR #
1/2"	10	10	10	10	10	10	10
3/8"	10	10	10	10	10	10	10
1/4"	10	10	10	10	10	10	10
3/16"	10	10	10	10	10	10	10
1/8"	10	10	10	10	10	10	10



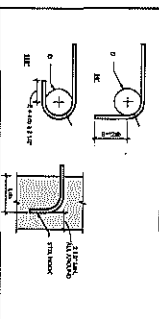
3. STIRRUP / TIE SCHEDULE

CONCRETE MIX SCHEDULE	NO. OF BARS
CONCRETE MIX SCHEDULE	NO. OF BARS

4. CONCRETE MIX SCHEDULE

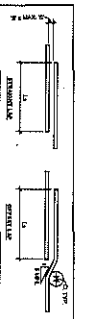


5. TYPICAL CONCRETE GRADE BEAM



6. STANDARD HOOK (MIN. DEVELOPMENT SCHED.)

BAR SIZE	DEVELOPMENT LENGTH	DEVELOPMENT LENGTH	DEVELOPMENT LENGTH	DEVELOPMENT LENGTH
1/2"	12"	12"	12"	12"
3/8"	12"	12"	12"	12"
1/4"	12"	12"	12"	12"
3/16"	12"	12"	12"	12"
1/8"	12"	12"	12"	12"



7. LAP SPlice / DEVELOPMENT SCHEDULE

BAR SIZE	DEVELOPMENT LENGTH	DEVELOPMENT LENGTH	DEVELOPMENT LENGTH	DEVELOPMENT LENGTH
1/2"	12"	12"	12"	12"
3/8"	12"	12"	12"	12"
1/4"	12"	12"	12"	12"
3/16"	12"	12"	12"	12"
1/8"	12"	12"	12"	12"



La Rose des Vents  
Sculpture  
Conservatory of Flowers  
San Francisco, CA

NO.	DESCRIPTION	DATE
1	REVISION	
2	REVISION	
3	REVISION	
4	REVISION	
5	REVISION	
6	REVISION	
7	REVISION	
8	REVISION	
9	REVISION	
10	REVISION	

PROJECT: S-4

DATE: 1/1/00

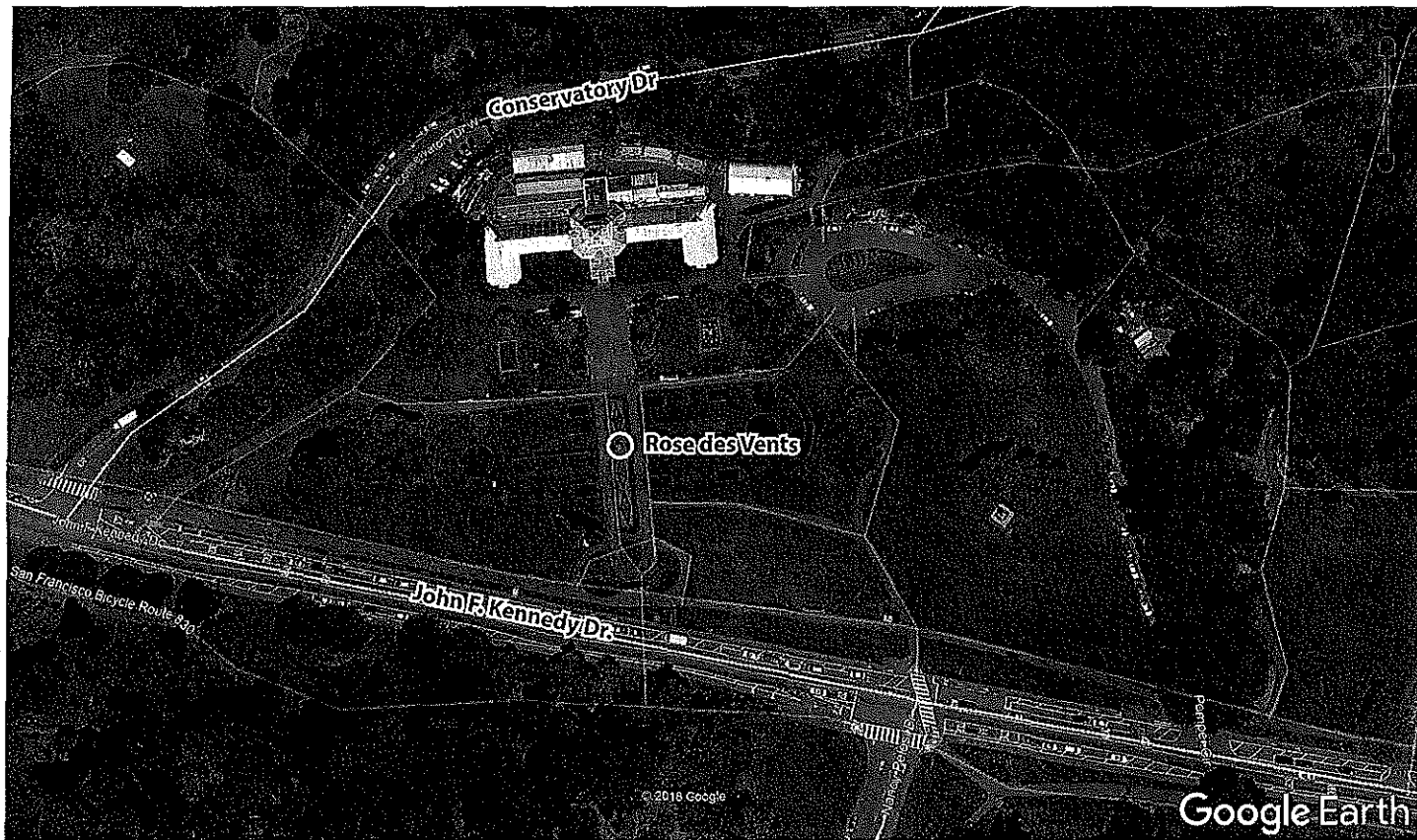
BY: [Signature]

SCALE: AS SHOWN

PROJECT: S-4



Attachment A: Location of the Proposed Permanent Extension of the Rose des Vents Art Installation





**Appendix B**  
**Services to be provided by Donor**

**Phase I**

**DESIGN**

**1. Scope of Work.**

- a) General
- i) Donor shall deliver a Proposal for the Artwork ("Proposal") in accordance with the San Francisco Arts Commission's Gift Policies. The scope of work under this phase includes the development of the proposal through all phases of design, including Conceptual Design, Design Development and Construction Documents. The Commission must approve each phase of Design by Resolution.
  - ii) The Proposal shall reflect the requirements of the Client and Commission, as expressed in communications with the Commission and Client.
  - iii) Donor shall insure that project Artist, or Artist's designated representative, agrees to collaborate closely with the City through in-person meetings and other necessary means of communication in order to ensure that the City has a full understanding of the artist's design and installation requirements. **Donor and Artist shall coordinate their communications with all City elected officials, staff and other city contractors through the Arts Commission Project Manager.**
  - iv) Donor shall deliver a list of all subcontracts of all or any Work pursuant to this Agreement.
- b) **Design Development:** For the purposes of this agreement, the parties acknowledge that the Artwork is complete and that the requirements of this section apply to the new base and permanent footing and attachment design for the Artwork, and any details relating to the installation of the artwork, including design of protective fencing, not previously submitted and approved by the Arts Commission. The revised base design will elevate the sculpture so that it meets Americans for Disability Act (ADA) requirements for an overhead obstruction.
- i) Design Development Materials and Documents shall incorporate the further development and refinement of the Proposal, Project Costs.
  - ii) Design Development shall include presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies and final cost estimates at design completion. When used in reference to the proposed Artwork, Design Development Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate. Donor shall ensure that the project Artist

and Artist's structural engineer and fabricator shall review all Design Development drawings, materials and documents for consistency and constructability, and report any engineering, structural concerns, or constructability concerns to the City. Modifications to the design necessitated by this review shall be submitted and approved by the City prior to beginning the production of Construction Documents and incorporated therein.

- iii) Conservator's Report, Maintenance Plan and Maintenance Endowment. At the time the Donor submits the Artist's proposal for review by the Arts Commission and as part of the Design Development Documents, Donor shall provide the Commission and Client with a Conservator's Report from a qualified Art Conservator, detailing General Maintenance Plan for the Artwork, with a detailed description of annual and long term future anticipated maintenance and conservation requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating artwork and the frequency of such staff involvement; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork.

The Report shall also provide a description of all equipment and or machinery needed to operate the project (if applicable) and any anticipated or required staffing, supervision or operational needs. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Donor shall ensure that all maintenance requirements will be reasonable in terms of time and expense. The Donor shall be responsible for making any updates or clarifications to this Maintenance Plan if the maintenance requirements and estimates change over the course of the project.

The Conservator's report and Maintenance Plan shall provide cost estimates for annual and long term care for a projected period of 20 years. This report shall be used as the basis for determining the amount of the Donor's required maintenance endowment.

**NOTE: The Conservator's Report, prepared by S.F. Art Conservation June 17, 2016, has been submitted and accepted by the Commission.**

**c) Construction Documents:**

- i) Construction Documents for construction and/or installation of the proposed Artwork as approved, which must be signed and stamped by design professionals licensed in the State of California, as required by the California Uniform Building Code and any San Francisco amendments to the Building Code. Construction Documents shall include completion of Appendix F: Special Inspections and Structural Observations.
- ii) Donor shall deliver Mock-ups and Samples, as required by Commission or its staff.
- iii) If the anticipated maintenance requirements and estimates have changed, Donor shall provide the Commission with a revised Maintenance Plan.
- iv) Donor shall deliver a schedule describing Artist's specific timelines for completing the Work.

2. **Insurance:** Donor shall obtain the following insurance prior to the commencement of Phase I unless waived in writing by the City Risk Manager. Artist shall comply with all the insurance requirements specified under Section 8 (Insurance) in the body of this Agreement.

## **Appendix B**

### **Services to be Provided by Donor**

#### **Phase II**

#### **Fabrication of Base; Repair of Artwork**

1. **Scope of Work.** The parties acknowledge that the Artwork is a pre-existing sculpture that is on display in Golden Gate Park. As a condition of acceptance of the Artwork as a gift to the City, the Donor has agreed to design and fabricate a new base for the sculpture to meet ADA requirements. The Artwork has also suffered loss of gilding and parties agree that the Artwork shall be re-gilded prior to transferring title to the city.
  - a) Donor shall ensure that the new base for the Artwork in accordance with all Contract Documents approved by the Commission through Phase I. The Donor shall also ensure that the Artwork is in pristine condition prior to transferring title to the city.
  - b) Shop Drawings. Donor shall deliver Artist's Shop Drawings as needed for sculpture armature, foundation and attachment hardware, produced by Artist or Artist's fabricator. The Shop Drawings shall be signed and stamped by a structural engineer as required by the California Uniform Building Code and any San Francisco amendments to the Building Code.
  - c) Inspection of Artwork:
    - i) Donor shall ensure that Artist or Artist's fabricator provide verification that materials used in fabrication are in accordance with those specified in Construction Documents and Shop Drawings. Artist shall provide copies of written specifications and mill certifications, as requested by the Arts Commission.
    - ii) Donor shall send photo documentation of base fabrication and re-gilded Artwork, at 100% completion. Documentation to be sent to Arts Commission Project Manager at each stage for review and approval prior to advancing with next phase of fabrication.
    - iii) Donor shall notify the Commission 30 days in advance of 100% completion of all the artwork elements so that the Arts Commission can do a field inspection of the artwork at the fabricators or request detailed photo documentation of the completed work.
  - d) Donor shall ensure that Artist's structural engineer shall review results of special inspection reports and structural observations, as identified in Construction Documents.

- i) Artist's structural engineer shall provide a written report to the Arts Commission stating the site visits that have been made from inspection and structural observation and identifying any reported deficiencies that, to the best of the structural engineer's knowledge, have not been resolved.
  - ii) Artist's structural engineer shall prepare a signed and stamped letter stating that all items requiring special inspection and structural observation were performed in accordance with the approved plans.
- e) Transportation Plan. Donor shall deliver a written list of the workers, vehicles, and equipment that will be involved in the transportation of the Artwork to the Site
- f) Final Documentation: Donor shall provide written proof of timely payment to subcontractors, maintenance manual, product specification data.
- g) Final Inspection: Donor shall notify SFAC for final inspection at 100% completion.
- h) Completion of the Artwork as part of obtaining a Letter of Conditional Acceptance. Artwork shall not be transported to the Site prior to receipt of the Letter of Conditional Acceptance.

**Phase III**  
**Transportation and Installation of Artwork**

**Phase III**  
**Transportation and Installation of Artwork**

**The Artwork shall be installed by the Donor under a separate agreement with a licensed Contractor (Artwork Installer) prior to the installation of the Artwork. The Artwork Installer shall develop an installation plan based on the Artist's Construction Documents, which the Artist shall review and provide to the Commission with comment. Artist, or Artist's representative, shall be available to be on site for consultation during the installation of the Artwork.**

**1. Scope of Work.**

- a) Donor shall provide for the transportation of the Artwork in accordance with the Transportation Plan approved by the Commission in Phase II. Donor shall not transport the Artwork to the site until Donor has received a Letter of Conditional Acceptance and until access to the Site has been approved and scheduled by the Commission in coordination with the Client.
- b) Donor shall ensure that the Artwork is prepared for transportation in accordance with customary industry standards for the transportation of fine works of art, and in accordance with any additional specifications.
- c) Artist's structural engineer shall review results of special inspection reports and structural observations, as identified in Construction Documents.
  - i) Regarding structural observations, Donor shall ensure that the Artist's structural engineer provides a written report to the Arts Commission stating the site visits that have been made and identifying any reported deficiencies that, to the best of the structural engineer's knowledge, have not been resolved.

- ii) The structural engineer shall prepare a signed and stamped letter stating that all items requiring special inspection and structural observation were performed in accordance with the approved plans.
  
- d) Donor, Artist, and Donor's Art Installer shall consult with the Arts Commission and Client prior to and during the installation of the Artwork. Donor shall coordinate Artist's activities on site with the Commission and/or Client staff.
- e) Donor shall coordinate and pay for all aspects of the installation, including site preparation, installation of footings, base, sculpture, and protective fencing.
- f) Artwork must be installed by a licensed contractor approved by the Commission.
- g) Donor shall deliver all insurance as specified in Section 8, Insurance, for all Contractors and subcontractors performing work on City Property.
- h) Donor shall install the artwork ensuring that all contracts are in compliance with State Law governing Public Works, including the payment of prevailing wage.
- i) Maintenance Documents. Donor shall deliver all information necessary for the Commission to properly care for and maintain the Artwork, including information regarding the physical make-up of the Artwork, methods and materials, and information about the artistic intent of Artist in the Design, Fabrication and Installation of the Artwork (attached as **Appendix E: Civic Art Collection Forms**).
- j) Donor shall provide the City with documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner and that there are no claims or liens on the Artwork.

## APPENDIX C

### PROJECT COSTS AND ALLOCATION AMONG DONORS AND ARTIST

#### PROJECT COSTS TO BE PAID DIRECTLY BY DONOR (AS INDICATED)

Artist Fees for Design, Fabrication of Artwork (Purchase Price) (Julie Lepinard)  
Repair and Re-gilding of Artwork (Artist)  
Design and fabrication of new sculpture base and protective fencing (Artist and Julie Lepinard)  
CAD, new base and shipment. fence (JSLH foundation)  
Signed Stamped Engineering Drawings and Calculations (Artist and Julie Lepinard)  
Drawings, Specifications from other Design Professionals (i.e. lighting designers, architects, Landscape architects etc.) (Julie Lepinard)  
Soil Reports (JSLH Foundation)  
Conservator's Report (JSLH Foundation)  
Storage and Transportation Costs (Julie Lepinard) Insurance Costs (Julie Lepinard): \$2,185 from May 2017 to Dec 2019  
Permit Fees if applicable (JSLH Foundation) : \$2,000 from 2016 to 2019 (\$500 per year).  
Installation Costs including Site Preparation, installation of footings, base, sculpture, and protective fencing, and identification signage (JSLH Foundation) footings and their installation  
Identification signage as per Arts Commission format (JSLH Foundation)

**Sub-Total of Donor's Direct Payment Costs: \$386,421 (\$49,768 Artist, \$306,231 Julie Lépinard, \$30,422 JSLH Foundation)**

**Sub-Total of Donor's Direct Payment Costs: \$386,421**

#### **COMMISSION'S COSTS: PROJECT COSTS PAID BY DONOR TO THE COMMISSION (JSLH FOUNDATION)**

Maintenance Endowment: \$190,322

**TOTAL PROJECT COSTS: \$576,743**



**APPENDIX D**

**CITY'S AGREEMENT WITH THE ARTIST**



**City and County of San Francisco  
Arts Commission  
25 Van Ness Avenue, Suite 240  
San Francisco, California 94102**

Agreement between the City and County of San Francisco and

**JEAN-MICHEL OTHONIEL**

This Agreement is made this **April 4<sup>th</sup>, 2019** in the City and County of San Francisco, State of California, by and between: Jean-Michel Othoniel (known hereinafter as “Artist”) and the City and County of San Francisco, a municipal corporation, hereinafter referred to as “City,” acting by and through its Arts Commission (the “Commission”), for the purposes and on the terms and conditions set forth below.

**Recitals**

This Agreement is made with reference to the following facts:

Whereas, the **JULIE LEPINARD AND JSLH FOUNDATION** (known herein after as “Donor”) has commissioned or purchased the following artwork created by the Artist: *La Rose Des Vents*, an aluminum kinetic sculpture gilded in gold leaf (known herein after as Artwork), and

Whereas, the Donor has offered Artwork as a gift to the City to be installed in front of the Conservatory of Flowers in Golden Gate Park (“Site”), and

Whereas, the Commission, by Resolution Number 1002-17-295 # has approved the Artist’s design of the Artwork and agreed to accept it as a gift to the Civic Art Collection, and

Whereas the Recreation and Parks Dept. has approved the proposed installation of the Artwork at the Site, and

Whereas, the Commission will enter into separate agreements with the Donor and Client Department regarding responsibilities of the donor and the use of the site, respectively, and

Whereas the Artist is recognized as the original creative artist who designed the Artwork and who holds the copyright on that design and

Whereas the Artist has transferred title of the Artwork to the Donor, so that the Donor, free and clear from any claims by the Artist, is legally free to transfer ownership of the Artwork to the City,

Now therefore, the Commission and the Artists enter into this agreement. for the purpose of a clear understanding of the rights and responsibilities of the Artists and the City relative to the use and display of the Artwork.

## **TERMS OF AGREEMENT**

Artist and the Commission, on behalf of City, hereby agree as follows:

### **1) Definitions:**

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement or the Contract Documents, it shall have the meaning set forth below:

- a) "Agreement" shall mean this agreement, including all addenda, appendices and modifications, whether created now or in the future.
- b) "Artist" or "Artists" shall mean: **JEAN-MICHEL OTHONIEL**
- c) "Artwork" shall mean: **LA ROSE DES VENTS**
- d) "City" shall mean City and County of San Francisco, a municipal corporation.
- e) "Client" shall mean the **RECREATION AND PARKS DEPARTMENT**.
- f) "Commission" shall mean the San Francisco Arts Commission.
- g) "Committee" shall mean the Visual Arts Committee of the Commission.
- h) "Donor" shall mean **JULIE LEPINARD AND JSLH FOUNDATION**.
- i) "Donor Agreement" shall mean that certain Gift Agreement by and between The San Francisco Arts Commission and Julie Lepinard and JSLH Foundation.
- j) "Site" shall mean the garden in front of the Conservatory of Flowers in Golden Gate Park, approved for the installation of the Artwork by the Client and the Arts Commission.
- k) Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of the Commission. The words "sufficient," "necessary," or "proper," and the like, mean sufficient, necessary or proper in the judgment of the Commission. The words "approval," "acceptable," "satisfactory," or words of like import, shall mean approved by, or acceptable to, or satisfactory to the Commission, unless otherwise indicated by the context. The terms "include," "included" or "including" and similar terms shall be deemed to be followed by the words "without limitation."

### **2) Artist's Moral Warranties**

a. Warranty of Title. Artist represents and warrants that Artist is the sole author of the Artwork and that Artist is the sole owner of any and all copyrights pertaining to the Artwork. Artist further represents that the Artwork is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights or any other rights in the Artwork or any parts of the Artwork. The Artist warrants that in a separate agreement with the Donor, title to the artwork was transferred to the Donor, and that the Donor was free to transfer title to the City, and that the Artist has relinquished any and all claims to title to the Artwork. If the artwork uses photographic images supplied by others, the Artist warrants that Artist has been granted license in writing from the entity holding the copyright regarding the use and incorporation of copyrighted materials into this artwork, and shall provide proof of such license to the Commission.

b. Warranty of Workmanship. Artist represents and warrants that, for a period of one year after final acceptance, the Work will be free of defects in workmanship or materials, including Inherent Defects (as defined below), and that the Work will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at the Site. "Inherent Defect" refers to a quality within the material or materials, which comprise the Work which, either alone or in combination, results in the tendency of the Work to destroy itself. "Inherent Defect" does not include any tendency to deteriorate that is specifically identified in the Contract Documents approved by the Commission.

c. Warranty of Public Safety. Artist represents and warrants that the Work will not pose a danger to public health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement.

d. Warranty of Acceptable Standard of Display and Operation. Artist represents and warrants that:

(1) Cleaning and repair of the Artwork and any associated working parts and/or equipment in accordance with the Conservation Report as defined in the Donor Agreement will maintain the Work within an acceptable standard of public display;

(2) With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Work will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

e. Manufacturer's Warranties. The Work does not incorporate products covered by a manufacturer's warranty.

### **3. Instructions for Maintenance; Variable Media Guidelines; Anticipated Life Span of Artwork**

Unless specifically provided in this Agreement, Artist shall not be responsible for ongoing maintenance of the Artwork. The Artwork shall be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment.

With respect to Artwork involving or incorporating electronic, digital, video, mechanical, living, variable, moving or other dynamic components ("Variable Media"), the Artist shall also provide the Commission with a written recommendations for translating the Artwork into new media or replacing elements of the Artwork in the event that the original medium, components and/or the Artist's installation plan become obsolete ("Variable Media Guidelines."). Although the City is not required to comply with such Variable Media Guidelines, the City may take such Guidelines into account when maintaining the Artwork or trying to preserve the integrity of the Artwork.

Although City strives to maintain the Civic Art Collection in good repair and condition, City is not required by this Agreement to maintain the Artwork to any particular standard. City may determine to allow the Artwork to deteriorate in accordance with the Artwork's temporary life span, if deemed appropriate by City or if City lacks sufficient funds for required maintenance and/or conservation. If the Artwork suffers deterioration, City shall have sole discretion to determine whether to remove the Artwork from display as a result of deterioration, whether to replace any portion of the Artwork or translate any component into new media, or whether to maintain the Artwork on display despite its deteriorated condition. The City shall make a good faith effort to contact Artist before replacing the Artwork in case of deterioration.

The anticipated life span of the Artwork is 25 years from the date of final acceptance by the Commission. After that time, the Commission in its sole discretion may re-evaluate the Artwork to determine if it retains its identity as a work of art and, if not, whether to take appropriate action, including the possibility of destroying the Artwork. If no life span is specified above or pursuant to a subsequent contract modification, the anticipated life span of the Artwork shall be 25 years. If the Commission determines that, through decay, vandalism or other forces, the Artwork has lost its integrity to the point where it should be destroyed, the Commission shall first offer the Artwork to Artist free of charge.

#### 4. Artist's Moral Rights; City's Ownership Rights

a. The Commission, pursuant to its Charter responsibilities, intends to display the Artwork at the Site as originally created by Artist and to maintain the Artwork in good condition. Public artworks in the collection of the city are sometimes integrated into their site, such that they become an integral, permanent and site-specific part of the building's architecture or landscaped environment and removal of the artwork would result in significant changes to the artwork and the building's architecture. City, however, shall preserve complete flexibility to operate and manage City property in the public's interest. Therefore, City retains the absolute right to Alter the Artwork in City's sole judgment. For example, City may Alter the Artwork to eliminate hazard, to comply with the ADA, to otherwise aid City in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, City finds the Site to be inappropriate, City has the right to install the Artwork at an alternate location that City chooses in its sole discretion. If the Artwork is free-standing such that it can be removed without significant damage to the Artwork or the Site, and if the Commission authorizes the removal of the Artwork, the Commission shall take reasonable precautions to minimize Alteration of the Artwork during removal.

b. With respect to the Artwork produced under this Agreement, and in consideration of the procedures and remedies specified in this Artist waives any and all claims, arising at any time and under any circumstances, against City, its officers, agents, employees, successors and assigns, arising under the federal Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 et seq.), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. §106A, Cal. Civil Code §§987 et seq., or any other type of moral right protecting the integrity of works of art. If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without Alteration of the Artwork, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for Alteration of the Artwork.

c. If City intends to take any action with respect to the Site or the Artwork that would Alter the Artwork, other than routine cleaning and maintenance, the following procedures shall apply:

(1) Notice. Where time permits, Commission shall make reasonable good faith efforts to notify Artist at least 30 calendar days prior to authorizing any Alteration of the Artwork, at the last phone number or address provided by Artist to the Commission's Collections Manager. Where time does not permit prior to Alteration of the Artwork – for example, in cases of public hazard, accident or unauthorized Alteration – Commission shall notify Artist within 30 calendar days after such Alteration.

(2) Consultation. After receiving such notice, Artist shall consult with City to determine whether the Artwork can be restored or relocated, and to attempt to come to a mutually agreeable plan for disposition of the Artwork. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing. If City intends to remove the Artwork, Artist shall consult regarding methods to minimize or repair any Alteration to the Artwork caused by such removal and the potential costs of such removal.

(3) Restoration. If the Artwork is Altered, with or without prior notice to Artist, and City intends to maintain the Artwork on display, City shall make a reasonable good faith effort to engage Artist in the restoration of the Artwork and to compensate Artist for Artist's time and efforts at fair market value, which may be the subject of a future Agreement between Artist and City. However, City has no obligation under this Agreement to restore the Artwork to its original condition, to compensate Artist for any restoration work, or to maintain the Artwork on display. If Artist fails or refuses to negotiate with City in good faith with respect to any restoration, City may contract with any other qualified art conservator or artist for such restoration. During Artist's lifetime, City shall make best efforts not to display or de-accession only a portion of the Artwork without Artist's consent.

(4) Remedies. If City breaches any of its obligations under this Section, Artist's remedies shall be limited as follows: If City inadvertently fails to provide a required prior notice of Alteration, City will provide notice as soon as it discovers the omission, and before Alteration of the Artwork if that remains possible. If City Alters the Artwork without providing Artist a required prior notice of Alteration, Artist shall be given the first right of refusal to restore the Artwork at the same location and City shall make reasonable efforts to provide funding for the restoration. If City funds cannot be made available after reasonable efforts are made to secure such funding, Artist may, but is not obligated to, restore the Artwork at Artist's expense. If Artist elects not to restore the Artwork, City may retain another artist or conservator to restore it, or may Alter the Artwork in any manner, at City's sole discretion.

d. If City Alters the Artwork without Artist's consent in a manner that is prejudicial to Artist's reputation, Artist retains the right to disclaim authorship of the Artwork in accordance with California Civil Code §987(d) and 17 U.S.C. §106A(a)(2).

e. Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of City, Artist retains Artist's moral rights in the Artwork, as established in the Visual Artists Rights Act (17 U.S.C. §§106A and 113(d)), the California Art Preservation Act (Cal. Civil Code §§987 and 989), or any other local, state, federal or international moral rights laws that protect the integrity of works of art. Accordingly, nothing herein shall prevent Artist from pursuing a claim for Alteration of the Artwork against a third party who is not an officer, employee, agent, successor or assign of City. City has no obligation to pursue claims against third parties to remedy or prevent Alteration of the Artwork. However, as owner of the Artwork, City may pursue claims against third parties for damages or to restore the Artwork if the Artwork has been altered without City's authorization.

**5. Rights of First Refusal.** If the City desires to sell the Artwork and has an interested buyer who has proposed terms of sale ("Sale Terms"), the City shall first offer the Artwork to the Donor on the Sale Terms. If Donor desires to purchase the Artwork on the Sale Terms, Donor shall give the City written acceptance of the Sale Terms no later than thirty (30) days from the City's offer of the Artwork to Donor. Thereafter, Donor shall purchase the Artwork on the Sale Terms. If Donor does not desire to purchase the Artwork on the Sale Terms, the City shall offer the Artwork to Artist on the Sale Terms. If Artist desires to purchase the Artwork on the Sale Terms, Artist shall give the City written acceptance of the Sale Terms no later than thirty (30) days from the City's offer of the Artwork to Artist. Thereafter Artist shall purchase the Artwork on the Sale Terms. If neither Donor nor Artist has given written acceptance of the Sale Terms to the City within sixty (60) days from the City's offer of the Artwork to Donor, the City may accept any third party offer on the Sale Terms within six (6) months after the end of such sixty (60) days. If the City does not sell the Artwork to a third party within such six (6) month period, the right of first refusal in favor of Donor and Artist shall be reinstated.

## **6. Intellectual Property and Publicity Rights**

a) Copyright. Subject to usage rights and licenses granted to City hereunder, Artist shall retain all 17 U.S.C. §106 copyrights in all original works of authorship produced under this Agreement. Artist's copyright shall not extend to predominantly utilitarian aspects of the Work, such as landscaping elements, furnishings, or other similar objects. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Work.

b) City's Intellectual Property License. Artist grants to City, and to City's agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the Work, the Artwork, and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

- i. Implementation, Use and Display. City may use and display the Work (to the extent the Work includes graphic representations or models) and the Artwork. To the extent the Work involves design elements that are incorporated by City into the design of the Site, City may implement such elements at the Site.
- ii. Reproduction and Distribution. City may make and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional reproductions. City may use such reproductions for any City-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, gifts for the Commission benefactors, documentation of City's Civic Art Collection, and catalogues or similar publications. City shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the Commission. The proceeds from the sale of any such reproductions shall be used to maintain and support City's Civic Art Collection or for any other public purposes that City deems appropriate. The license granted hereunder does not include the right to create 3-dimensional reproductions on items such as tote-bags, T-shirts, coffee mugs and similar merchandise. Such reproductions may only be created pursuant to separate license agreements with Artist. Artist may use the City's reproductions on a royalty-free perpetual basis solely for promotion and marketing of Artist's work.
- iii. Reproduction for Replacement of Damaged, Destroyed or Stolen Artwork: In recognition that the artwork was created from digital images and/or electronic data files, and may be reproduced from the same files, the Artist shall provide the City with a copy of all final digital images and electronic data files used to create the artwork, and hereby grants license to the city to reproduce the artwork from the these files should the artwork be damaged, destroyed or stolen. The City warrants that the artwork would only be reproduced under these conditions, and should this occur, the City will make a good faith effort to contact the artist for consultation purposes regarding the re-fabrication of any portion of the artwork.
- iv. Public Records Requests. Any documents provided by Artist to City are public records and City may authorize third parties to review and reproduce such documents pursuant to public records laws, including the San Francisco Sunshine Ordinance and California Public Records Act.
- c) Third Party Infringement. The Commission is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.
- d) Credit. Artist hereby agrees that all formal references to the Artwork and any reproductions of the Artwork in any form shall include the following credit: "Collection of the City and County of San Francisco, San Francisco Arts Commission." City shall credit Artist for the Artwork upon publication of any two dimensional reproductions of the Artwork.
- e.) Publicity. City shall have the right to use Artist's name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Artwork including all advertising and promotional materials regarding City or the Commission. Artist shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the Artwork.
- f.) Trademark. In the event that City's use of the Artwork creates trademark, service mark or trade dress rights in connection with the Artwork, City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.



- g.) Unique. Artist warrants that the design of the Artwork is an edition of one, and that neither Artist nor Artist's agents will execute or authorize another to execute another work of the identical design or dimensions as the Artwork. This warranty shall continue in effect for a period consisting of the life of Artist plus 70 years or for the duration of the Artwork's copyright protected status, whichever is longer, and shall be binding on Artist and Artist's heirs and assigns. In the case where Artist is comprised of two or more individual persons or a group of people, the measuring life shall be the life of the last surviving individual person comprising Artist. Recognizing that City has no adequate remedy at law for Artist's violation of this warranty, Artist agrees that, in the event Artist breaches this warranty, City shall be entitled to enjoin Artist's breach. Nothing hereunder shall be construed to constrain Artist from creating posters, note cards, or other reproductions of the Artwork.
- h.) Resale Royalty. If City sells the Artwork as a fixture to real property, and if the resale value of the Artwork is not itemized separately from the value of the real property, the parties agree that the resale price of the Artwork shall be presumed to be less than the purchase price paid by City under this Agreement. Thus, City has no obligation to pay resale royalties pursuant to California Civil Code §986 or any other law requiring the payment of resale royalties. If City sells the Artwork as an individual piece, separate from or itemized as part of a real property transaction, City shall pay to Artist a resale royalty to the extent required by law, based upon the sale price of the Artwork.

## 7. Notices to the Parties

- a. Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail or by fax, and shall be addressed as follows:

**To Commission:**

San Francisco Arts Commission  
25 Van Ness Avenue, Suite 345  
San Francisco, CA 94102  
Attn: Allison Cummings  
Phone: (415) 252-2559  
Fax: (415) 252-2595

**To Artist:**

Jean-Michel Othoniel  
Othoniel Studio  
18 Rue de la Perle  
75003 Paris, France  
Phone: 33+(0)1 43 67 4722  
Cecilia@othoniel.fr  
jm@othoniel.fr

- b. Any notice of default must be sent by registered mail.
- c. Any change in the designation of the person or address to which submittals, requests, notices and reports shall be delivered is effective when the other party has received written notice of the change.

**SIGNATURES**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

**CITY**

Recommended by:

By \_\_\_\_\_  
**Tom DeCaigny**  
Director of Cultural Affairs  
Arts Commission

**Approved as to Form:**

**Dennis J. Herrera**  
City Attorney

By \_\_\_\_\_  
Lauren Curry  
Deputy City Attorney

**ARTIST**

By \_\_\_\_\_  
**Jean-Michel Othoniel**  
Othoniel Studio  
18 Rue de la Perle  
75003 Paris, France

## Appendix E Civic Art Collections Forms

### ARTIST BIOGRAPHY

Artist Surname: Othoniel		Given Name: Jean-Michel	
Birth Date: 1964	Birth Place: Saint-Étienne, France		Sex: M
Ethnicity: (optional)			
Contact Information: (current address, phone number and e-mail)			
18, rue de la Perle 75003, Paris, France			
Attach Artist Resume: (curriculum vitae or resume)			

### OBJECT INFORMATION

Title of Artwork: La Rose des Vents
Object Description: (describe the artwork and the components that comprise the complete installation)
Large scale kinetic sculpture made from gold and aluminum.
Installation Location: Conservatory of Flowers in Golden Gate Park
In the interest of history, as well as for future conservation and restoration, should that become necessary, please complete the attached <b>Technical and Maintenance Record Sheet</b> . Describe all materials used to create this work of art, providing trade names wherever possible.

### NON-COMMISSIONED WORKS

Provenance: (history of ownership, including dates work was transferred)
--



**Exhibition History:** (list all exhibitions by title, date and museum/gallery name)

**ARTIST INTENT**

**Statement of Intent:** (provide any information about the subject of the work, sources of inspiration, ideas expressed in it or historical value relating to the work. You may attach a separate sheet.)

**Artist Signature and Date certifies that the information provided is accurate and complete:**

**Attach photographic documentation of the fabrication and completed artwork for the archive. Digital images on disk are preferred.**

**APPENDIX E Civic Art Collections Forms: 2-D Technical Maintenance Form**

<b>Full Name of Artist:</b>
<b>Title of Artwork:</b>
<b>Date of Execution:</b>
<b>Dimensions:</b>
<b>Artwork Material/s:</b> (list type and brand name for all materials; attach Material Safety and Technical Data Sheets. Include contact names for each supplier and attach warranties when possible.)
<b>Framing Materials and Construction Method:</b> (list type and brand name for all materials; attach Material Safety and Technical Data Sheets. Include contact names for each supplier and attach warranties when possible.)
<b>Technique or Construction Method:</b> (List all architects and fabricators. Attach any warranties or agreements)

**Finish:** (all anti-graffiti/protective coatings, fixative coatings, fire retardant, sprays, etc., attach Material Safety and Technical Data Sheets)

**Foundation/Installation Method:**

**Maintenance and Care of Artwork:** (suggested cleaning agent and procedures, attach Material Safety Data and Technical Data Sheets)

**Placement of Artwork:** (cautions regarding sunlight, heat, etc.)

**Handling Instructions:**

APPENDIX E: 3-D Technical Maintenance Form

<b>Full Name of Artist:</b> Jean-Michel Othoniel
<b>Title of Artwork:</b> La Rose des Vents
<b>Date of Execution:</b> 2015
<b>Dimensions:</b> 12' 1.62" x 96 1/2 x 78 3/4 inches (369.9 x 245 x 200 cm) (without pedestal); 12'5.55" x 96 1/2 x 78 3/4 inches (379.9 x 245 x 200 cm) (with pedestal)
<b>Artwork Material/s:</b> (List type and brand name for all materials; attach Material Safety and Technical Data Sheets. Include contact names for each supplier and attach warranties when possible. Include Fabrication Documents, ie Mill Certifications. Inspection documentation and other applicable material test results) Painted steel and gilded aluminum
<b>Material Thickness:</b> 15mm, 75mm round.
<b>Welding or Joint Material:</b>
<b>Welding Rod Alloy or Joint Material:</b>
<b>Casting Alloy, Wax Body, Glass or Fiber Type:</b>
<b>Framing Materials and Construction Method:</b> (List type and brand name for all materials; attach Material Safety and Technical Data Sheets. Include contact names for each supplier and attach warranties when possible.)
<b>Technique or Construction Method:</b> (List all architects and fabricators. Attach any warranties or agreements.)



**Finish:** (all anti-graffiti coatings, fixative coatings, fire retardant sprays, etc., attach Material Safety and Technical Data sheets.)

- Primary grip anticorrosion, 2 layers of Vigor EP 201 HS.
- Aqueous interface Freitacrocche 1 layer.
- Freitacolor 2 layers.

**Foundation/Installation Method:**

**Maintenance and Care of Artwork:** (Suggested cleaning agent and procedure, attach Material Safety and Technical Datasheets.)

UPPER ROSE STRUCTURE: Application with a damp cotton cloth over the entire surface of the rose. In case of deterioration bomb (graffiti) the damaged parts must be restored to the sheet gold with a varnish finish. LOWER FOOT STRUCTURE: Application with a damp cotton cloth over the entire surface of the foot. In case of deterioration bomb (graffiti) damaged parties will have to be restored. Painting «patina» P7 anti-graffiti paint mat.

**Placement of Artwork:** (cautions regarding sunlight, heat, etc.)

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**Handling Instructions:**

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**Attach any diagrams and disassembly instructions.**

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**APPENDIX F: Structural Engineering Inspection Form**

**SPECIAL INSPECTION AND STRUCTURAL OBSERVATION**  
**A COPY OF THIS DOCUMENT SHALL BE KEPT WITH THE APPROVED STRUCTURAL DRAWING SET**

JOB ADDRESS \_\_\_\_\_ APPLICATION NO. \_\_\_\_\_ ADDENDUM NO. \_\_\_\_\_

OWNER NAME \_\_\_\_\_ OWNER PHONE NO. ( \_\_\_\_\_ ) \_\_\_\_\_

Employment of Special Inspection is the direct responsibility of the OWNER, or the engineer/architect of record acting as the owner's representative. Special inspector shall be one of those as prescribed in Sec.1704. Name of special inspector shall be furnished to DBI District Inspector prior to start of the work for which the Special Inspection is required. Structural observation shall be performed as provided by Section 1704.5. A preconstruction conference is recommended for owner/builder or designer/builder projects, complex and highrise projects, and for projects utilizing new processes or materials.

In accordance with Sec. 1701;1703;1704; 1705 (2013 SFBC), Special Inspection and/or testing is required for the following work:

- |   |  |   |
|---|--|---|
| 1. <input type="checkbox"/> Concrete (Placement & sampling)                           | 6. <input type="checkbox"/> High-strength bolting                                      | 18. Bolts Installed in existing concrete masonry:   |
| 2. <input type="checkbox"/> Bolts installed in concrete                               | 7. <input type="checkbox"/> Structural masonry   | <input type="checkbox"/> Concrete <input type="checkbox"/> Masonry  |
| 3. <input type="checkbox"/> Special moment-Resisting concrete frame                   | 8. <input type="checkbox"/> Reinforced gypsum concrete                                 | <input type="checkbox"/> Pull/torque tests per SFBC Sec.1607C & 1615C   |
| 4. <input type="checkbox"/> Reinforcing steel and prestressing tendons                | 9. <input type="checkbox"/> Insulating concrete fill                                   | 19. <input type="checkbox"/> Shear walls and floor systems used as shear diaphragms                                       |
| 5. Structural welding:  | 10. <input type="checkbox"/> Sprayed-on fireproofing                                   | 20. <input type="checkbox"/> Holdowns   |
| A. Periodic visual Inspection   | 11. <input type="checkbox"/> Piling, drilled piers and caissons                        | 21. Special cases:  |
| <input type="checkbox"/> Single pass fillet welds 5/16" or smaller                    | 12. <input type="checkbox"/> Shotcrete   | <input type="checkbox"/> Shoring  |
| <input type="checkbox"/> Steel deck   | 13. <input type="checkbox"/> Special grading, excavation And filling (Geo. Engineered) | <input type="checkbox"/> Underpinning: <input type="checkbox"/> Not affecting adjacent property                           |
| <input type="checkbox"/> Welded studs   | 14. <input type="checkbox"/> Smoke-control system                                      | <input type="checkbox"/> Affecting adjacent property: PA _____  |
| <input type="checkbox"/> Cold formed studs and joists                                 | 15. <input type="checkbox"/> Demolition  | <input type="checkbox"/> Others   |
| <input type="checkbox"/> Stair and railing systems                                    | 16. <input type="checkbox"/> Exterior Facing   | 22. <input type="checkbox"/> Crane safety (Apply to the operation of Tower cranes on highrise building) (Section 1705.21) |
| <input type="checkbox"/> Reinforcing steel  | 17. Retrofit of unreinforced masonry buildings:  | 23. <input type="checkbox"/> Others: "As recommended by professional of record" _____                                     |
| B. Continuous visual Inspection and NDT (Section 1704)                                | <input type="checkbox"/> Testing of mortar quality and shear tests                     |   |
| <input type="checkbox"/> All other welding (NDT exception: Fillet weld)               | <input type="checkbox"/> Inspection of repointing operations                           |   |
| <input type="checkbox"/> Reinforcing steel; and <input type="checkbox"/> NDT required | <input type="checkbox"/> Installation inspection of new shear bolts                    |   |
| <input type="checkbox"/> Moment-resisting frames                                      | <input type="checkbox"/> Pre-Installation inspection for embedded bolts                |   |
| <input type="checkbox"/> Others _____   | <input type="checkbox"/> Pull/torque tests per SFBC Sec.1607C & 1615C                  |   |

24. Structural observation per Sec. 1704.5 (2013 SFBC) for the following:  Foundations       Steel framing  
 Concrete construction       Masonry construction       Wood framing  
 Other: \_\_\_\_\_

25. Certification is required for:  Glu-lam components

Prepared by: \_\_\_\_\_ Phone: ( \_\_\_\_\_ ) \_\_\_\_\_  
 Engineer/Architect of Record

Required information:  
 FAX: ( \_\_\_\_\_ ) \_\_\_\_\_ Email: \_\_\_\_\_

Review by: \_\_\_\_\_ Phone: (415) 558-\_\_\_\_\_  
 DBI Engineer or Plan Checker

APPROVAL (Based on submitted reports.)

\_\_\_\_\_  
 DATE DBI Engineer or Plan Checker / Special Inspection Services Staff

QUESTIONS ABOUT SPECIAL INSPECTION AND STRUCTURAL OBSERVATION SHOULD BE DIRECTED TO:  
 Special Inspection Services (415) 558-6132; or [dbi\\_specialinspections@sfgov.org](mailto:dbi_specialinspections@sfgov.org) ; or FAX (415) 558-6474