

**MAINTENANCE AGREEMENT  
FOR TRANSPORTATION ART IN THE CITY AND COUNTY OF  
SAN FRANCISCO**

THIS Maintenance Agreement for maintenance of Transportation Art in the City and County of San Francisco (“AGREEMENT”) is made effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between the State of California, acting through the Department of Transportation (“STATE”) and the City and County of San Francisco (“CITY”) and collectively called “PARTIES”.

**SECTION I**

**RECITALS**

1. WHEREAS, Encroachment Permit Number \_\_\_\_\_ was executed between CITY and STATE to construct the Transportation Art Project within the STATE right of way along State Route 101; at the north and south boarding platforms of the Van Ness Avenue BRT Geary Street station between Geary and O’Farrell Streets (04-CCSF-101 PM 5.5/5.6), as shown in EXHIBIT A, entitled “TRANSPORTATION ART LOCATIONS,” attached and incorporated herein. The Transportation Art Project, which includes new light sculptures placed upon required sculpture foundation/footings with an engineered electrical system is “ART”; and
2. WHEREAS, it was agreed by PARTIES that before initiation of ART installation and construction, CITY and STATE will enter into a Maintenance Agreement for the maintenance of ART; and
3. WHEREAS, the PARTIES mutually desire to clarify the division of maintenance responsibilities as defined in Section 27 of the California Streets and Highway Code that include, but are not limited to, providing emergency repair and maintenance (collectively “MAINTAIN/MAINTENANCE”) of ART at the location, as shown in EXHIBIT A; and
4. WHEREAS, this AGREEMENT does not replace or supersede any prior or existing Freeway Maintenance Agreements between STATE and CITY; and
5. WHEREAS, on \_\_\_\_\_, 2020, the Council of the County and City of San Francisco through Resolution No. \_ approved a recommendation to accept MAINTENANCE responsibilities for ART.

NOW THEREFORE, IT IS AGREED AS FOLLOWS:

SECTION II

AGREEMENT

1. In consideration of the mutual covenants and promises herein contained, CITY and STATE agree:
  - 1.1. When a change to this agreement is necessary, the PARTIES will execute a formal amendment in writing through their authorized representatives.
  - 1.2. PARTIES agree maintenance responsibilities include, but are not limited to, inspection, providing emergency repair and maintenance as defined in Section 2.9 below (collectively “MAINTAIN/MAINTENANCE”) of ART in EXHIBIT A.
  - 1.3. EXHIBIT A consists of images that delineate the locations within STATE’s right of way, where ART will be located, what the ART comprises, and the responsibility of CITY to MAINTAIN under this AGREEMENT.
2. CITY’s obligations, at CITY’s expense, include:
  - 2.1. CITY shall MAINTAIN ART conforming to the final form plans, specifications and details, prepared and stamped by a licensed landscape architect or licensed engineer, approved by STATE (“Final Form Plans”).
  - 2.2. CITY shall submit the Final Form Plans for ART to STATE’s District 4 Permit Engineer for review and approval and will obtain and have in place all valid necessary Encroachment Permit(s) before the start of any work within STATE’s right of way. All proposed ART must meet STATE’s standards as outlined in STATE’s Project Development Procedures Manual (“PDPM”), Chapter 29, Section 9, Transportation Art.
  - 2.3. CITY shall ensure ART is provided with acceptable scheduled routine MAINTENANCE necessary to MAINTAIN a neat and attractive appearance. CITY shall coordinate, in writing, said MAINTENANCE with STATE before the start of any work.
  - 2.4. An Encroachment Permit rider may be required for any changes to the scope of work allowed by this AGREEMENT before the start of any work within STATE’s right of way.
  - 2.5. CITY, CITY’s contractors and ARTIST(s) will have to obtain individual Encroachment Permits from STATE before the start of any work within STATE’s right of way. This includes, but is not limited to the installation, MAINTENANCE, restoration or removal of ART. A permit fee will be required of CITY’s third-party successors and CITY’s contractor. CITY agrees that it shall remain subject to the

- terms of this AGREEMENT until termination of this AGREEMENT or until ART has been removed from STATE right of way in its entirety, whichever is later.
- 2.6. CITY shall immediately replace or repair damaged ART when observed or within thirty (30) calendar days of being notified in writing by STATE.
  - 2.7. CITY shall remove ART and restore STATE-owned areas to a safe and attractive condition acceptable to STATE, if this AGREEMENT is terminated, or ART has been removed from STATE's right of way in its entirety, as set forth herein.
  - 2.8. CITY shall expeditiously MAINTAIN, replace, repair, remove, or restore ART if it has become unsightly.
  - 2.9. CITY shall MAINTAIN, at CITY's expense, all ART within STATE highway right of way, as shown on EXHIBIT A for as long as it remains in place. MAINTENANCE shall include, but not limited to, (1) the sculpture's required structure foundations and footings; (2) all associated energy costs and necessary electrical facilities; (3) all restoration or replacement of damaged ART; (4) all removal of dirt, debris, graffiti, grown vegetation and weeds surrounding ART and the immediate area CITY uses to access and MAINTAIN ART; and (5) all removal of any deleterious item or material on ART in an expeditious manner. Graffiti removal must conform to STATE policies and guidelines existing when CITY performs work, including the requirement to promptly remove any offensive messages and the timely removal of all other graffiti. MAINTENANCE practices must protect air and water quality as required by state and federal law. Should ART be removed, for whatever reason, CITY, at no cost to STATE, shall return the area where ART was installed to its original condition acceptable to STATE.
  - 2.10. No work will be performed from the freeway or adjacent roadside, unless approved by STATE in a separate written Encroachment Permit. All work will be conducted from local streets or adjacent sidewalks. CITY shall be responsible for all necessary traffic operations, traffic control, traffic/lane closures and traffic safety required for installation of ART and MAINTENANCE operations.
  - 2.11. Other than STATE-approved ART, no alteration of STATE's existing freeway structure or any other highway facility, including signage, will be permitted, unless pre-approved in writing by STATE. No existing landscaping shall be removed to accommodate ART unless approved by STATE.
  - 2.12. All work in connection with installation, MAINTENANCE, restoration, or removal, of ART; or, more generally, to benefit CITY will be done at no cost to STATE.
  - 2.13. CITY shall remove ART when, in the opinion of STATE, ART creates a maintenance or operational concern. If CITY fails to remove ART promptly, STATE may remove ART thirty (30) calendar days following written notification to CITY, and STATE will bill CITY for any costs related to the removal and

restoration of STATE-owned areas to their original condition acceptable to STATE.

- 2.14 CITY may remove ART thirty (30) days following written notification to STATE. CITY shall remove ART and restore STATE-owned areas to a safe and attractive condition acceptable to STATE.
  - 2.15 CITY is required, before the installation and construction of ART on STATE's right of way, to obtain from ARTIST(s) or any party CITY contracts with for the ART and provide to STATE an original wet-signature copy of STATE's Assignment and Transfer of Copyright and Waiver of Moral Rights in Artwork Agreement(s), signed, executed and notarized assigning any copyright interest in the ART to the STATE.
  - 2.16 Upon completed installation of ART within STATE's right of way, said tangible ART shall become property of the STATE. When ART is removed by CITY from STATE's right of way, said tangible ART shall become the property of CITY.
3. STATE shall have these obligations and rights under this AGREEMENT:
- 3.1. Provide CITY with timely written notice of unsatisfactory conditions that require correction by the CITY. However, the non-receipt of notice does not excuse CITY from MAINTENANCE responsibilities assumed under this AGREEMENT. ART which in the opinion of STATE becomes a safety or operational concern will be removed immediately at no cost to STATE by CITY.
  - 3.2. Provide CITY, upon receiving CITY's written request, the Encroachment Permits from STATE's District 4 Encroachment Permit Office prior to CITY entering STATE right of way to perform CITY MAINTENANCE responsibilities. These Encroachment Permits will be issued at no cost to CITY.
  - 3.3. Provide CITY, CITY's contractor and/or ARTIST(s), upon separate written requests, Encroachment Permits from STATE before the start of any work within STATE's right of way. A permit fee will be required for CITY's contractor and ARTIST(s).
  - 3.4. STATE reserves the right to remove ART, partially or in its entirety, alter and/or modify parts thereof due to any STATE transportation activities, including but not limited to, emergency, construction, rehabilitation, or other necessary activities affecting STATE's transportation facilities, with no obligation, notification, compensation to, or approval of CITY.
  - 3.5. STATE reserves the right to remove or alter ART that presents a safety hazard to the public, as solely determined by STATE, without delay or advance notification to CITY.

- 3.6. STATE will not be responsible for the cost of any MAINTENANCE, including but not limited to, repair, restoration or replacement of ART damaged in performing STATE's duties related to its highway operations and activities. STATE will not be responsible for any damage to ART caused by any third-party or because of vandalism or accidents on STATE's right of way.
- 3.7. STATE will notify CITY thirty (30) days before any planned work that may affect the ART. If the work required is due to a public safety hazard, this notification period does not apply, and STATE will notify CITY as soon as practicable of the performed work.

#### 4. LEGAL RELATIONS AND RESPONSIBILITIES

- 4.1. Nothing within this AGREEMENT should create duties or obligations to or rights in third parties not parties to this AGREEMENT or to affect the legal liability of a PARTY to the AGREEMENT by imposing any standard of care regarding the operation and maintenance of STATE highways and local facilities different from the standard of care imposed by law.
- 4.2. If during the term of this AGREEMENT, CITY should cease to MAINTAIN ART to the satisfaction of STATE as required under this AGREEMENT or if in the opinion of the STATE the ART creates an unsatisfactory condition, STATE may either undertake to perform that MAINTENANCE on behalf of CITY at CITY's expense; direct CITY to remove ART; or undertake to remove ART at CITY's sole expense and restore STATE's right of way to its prior condition. CITY agrees to pay said STATE expenses related to the ART, within thirty (30) calendar days of receipt of billing by STATE. However, prior to STATE performing any MAINTENANCE or removing ART, STATE will provide written notice to CITY to cure the default and CITY will have thirty (30) calendar days within which to affect that cure.
- 4.3. Neither STATE nor any officers or employees thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by CITY under or in connection with any work, authority or jurisdiction conferred upon CITY under this Agreement. It is understood and agreed that CITY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by CITY under this Agreement.
- 4.4. Neither CITY nor any officers or employees thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE under or in connection with any work, authority or jurisdiction conferred upon STATE under this Agreement. It is understood and agreed that STATE shall

fully defend, indemnify and save harmless CITY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this Agreement.

## 5. PREVAILING WAGES

- 5.1. Labor Code Compliance. If the work performed on this ART is done under contract and falls within the Labor Code section 1720(a)(1) definition of a "public work" because it is construction, alteration, demolition, installation, or repair; or maintenance work under Labor Code section 1771. CITY must conform to Labor Code sections 1720 through 1815, and all provisions of California Code of Regulations found in Title 8, Chapter 8, Subchapter 3, Articles 1-7. CITY agrees to include prevailing wage requirements in its contracts for public work. Work performed by CITY'S own forces is exempt from the Labor Code's Prevailing Wage requirements.
- 5.2. Requirements in Subcontracts. CITY shall require its contractors to include prevailing wage requirements in all subcontracts funded by this Agreement when the work to be performed by the subcontractor is a "public work" as defined in Labor Code Section 1720(a)(1) and Labor Code Section 1771. Subcontracts shall include all prevailing wage requirements in CITY's contracts.

## 6. INSURANCE

- 6.1 CITY is self-insured. CITY agrees to deliver evidence of self-insured coverage providing general liability insurance, coverage of bodily injury liability and property damage liability, naming the STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by a certification of self-insurance letter ("Letter of Self-Insurance"), satisfactory to the STATE, certifying that CITY meets the coverage requirements of this section. Said Letter of Self-Insurance shall also identify ART and ART location and attached to this AGREEMENT as EXHIBIT B. CITY shall deliver to STATE said Letter of Self-Insurance with a signed copy of this AGREEMENT.
- 6.2 If the work performed under this AGREEMENT is done by CITY's contractor(s), CITY shall require its contractor(s) to maintain in force, during the term of this agreement, a policy of general liability insurance, including coverage of bodily injury liability and property damage liability, naming STATE, its officers, agents and employees as the additional insured in an amount of \$1 million per occurrence and \$2 million in aggregate and \$5 million in excess. Coverage shall be evidenced by the Letter of Self-Insurance in a form satisfactory to STATE and shall be delivered to STATE with a signed copy of this AGREEMENT.

7. TERMINATION. This AGREEMENT may be terminated by mutual written consent by the PARTIES, or by CITY's failure to comply with this AGREEMENT.
8. TERM OF AGREEMENT. This AGREEMENT shall become effective on the date and year first shown on its face sheet and shall remain in full force and effect for as long as the ART remains on STATE's right of way under this AGREEMENT.
9. DERIVATIVE WORKS. STATE shall not create derivative works based on the ART.
10. CREDIT. STATE agrees to make all reasonable efforts to credit Jorge Pardo and the San Francisco Arts Commission as the creators of the ART in any publication or reproduction of the ART. Should STATE grant the right to a third-party to use a reproduction of the ART in any publication, STATE shall require the third-party to credit Jorge Pardo and the San Francisco Arts Commission as the creators of the ART in said publication.

PARTIES are empowered by Streets and Highways Code Section 114 and 130 to enter into this AGREEMENT and have delegated to the undersigned the authority to execute this AGREEMENT on behalf of the respective agencies and covenants to have followed all the legal requirements to validly execute this AGREEMENT.

THE CITY AND COUNTY OF  
SAN FRANCISCO

STATE OF CALIFORNIA  
DEPARTMENT OF TRANSPORTATION

By: \_\_\_\_\_  
MOHAMMED NURU  
Director of Public Works

By: \_\_\_\_\_  
TOKS OMISHAKIN  
Director of Transportation

APPROVE AS TO FORM AND  
PROCEDURE:

By: \_\_\_\_\_  
DAVID AMBUEHL  
Deputy District Director  
Maintenance District

By: \_\_\_\_\_  
CHRISTOPHER TOM  
Deputy City Attorney

APPROVED AS TO FORM AND  
PROCEDURE:

By: Maria S. Sapiandante  
\_\_\_\_\_  
Attorney

Department of Transportation



