

CITY AND COUNTY OF SAN FRANCISCO PROFESSIONAL SERVICES

**Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, California 94102**

**AGREEMENT BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO
AND
YUMEI HOU TO PROVIDE ARTWORK DESIGNS FOR THE CENTRAL SUBWAY PROJECT**

This Agreement, dated for convenience as March 1, 2011 is made in the City and County of San Francisco, State of California, by and between **YUMEI HOU**, 1590 Broadway Street, Apt. 2115, San Francisco, CA 94109, hereinafter referred to as "Artist" and the City and County of San Francisco, a municipal corporation, hereinafter referred to as "City," acting by and through its Municipal Transportation Agency ("SFMTA") and its Arts Commission ("Commission"), for the purposes and on the terms and conditions set forth below.

I. RECITALS

A. The City desires that the Artist render professional Designs and related services in connection with the design and construction of the Central Subway Project, Step 2 of the SFMTA Third Street Light Rail Project ("the Project").

B. Funding for the Designs and the Artwork for the Project will be derived from Federal Transit Administration ("FTA") grants and other funds granted the SFMTA, which the SFMTA provides to the Commission to administer the art program for the Project.

C. A Request for Qualifications (RFQ) was issued on October 1, 2004 and April 30, 2008, and City selected Artist as one of six highest qualified scorers pursuant to the RFQ.

D. Artist represents and warrants that she is qualified to perform and that she possesses the requisite experience and resources to render the services required by the City as set forth under this Contract.

E. The City and Artist intend that this Agreement comply with FTA regulations and contract regulations.

F. Approval for said Agreement was obtained from a Civil Service Commission Notice of Action for Contract Number 4062-10/11 on January 3, 2011.

G. The Commission, by Resolution No. 1206-10-338 has authorized the Director of Cultural Affairs to enter into an agreement with Artist for the development and implementation of a work of art for the Central Subway Chinatown Station under the terms and conditions set out herein.

Now, therefore, in consideration of the preceding statements, the accuracy of which the Parties hereby stipulate, the Artist, the SFMTA and Commission, on behalf of City, hereby agree as follows:

II. SUMMARY OF AGREEMENT

As more specifically described below, Artist shall produce Designs for Artwork that the City may have fabricated by reproducing said Designs onto cut metal panels to be displayed in the Chinatown Station of the Central Subway.

Artist was selected on the basis of proposed designs submitted in response to the RFP. Since Artist's submission of her original proposal, the design of the Chinatown Station and the location within the Station where the Artwork will be installed and displayed have changed. Artist's Designs for the Artwork under this Contract shall be in keeping with her original proposal but shall conform to the new design of the Chinatown Station.

Artist shall produce the Designs and consult in the fabrication and installation of the Artwork in seven Steps. In Step One, Artist shall attend a meeting or meetings with Arts Commission staff to go over the process for production of the Designs and fabrication of the Artwork. In Step Two, Artist shall attend meetings with a consultant contracted by the Commission to reconfigure the Artist's proposal into a set of Designs that may be fabricated into Artwork that will fit into the new installation Site in the Chinatown Station. In Step Three, Artist shall submit the Designs produced under Step Two and shall meet with the Commission to review the Designs. In Step Four, the Artist shall submit final revised Designs (if revisions are required) that incorporate changes requested by the Commission in Step Three. Artist will be compensated as provided in Section 5 upon successful completion of each Step. In Steps Five, Six and Seven, Artist will consult with the Commission and SFMTA concerning the fabrication and installation of the Artwork.

Under this Agreement, the Artist licenses the Designs and assigns all rights to the use of the Designs to the City, and the Artist shall have no control as to the City's use of the Designs or to the finished Artwork. The City in its sole discretion may determine whether to fabricate the Designs into a finished Artwork or determine whether or how to display the finished Artwork, if fabricated. The Artist shall meet and consult with the City, its Architect and Construction Contractor as requested by the City.

In fabricating the Artwork from the Designs, the City will endeavor to avoid substantive changes to the Designs, and will allow the Artist to review and provide timely comments concerning the fabrication and installation of the Artwork, to ensure that the Artist's intention and vision for the Artwork is realized insofar as the City may deem practicable. If the Artist approves of the Artwork as finally fabricated and installed, the City will place appropriate signs at the Site attributing the Artwork to the Artist. If the Artist objects to the Artwork as finally fabricated and/or installed, the City will at Artist's request not place any signs or other notices or voluntarily provide other information to the public attributing the Artwork to the Artist. The City will compensate Artist in an amount not to exceed \$60,500 for the preparation and delivery of the Designs, consultations concerning fabrication and installation of the Artwork, and the license and rights pertaining to the Designs and Artwork as provided herein.

III. 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:

1. "Agreement" means this written contract document, including all addenda, appendices and modifications to said document, whether created now or in the future.

2. "Alter" or "Alteration" means, with respect to the Artwork, to change, repair, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface.
3. "Architect" means the engineering design firm engaged by the SFMTA to design the portion of the Central Subway Project in which the Art Work will be incorporated or installed.
4. "Artist" means: **YUMEI HOU**.
5. Artist's Fee means the monies (\$60,500) to be paid by the City to the Artist as compensation for the Work Artist shall perform and the rights transferred under this Agreement.
6. "Artwork" means the work of art to be fabricated by the City based on the Designs provided by Artist under this Agreement.
7. "Authorization" means an Agreement, properly executed by the Commission and certified by the Controller for the specific funding of this Agreement or any modification thereof.
8. "Central Subway Project" (CSP) or "Project" means the planning, design and construction of the Central Subway Project, Phase 2 of the SFMTA Third Street Light Rail Project.
9. "City" means the City and County of San Francisco, a municipal corporation.
10. "Commission" means the San Francisco Arts Commission.
11. "Committee" means the Visual Arts Committee of the Commission.
12. "Conceptual Designs" means drawings (in plan and elevation) and/or 3-dimensional models, a written description, proposed materials and samples and cost estimates at 30 percent completion of design. The information provided in Conceptual Designs shall be complete enough to fully illustrate the design intent of the Artwork.
13. "Construction Contractor" means the licensed contractor and its subcontractors selected by the City to construct the Central Subway Project or any portion thereof, including installation of the Artwork at the Site.
14. "Construction Manager" or "PMCM" means the Central Subway Partners, a joint venture between AECOM USA and EPC Consultants, engaged by the SFMTA to manage the design and construction of the Project as the Program Manager/Construction Manager consultant.
15. "Contract Documents" means any work, including but not limited to, Conceptual Designs, Design Development Documents 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.
16. "Contract Sum" (or "Total Amount" of the Contract) means the Artist's Fee. (See Section 5.)

17. "Controller" means the Controller of City.
18. "Days" means working days of the City and County of San Francisco (unless otherwise indicated). The use of the term "days," "working days" or "business days" shall be synonymous, whether or not capitalized.
19. "Department of Transportation" (DOT) means the federal agency Department of Transportation.
20. "Director of Cultural Affairs" means the Director of Cultural Affairs for the Commission.
21. "Designs" means the conceptual designs, including drawings, specifications, descriptions of the finished Artwork on which the City shall base the fabrication of the Artwork, which the Artist shall develop in Steps 1 through 4. (See Section 3.)
22. "Design Development Documents" means the design documents generated by the Artist and submitted to the Commission for review, comment and approval during the course of the design of the Artwork. The content of Design Development Documents shall be determined by the Commission, and may include colored drawings or computer-generated color images (in plan and elevation) and/or three-dimensional models that accurately reflect the Artwork, that describe the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, and mechanical systems, materials and other elements as may be appropriate, describe how the Artwork 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.
23. "FTA" means the Federal Transit Administration, an agency of the federal Department of Transportation.
24. "Force Majeure" with respect to a delay in or prevention of performance means (a) any strike, lockout or other labor or industrial disturbance (whether or not on the part of the employees of either Party), civil disturbance, future order claiming jurisdiction, act of the public enemy, war, riot, sabotage, blockade, embargo, inability to secure customary materials, supplies or labor through ordinary sources by reason of regulation or order of any government or regulatory body; (b) any changes in any applicable laws or the interpretation thereof; or (c) any flood, washout, explosion, or any other cause beyond the reasonable control of the Party from whom performance is required.
25. "Milestone" or "Step" means a set amount of Work to be accomplished by date(s) certain, set out in Section 3 of this Agreement.
26. "Mock-ups" or "Samples" means physical samples of all or any portion of the Work furnished by Fabricator. The purpose of the Mock-ups and Samples is to provide physical examples that demonstrate materials or workmanship and establish the standards by which the Designs will be judged.
27. "Party" means a person or entity bound by this Agreement.
28. "Parties" mean all persons and entities bound by this Agreement.
29. "Project" means the Third Street Light Rail Project, Phase 2, Central Subway.
30. "Proposal" means the proposed visual, aesthetic, and artistic intent and design of the Artwork incorporated in the Contract Documents approved by the 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. 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.

31. "Public Work" means a construction project, erection, installation or other element of a construction project defined as a public work or S.F. Administrative Code Section 6.1(I), as currently written or as may be amended from time to time.
32. "Request for Qualifications" (RFQ) means the Request for Qualifications issued by the Arts Commission on September 10, 2004 and on April 30, 2008.
33. "Scope of Services" or "Work" means the services, tasks, and deliverables that the Artist will provide to the Arts Commission under this Agreement, as outlined in Appendix B of this Agreement.
34. "SFMTA" means the San Francisco Municipal Transportation Agency, created by under Section 8A of the City's Charter.
35. "Site" means the Project location where the Artwork is to be installed, which for this Agreement is the Central Subway Chinatown Station located at the corner of Stockton and Washington streets.
36. "Work" means the work of Artist necessary, incidental or otherwise pertaining to the performance of the services and deliverables required under this Agreement. In addition to all other services and deliverables required, Work shall include the production of the Designs, meetings and consultation related to the designs, fabrication and installation of the Artwork. (See Section 3 - Scope of Work.)

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 or the SFMTA, as provided herein. 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, means approved by, or acceptable to, or satisfactory to the Commission or of the SFMTA, as provided herein, 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."

IV. AGREEMENT

Special Provisions

1. Term of the Agreement.

The term of this Agreement shall be from March 1, 2011 to December 31, 2018, unless extended by subsequent contract modification pursuant to the contract modification requirements in this Agreement. Notwithstanding the above, this Agreement may be extended by mutual written agreement of the Parties for a period not to exceed two years beyond the initial term, provided that such extension does not create a contract with a total aggregate term of more than nine years.

2. Effective Date of Agreement.

This Agreement shall become effective when the Controller has certified to the availability of funds and Artist has been so notified in writing.

3. Services Artist Agrees to Perform; Procedure for Execution of Work.

a. General.

(1) Artist has delivered a Conceptual Proposal for the Artwork ("Proposal") approved by the Arts Commission, under its Resolution No. 0802-10-214. The Scope of Work under this Agreement includes the development of the Proposal through all phases ("Steps") of design, including Conceptual Design, Design Development that meets the SFMTA's construction document requirements, and Construction Documents for the fabrication and installation of the Artwork, and Final Design of the Artwork. The Artist shall complete the Designs and provide related consulting services in seven Steps, as described below and as further described in the following sections.

- Step 1** Participate in coordination meeting with Arts Commission staff.
- Step 2** Work with Arts Commission's design consultant to reconfigure proposal imagery to meet current Station design and Site location.
- Step 3** Submit design imagery for review by the Commission.
- Step 4** Make any required revisions to design and resubmit for review by the Commission and complete and submit Collection Form (Appendix B).
- Step 5** Review Artwork fabricator's layout of the artist's design and fabrication mock up prior to fabrication of the Artwork in metal.
- Step 6** Review fabricated panels.
- Step 7** Review installed Artwork.

(2) By authorizing the Artist to perform any Step, the Commission is not obligated to authorize any subsequent Step or other work. Subject to the limitations contained in this Agreement, the Commission may terminate this Agreement at any time.

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

(4) The City may terminate the Work at anytime, during or between Steps, with or without cause. If the City terminates the Work for convenience (without cause), the Artist shall be paid the amount(s) agreed for completed Milestones up to the date of termination as provided in Section 15. (Termination for Convenience).

(5) The Commission must approve changes to the Proposal at each Step of Designs development before the Artist proceeds to the next Step. If the Commission

does not accept the Proposal at any design Step, the Artist agrees to rework, amend and modify the Designs at no additional cost to the City until it is accepted by the City.

(6) The Designs shall reflect the requirements of the SFMTA, Architect and Commission, as expressed in the Request for Qualifications and as further directed and discussed in communications with the Commission, SFMTA and Architect.

(7) Artist shall attend Project meetings and make presentations to City staff, the Architect, Commissions, and other individuals and organizations, as directed by the Commission.

(8) Artist agrees to collaborate closely with Architect through in-person meetings and other necessary means of communication to allow the Architect to thoroughly integrate the Proposal into CSP architectural and engineering drawings and plans throughout all Steps of design of the Artwork. Artist shall coordinate her communications with the Architect and the SFMTA through the Arts Commission Project Manager.

(9) Artist shall communicate with the Architect, SFMTA, Construction Manager, and Construction Contractor only through the Commission. Artist shall not enter into any verbal agreements and /or understandings in conversations or meetings between Artist and Architect, SFMTA, Construction Management Team and/or Construction Contractor without the knowledge and participation of a Commission representative.

(10) The Artist shall request to the Arts Commission's representative any information and data she may require from the SFMTA or the Architect for her Work. The Artist shall identify the timing and priority for which this information and data will be required in its request for that information. The Artist shall plan her work to allow adequate time for the City to provide the requested information. The Artist shall respond promptly, but in no case more than five Days, to any request for information from the Arts Commission.

(11) The Artist shall at all times avoid changes in the Designs that deviate materially from the Artist's Proposal. The Artist shall not Alter any aspect of the Designs as approved by the Arts Commission and SFMTA without prior written permission from the Art Commission.

b. Step One - Coordination Meeting with the Commission

Meet with Arts Commission staff so that Artist is provided with an orientation to the current architectural design of Chinatown station including the configuration of the Artwork locations and review of scope of work under this Agreement. At this meeting the schedule for completing the Designs shall be established. Arts Commission staff shall provide the Artist with information about the Artwork fabrication process and structural engineering criteria, which shall be taken into consideration during design development.

c. Steps Two, Three and Four – Design Development

Artist shall work with a design consultant hired by the Arts Commission to produce Design Development Documents reflecting a reconfiguration of the proposal imagery to fit the new artwork locations at the Chinatown Station and to meet the fabrication and structural criteria related to translating the design into metal artwork for installation at the Site. As part of Step 4, Artist shall complete and submit Collections Form (Appendix B).

License to the Designs, as described herein, shall pass to the City upon completion of Step 4.

(1) Design Development Documents and materials shall incorporate the further development and refinement of the Proposal.

(2) Design Development Documents shall include presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) that accurately reflect the Designs of the Artwork for the two locations where it will be installed at the Site. 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, lighting design, materials, color and other elements as may be appropriate.

d. Steps Five, Six and Seven - Consultation during Fabrication and Installation.

Artist shall review the artwork design as developed for production by the fabricator prior to fabrication into metal. Artist shall review the fabricated Artwork prior to installation and shall review the Artwork as installed on Site.

(1) The Artist's role during fabrication shall be to provide consulting services and to comment in writing on all samples, construction mock-ups and shop drawings for adherence to the Artist's design intent, and shall provide the Commission with written approval prior to the Commission's authorizing the Fabricator to fabricate the Artwork. Artist will participate, in conjunction with the Commission and SFMTA, in the resolution of all issues and problems that may arise during the fabrication of the Work. Artist shall review the completed fabrication and approve, or note any defects, in writing to the Commission.

(2) Shop Drawings and Fabrication Mock Ups. Artist shall review and comment on Shop Drawings produced by the Fabricator as needed, but not limited to, interface between the Artwork and station elements, all attachment systems and other components. Fabricator shall produce a mock up of Artwork for approval by Artist and Arts Commission prior to being authorized to fabricate. Approved mock ups shall be the standard against which the rest of the work is judged.

(3) Inspection of Artwork: Artist shall review documentation of the Artwork or the actual Artwork during a field inspection to the Fabricator with the Arts Commission's Project Manager of fabrication at completion. Artist shall comment on the fabricated Artwork following the inspection in writing.

(4) Provided that City determines, in its sole discretion, to fabricate the Artwork, the Artist shall consult with the City and a fabricator selected by the City concerning the fabrication and installation of the Artwork. Provided that the City determines in its sole discretion to install the Artwork, as directed by the Commission, the Artist shall assist and consult with the Commission, the SFMTA and the Construction Contractor as to the installation of the Artwork at the Site.

(5) As directed by the Commission, the Artist shall assist the SFMTA and its design consultants and Construction Manager with preparation of drawings, specifications and other documents that may be necessary for the preparation of construction contract modifications and responses to Requests For Information (RFIs) from the Construction Contractor. Compensation for the Artist's attendance at meetings, consultation with the

Architect, the Construction Contractor, the SFMTA and Commission is included in the Artist's Fee.

e. Presentations to Community Representatives. As directed by the Commission, the Artist shall meet with and make presentations to representatives of communities and property owners along the alignment that may be affected by the Project and other interested Parties.

f. Artist Is Not A Licensed Contractor. The Parties do not intend that the design and fabrication of the Artwork is a Public Work, as the Artwork will be erected, installed and incorporated into the Project by the Construction Contractor, not the Artist. Artist's responsibilities as to installation of the Artwork shall be limited to consultation with the City and the Construction Contractor only. The Artist's provision of consulting services during installation does not render this Agreement a public works or construction contract subject to Article 6 of San Francisco Administrative Code or to the California Public Contract Code.

g. Time is of the Essence. Time is of the essence in the Artist's performance of the Work. Artist agrees to provide all deliverables in accordance with the timelines contained herein unless changes to those timelines are approved in writing by the Commission. All changes to schedule must be approved by the Commission in writing.

4. Compensation and Schedule.

a. Total Amount.

(1) The Total Amount payable to Artist under this Agreement (the "Contract Sum" or "Artist's Fee") for all Work performed by Artist, including but not limited to preparation and delivery of the Designs, consultations concerning fabrication and installation of the Artwork, and grant of copyright licenses to and transfer of ownership of the Designs, shall not exceed Sixty Thousand Five Hundred Dollars (\$60,500), unless this Agreement is amended as provided herein. Payment of the full Contract Sum is not guaranteed; to receive the full Contract Sum the Artist shall fully perform all Work described in this Agreement in compliance with the standards of performance described herein. All compensation due to Artist for Work performed under this Agreement shall be made in accordance with the terms of this Agreement.

(2) The Contract Sum shall be the full consideration paid by City to the Artist, inclusive of profit. The Contract Sum fully recompenses all expenses and costs incurred by Artist in performing the services and producing the Designs under this Contract, including but not limited to suppliers charges, fees, taxes, permits, insurance, transportation to and from meetings, direct labor costs, other direct costs and indirect costs for all Work performed under this Agreement. The Contract Sum includes all fees and compensation for license of authority and assignment of rights to the City for the Designs and for fabrication of the Artwork.

(3) The Artist's Fee shall be paid in prorated installments when Artist completes Milestones to the satisfaction of the Commission, as follows:

Step 1 \$4,500
Participate in coordination meeting with Arts Commission staff.

Step 2 \$16,000

Work with Arts Commission's design consultant to reconfigure proposal imagery to meet current Station design and Site location.

Step 3 \$16,000

Submit design imagery for review and acceptance by the Commission. License to the Designs transfers upon acceptance of the Designs by the Commission.

Step 4 \$16,000

Make any required revisions to design and resubmit for review by the Commission. Complete and Submit Collections Form (Appendix B)

Step 5 \$4,000

Review Artwork fabricator's layout of the artist's design prior to fabrication of Artwork in metal.

Step 6 \$2,000

Review fabricated panels.

Step 7 \$2,000

Review installed Artwork.

b. Schedule. Artist shall complete Steps 1 through 4 on or before April 30, 2012. The City will endeavor to have the accepted Designs fabricated so that Steps 5 and 6 make be completed on or before October 1, 2013. It is understood that completion of Step 7 is dependent upon the Construction Contractor.

c. Payment Follows Acceptance of Completed Work. No charges shall be incurred under this Agreement nor shall any payments become due to Artist until deliverables, services, or both, required under this Agreement are received from Artist and approved by the Commission as being satisfactory and in accordance with this Agreement. City may withhold payment to Artist in any instance in which Artist has failed or refused to satisfy any material obligation provided for under this Agreement.

c. Change in Scope of Services. If the Scope of Services of any Step or other portion of the Project is reduced, that reduction shall be memorialized in an amendment to the Agreement, and the portion of the Artist's Fee for that Work shall be reduced, as negotiated by the Parties, but such reduction shall not be less than the proportional value of the reduced Work, as measured by the value of that Work set out above. If the Scope of Services is increased, then the Parties will negotiate an appropriate increase to the Artist's Fee for the additional services. Any negotiations for changes in the scope of services shall be subject to the agreement of the Commission and the Artist. The Artist shall do no work in addition to or beyond the scope of the services set forth and contemplated by this Agreement unless and until it is authorized to do so by the issuance to it of a "Modification of Contract," duly executed and approved.

d. Prepayment. Unless the SFMTA and Commission give specific written authorization, Artist shall not submit invoices and the City shall not pay or otherwise reimburse Artist for costs of any kind that the Artist has not actually incurred and paid prior to date of invoice.

e. Payment of Invoices. Compensation shall be made within 45 days that the Commission, in its sole discretion, concludes the Milestone or other undisputed portion

of Work approved for payment has been performed City shall make payment to Artist at the address specified in Section 20 (Notices to the Parties). All amounts paid by City to Artist shall be subject to audit by City.

f. No Interest on Late Payments. In no event shall City be liable for interest or late charges for any late payments.

g. Project Suspension or Termination.

(1) If the Project is suspended for more than one hundred eighty (180) days or abandoned in whole or in part, the Artist shall be compensated for services satisfactorily performed prior to receipt of written notice from the City of such suspension or abandonment. If the Project is resumed after being suspended for more than one hundred eighty (180) days, the Artist's compensation for the remainder of the services to be provided for the Project shall be equitably adjusted based on the Artist's demonstrated increased costs.

(2) In the event that the City terminates the Agreement for fault, the City may reduce any amount earned or otherwise due the Artist by the sum of any additional costs the City has or will incur as a result of the Artist's default.

h. Final Payment. Final payment of any balance earned by the Artist for Project work will be made within ninety (90) days after all of the following:

- (1) Satisfactory completion of all Work required by this Agreement;
- (2) Receipt by SFMTA of the Work not previously delivered;
- (3) Delivery of all equipment/materials purchased specifically for the project where SFMTA has reimbursed the Artist for such costs;
- (4) Such audit and verification as SFMTA may deem necessary; and,
- (5) Execution and delivery by the Artist of a release of all claims against the City arising under or by virtue of this Agreement, other than such claims, if any, as may be specifically exempted by the Artist from the operation of the release in stated amounts to be set forth therein.

i. Delay. Artist shall not claim and hereby waive damages and additional compensation for delay other than an extension of time for the completion of Work. Such an extension will be for the period of time City shall consider Artist to have been delayed in the completion of Work where such delay was not caused by and could not have been reasonably avoided by Artist.

j. Travel Expenses and Mileage. The City shall not pay Artist's travel expenses, including mileage, for travel within fifty (50) miles of the City and County of San Francisco to perform Work under this contract. If Artist is directed by the Commission to travel further than that distance to perform Work under this contract, the Commission shall reimburse Artist her actual costs for said travel. The Commission shall pay Artist mileage for automobile travel beyond said 50-mile limit only to the extent and as authorized by applicable federal law.

5. Guaranteed Maximum Costs.

The City's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

Except as may be provided by laws governing emergency procedures, officers and employees of City are not authorized to request, and City is not required to reimburse Artist for, commodities or services beyond the scope of this Agreement unless the changed scope is authorized by amendment and approved as required by law.

Officers and employees of City are not authorized to offer or promise, nor is City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which this Agreement is certified without certification of the additional amount by the Controller.

6. Artist Invoices.

The Commission shall provide the Artist with a form invoice that Artist shall use to request payment. City shall make payment to the Artist at the address listed for notices in this Agreement. All amounts paid by City to Artist shall be subject to audit by City and other agencies with jurisdiction over the Project and Project funding.

7. Payment Does Not Imply Acceptance of Work; Approval and Final Acceptance.

a. Payment Does Not Imply Acceptance of Work. The issuance of any payment for Milestone(s), other progress payment or final payment by the City or the receipt thereof by the Artist shall in no way lessen the liability of the Artist to correct unsatisfactory Work or materials, although the unsatisfactory nature of such Work may or may not have been apparent or detected at the time such payment was made. Work that does not conform to the requirements of this Agreement may be rejected by City and in such case must be replaced or performed again by Artist without delay.

b. Correction of Errors. Upon notice from Commission, the Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Designs, Proposal and other deliverables or services; and, in the event of any deficiencies in such Designs, Proposals, or other deliverables or services resulting from the Artist's professional negligence, whether or not said deficiencies have been brought to the attention of the Commission, the Artist shall indemnify and reimburse the City for the cost of the corrective remedial work (including, without limitation, design, demolition, and construction) necessary to correct any such deficiencies and the consequences of such deficiencies caused by said professional negligence.

c. Approval and Final Acceptance.

(1) Approval. The granting or withholding of any approval by the Commission shall be determined by the Commission in its sole and reasonable discretion. However, the Commission shall approve all deliverables if they conform to plans or Contract Documents previously approved by the Commission. If the Commission withholds approval of any deliverables or Step, in addition to other rights or remedies available to the Commission under the Agreement or applicable law, the Commission shall have the right to terminate this Agreement immediately and shall have no further obligations under this Agreement.

(2) Final Acceptance. Artist shall advise the Commission in writing when Artist has completed all obligations, services and deliverables under this Agreement and all modifications. The Commission promptly shall send a Notice of Response identifying in writing any obligations, services or deliverables that Artist has not satisfactorily met, any defects in Artist's performance, and the requirements for Artist to cure any such default. Artist shall have 20 days from dispatch of the Notice of Response to cure any defects in Artist's performance identified in the Commission's Notice of Response. The Artwork shall not be finally accepted by City unless the Commission has issued a resolution of Final Acceptance. City shall make a good faith effort to make a determination as to Final Acceptance promptly.

(3) Civic Art Collection. Upon Final Acceptance, the Commission shall accession the Artwork into the Civic Art Collection.

8. Persons Performing the Work.

Except to the extent that the Commission directs Artist to work with a consultant contracted by the Commission, Work under this Agreement is personal and shall be performed only by the Artist. Artist shall not subcontract the Work. Artist shall not employ other persons to perform the Work.

9. Independent Contractor; Payment of Taxes and Other Expenses.

a. Independent Contractor. Artist shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which Artist performs the services and Work under this Agreement. Artist is liable for the acts and omissions of herself, and any employees and agents of Artist. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Artist.

Any terms in this Agreement referring to direction from City or the Commission shall be construed as providing for direction as to policy and the result of Artist's work only, and not as to the means by which such a result is obtained.

b. Payment of Taxes and Other Expenses. Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Artist is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Artist which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Artist for City, upon notification of such fact by City, Artist shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Artist under this Agreement (again, offsetting any credits for amounts already paid by Artist which can be applied against this liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Artist shall not be considered an employee of City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Artist is an employee for any other purpose, then Artist agrees to a reduction in City's financial

liability so that City's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Artist was not an employee.

10. Insurance.

a. Required Insurance. Without in any way limiting Artist's liability pursuant to Section 11, the "Liability and Indemnification" section of this Agreement, Artist shall maintain, or cause to be maintained, in force insurance in the following amounts and coverages. Artist shall obtain such insurance prior to commencing work on Step One (see Section 3). Except for required insurance under claims-made form (see Section 10 (c) (2), Artist 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) If Artist has any employee(s) during the Term of this Agreement, Artist shall retain **Workers Compensation Insurance for such period(s)**, in statutory amounts with Employers' Liability Limits not less than \$1,000,000 each accident, injury or illness. Artist shall obtain such insurance prior to engaging any person as an employee. To the extent Artist warrants, in writing, that Artist is not an employer and has no employees as defined by the California Labor Code Sections 3351-3351.1, Artist need not provide to the City proof of Workers Compensation insurance.

(2) If the Artist drives, Artist shall retain during the Term of this Agreement, **Automobile Liability Insurance**: If Artist is an *individual*, Personal Automobile Liability Insurance with limits not less than \$100,000/\$300,000 each occurrence. Artist shall obtain such insurance prior to certification of this Agreement.

b. Required Policy Language.

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

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

(b) 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.

(c) Regarding Workers' Compensation, Artist hereby agrees to waive subrogation which any insurer of Artist may acquire from Artist by virtue of the payment of any loss. Artist 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 Artist, its employees, agents and subcontractors. This provision 10b.1.c shall apply only if and to the extent Artist engages during the Term of this Agreement.

(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:

Jennifer Lovvorn, Project Manager
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102

and to

Shahnam Farhangi, Contracts Manager
SFMTA Capital Projects and Construction Division
1 South Van Ness, 3rd floor
San Francisco, CA 94103

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, Artist 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, Artist 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 Artist 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 Artist shall restore or reconstruct the Work, all insurance proceeds received by City shall be paid to Artist to the extent the proceeds are used for such restoration or reconstruction.

(7) If a subcontractor will be used to complete any portion of this agreement, the Artist 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 Artist listed as additional insureds.

11. Liability and Indemnification.

- A. Except as specifically otherwise provided in this Agreement, the City's liability to Artist shall be limited to the Artist's Fee or to the amounts stated in this Agreement for to be paid for Work within a Step that has been completed to the satisfaction of the Commission, whichever is less. Except as specifically otherwise provided in this Agreement, Artist's liability to the City shall be limited to amount received in payment for the Work.
- B. Liability for damages to third parties under this Agreement shall be apportioned according to principles of comparative fault as provided under California law. A Party shall indemnify the other Party to the extent of its respective liability. A Party shall be solely liable for damages to third parties arising or related directly or indirectly to that Party's own negligence. The Parties' liability to third parties under this Agreement shall be several only, not joint. Artist's liability shall be determined in conformance with her status as an independent contractor; the City shall not direct or have any responsibility for the activities of the Artist in performing the Work under this Contract.
- C. As required by San Francisco Administrative Code section 21.21 (Infringement Indemnity), Artist shall indemnify and hold City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by City, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

12. Incidental and Consequential Damages.

Neither Party shall be responsible for incidental and consequential damages resulting in whole or in part from the acts or omissions or delay of the other Party (regardless of whether any claim is based on contract or tort) for any special, consequential, indirect or incidental damages (including, but not limited to, lost profits) arising out of or in connection with this Agreement or the Work performed in connection with this Agreement.

13. Artist's Incapacity.

Should Artist die, become ill, injured or otherwise incapacitated (collectively, "incapacitated") such that Artist is unable to work for any period exceeding 30 days (whether consecutive or non-consecutive), any delay arising out of such incapacity will be allowed by City whenever it is practicable to do so, considering the facts and circumstances of the Work, the Project, the Architect, the Construction Contractor and the SFMTA. City may require Artist to provide medical certification of any claimed incapacity. In the event Artist is incapacitated such that Artist is unable to work for a period exceeding a total of 30 days (whether consecutive or non-consecutive), City may, at its option, undertake to complete and install the Work in Artist's absence, so long as the final Artwork is substantially similar to that designed by Artist. If City undertakes to

complete the Work, City shall give due consideration to Artist's suggestions and the Artist may disclaim authorship of the Work. If City exercises its option to implement the Artwork in Artist's absence, any compensation paid or payable to Artist shall be reduced by the costs and expenditures of City in completion and installation of the Work. In case of incapacity exceeding 30 days, the following person shall be Artist's representative vis-à-vis the City for purposes of this Section 13 (Timely Provision of Services; Damages for Delayed Performance; Liquidated Damages): Zhen Jun Zhao, 1331 Stockton Street, #442, San Francisco, CA 94133, (415) 601-6062, Artwhois@gmail.com_ unless otherwise directed in writing by the Artist.

14. Artist's Default; Remedies.

a. Events of Default. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

(1) Artist fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement:

- 10. Insurance
- 18. Subcontracting and Assignment Prohibited
- 21. Warranty of Title
- 30. Submitting False Claims; Monetary Penalties
- 32. Taxes
- 38. Drug-Free Workplace Policy
- 53. Compliance with Laws
- 56. Protection of Private Information
- 57. Graffiti Removal

(2) Artist's failure or refusal to perform or do any act required of Artist in this Agreement, including unexcused failure to meet the delivery deadlines or to conform the Work to the Contract Documents approved by the Commission;

(3) Artist (a) is generally not paying its debts as they become due, (b) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (c) makes an assignment for the benefit of its creditors, (d) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Artist or of any substantial part of Artist's property or (e) takes action for the purpose of any of the foregoing;

(4) A court or government authority enters an order (a) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Artist or with respect to any substantial part of Artist's property, (b) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction or (c) ordering the dissolution, winding-up or liquidation of Artist;

b. Termination in the Case of Default. On or after any event of Artist default, City shall have the right to exercise its legal and equitable remedies. City's remedies include

the right to terminate this Agreement upon written notice to Artist (setting forth with specificity the basis for the Commission's termination), or to seek specific performance of all or any part of this Agreement. Upon termination by the Commission, this Agreement shall be of no further force or effect. The date of termination shall be 5 calendar days from the Commission's dispatch of notice of termination, unless a later termination date is specified in the notice of termination. The Commission may rescind the notice of termination or extend the date for termination, but no rescission or extension is valid unless it is in writing and approved by resolution of the Commission.

c. Opportunity to Cure. In its sole discretion, the Commission may give Artist a grace period and opportunity to cure any default. Such grace period may be up to 35 Days after dispatch of written notice from the Commission setting forth the nature of the default and the requirements to cure.

d. No Obligation to Pay. Except as specifically provided in this Agreement, City shall have absolutely no payment or other obligations to Artist for any work or service completed, begun or contemplated by Artist subsequent to termination of this Agreement for any reason.

e. Remedies are Cumulative. These remedies are in addition to all other remedies available to either Party under this Agreement or under applicable federal, state or local laws should the other Party fail to comply with the terms of this Agreement.

15. Termination for Convenience.

a. City shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. City shall exercise this option by giving Artist written notice of termination. The notice shall specify the date on which termination shall become effective. As described below in subsection c., City shall pay Artist for services rendered prior to the date of termination.

b. Upon receipt of the notice, Artist shall commence and perform, with diligence, all actions necessary on the part of Artist to effect the termination of this Agreement on the date specified by City and to minimize the liability of Artist and City to third Parties as a result of termination. All such actions shall be subject to the prior approval of City. Such actions shall include, without limitation:

(1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by City.

(2) Not placing any further orders or subcontracts for materials, services, equipment or other items.

(3) Terminating all existing orders and subcontracts.

(4) At City's direction, assigning to City any or all of Artist's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, City shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.

(5) Subject to City's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

(6) Completing performance of any services or work that City designates to be completed prior to the date of termination specified by City.

(7) Taking such action as may be necessary, or as the City may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Artist and in which City has or may acquire an interest.

c. Within 30 Days after the specified termination date, Artist shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(1) The reasonable cost to Artist, without profit, for all services and other work City directed Artist to perform prior to the specified termination date, for which services or work City has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Artist's direct costs for services or other work. Any overhead allowance shall be separately itemized. Artist may also recover the reasonable cost of preparing the invoice.

(2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Artist can establish, to the satisfaction of City, that Artist would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5 percent of such cost.

(3) The reasonable cost to Artist of handling material or equipment returned to the vendor, delivered to the City or otherwise disposed of as directed by the City.

(4) A deduction for the cost of materials to be retained by Artist, amounts realized from the sale of materials and not otherwise recovered by or credited to City, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall City be liable for costs incurred by Artist or any of its subcontractors after the termination date specified by City, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Artist under this Section, City may deduct: (1) all payments previously made by City for work or other services covered by Artist's final invoice; (2) any claim which City may have against Artist in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the City, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. City's payment obligation under this Section shall survive termination of this Agreement.

16. Rights and Duties Upon Termination or Expiration.

If the Commission terminates this Agreement for any reason, City shall be automatically vested with title to any Work produced under this Agreement up to the date of termination. Artist shall deliver any such Work to City in the manner, at the times, and to the extent directed by City. If termination is due to the default of Artist, City may, at its option, require Artist to refund to City any interim payments received under the Agreement; in such case, City may transfer title to the Work to Artist. This Section and the following sections shall survive termination or expiration of this Agreement:

7. Payment Does Not Imply Acceptance of Work; Approval and Final Acceptance
9. Independent Contractor; Payment of Taxes and Other Expenses
10. Insurance
11. Liability and Indemnification
12. Incidental and Consequential Damages
17. Artist's Availability
20. License of Copyright and Ownership of the Designs
21. Artist's Warranties
22. Artist's Moral Rights; City's Ownership Rights
23. Intellectual Property and Publicity Rights
27. Audit and Inspection of Records; Reports
30. Submitting False Claims; Monetary Penalties
31. Disallowance , Disputed Amounts, and Debarment
32. Taxes
48. Modification of Agreement
49. Administrative Remedy for Agreement Interpretation
50. Agreement Made in California; Venue
51. Construction of Agreement
52. Entire Agreement
55. Severability
56. Protection of Private Information
57. Graffiti Removal

Subject to the immediately preceding sentence, upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Artist shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to City. This subsection shall survive termination of this Agreement.

17. Artist's Availability.

Artist shall be available to meet in San Francisco with the Architect, SFMTA and Commission staff, and others as the SFMTA and the Commission may require to ensure the completion of the Designs and the fabrication and installation of the Artwork. Compensation for attendance at such meetings is included in the Artist's Fee.

18. Subcontracting and Assignment Prohibited

The Work to be performed under this Agreement is unique and personal. Artist shall keep the Work under Artist's control and shall not assign or subcontract the Work, in whole or in part. Neither Party shall, on the basis of this Agreement, contract on behalf of or in the name of the other Party. An agreement made in violation of this provision shall confer no rights on any Party and shall be null and void.

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 by fax, and shall be addressed as follows:

To Commission:

Jennifer Lovvorn
Public Art Project Manager
San Francisco Arts Commission
25 Van Ness Avenue, Suite 345
San Francisco, CA 94102
Attn: Jennifer Lovvorn
Phone: (415) 252-4637
Fax: (415) 252-2595
Email: Jennifer.Lovvorn@sfgov.org

To Artist:

Yumei Hou
1590 Broadway Street, Apt. 2115
San Francisco, CA 94109
Phone: 415-203-7452
Email: Papercutlady@Yahoo.Com

Any notice of default shall be sent by registered mail.

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.

b. Department Liaison. In performing the services provided for in this Agreement, Artist's liaison with the Arts Commission will be Jennifer Lovvorn, or other person, designated by the Commission as Public Art Project Manager for the Central Subway Project.

Ownership Of Designs And Artwork

20. License of Copyright and Ownership of the Designs.

- a. **Title Transfer.** As provided in this Agreement, and except in the case of termination of this Agreement prior to the conclusion of Step 3, title to the Designs shall transfer from Artist to City upon the Commission's Final Acceptance of the Designs at the Conclusion of Step 3. Title transfer shall be self-executing upon Commission's Final Acceptance of the Designs at Step 3. Artist will cooperate in providing to City any title transfer documents, and other documents as the City may request or require during or after the Term of this Agreement.
- b. **Copyright and License of the Designs; Reproduction of Designs.** Artist retains the copyright to the Designs and the artistic ideas presented in those Designs. In consideration of the compensation paid under this Agreement, Artist grants to the City an irrevocable, unlimited, nonexclusive license to use the Designs to fabricate the Artwork and to use the Designs for any other purpose that the City deems appropriate, including but not limited to reproduction of the Designs without limitation

in promotional and informational materials, pamphlets, tangible objects, and two and three dimensional reproductions of the Artwork. The City shall provide appropriate attribution to the Artist in any reproduction of the Designs or Artwork.

- c. **Documents and Designs.** Conceptual Designs, Design Development Documents, Construction Documents, Samples, Mock-ups and all other documents prepared and submitted by Artist or by the Consultant to the Commission in collaboration with the Artist to the Commission pursuant to this Agreement shall belong to the City. Artist may retain originals of such documents and items and provide copies to City.
- d. **Changes.** In fabricating the Artwork from the Designs, the City will avoid substantive changes to the Designs, and will allow the Artist to review and provide timely comments concerning the fabrication and installation of the Artwork to ensure that the Artist's intention and vision for the Artwork is realized insofar as the City may deem practicable. But the City shall have the right to use the Designs and fabricated Artwork as it sees fit.
- e. **Attribution.** If the Artist approves of the Artwork as finally fabricated and installed, the City shall provide appropriate signs at the Site attributing the Artwork to the Artist. If the Artist objects to the Artwork as finally fabricated and/or installed, the City shall at Artist's request not place any signs or other notices or voluntarily provide other information to the public attributing the Artwork to the Artist.

21. Warranty of Title

Artist represents and warrants that Artist is the sole author of the Designs and that Artist is the sole owner of any and all copyrights pertaining to the Designs. Artist further represents that the Designs are 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 Designs.

22. Artist's Moral Rights; City's Ownership Rights.

a. The Commission, having expended considerable public funds to commission the Designs and (if the fabricated) the Artwork, and pursuant to its Charter responsibilities, intends to display the Designs as realized by the fabricated Artwork at the Site as originally envisioned by Artist and to maintain the Artwork in good condition. Public artworks commissioned by the Commission are sometimes integrated into a 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 authority to operate and manage City property as it deems to be 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 hazards, to comply with the ADA, to otherwise aid City in the management of its property and affairs, or to remedy 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 or not install the Artwork at all. 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 Agreement, 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 Designs (and if fabricated) and 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 20 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 will 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 deaccession 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 to the extent such restoration is practicable. 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) and the City shall discontinue authorization to the Artist.

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.

23. Intellectual Property and Publicity Rights.

a. Copyright. Subject to usage rights and licenses granted to City hereunder, Artist shall retain all copyrights to the Designs.

b. City's Intellectual Property License. To the extent that Artist retains any rights to the Designs or to the Artwork, 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 Designs, the Artwork fabricated from the Designs, and any other original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

(1) **Implementation, Use and Display.** City may use and display the Designs and the Artwork fabricated from the Designs. To the extent the Designs involves design elements that are incorporated by City into the design of the Site, City may implement such elements at the Site.

(2) **Reproduction and Distribution.** City may make and distribute, and authorize the making, display and distribution of, photographs and other two-dimensional reproductions of the Designs and of the Artwork fabricated from the Designs. 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.

(3) **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 Designs or the Artwork and any reproductions of the Designs or the Artwork in any form shall include the following credit: "Artist Yumei Hou; 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 Designs and 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 Design creates trademark, service mark or trade dress rights in connection with the Design, City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

g. Unique. Artist warrants that the Designs and the resulting Artwork as expressed in the Proposal that the Commission may accept at the Conclusion of Step 4 (see Section 3) is an edition of one, and that neither Artist nor Artist's agents will execute or authorize another to execute another work of the same or substantially similar image, design, dimensions and materials as the Artwork. Artist may create works that utilize or incorporate various individual art elements that comprise the Artwork, so long as the work utilizing or incorporating such individual elements (1) does not consist predominantly of such elements (2) is not the same or substantially similar in image, design, dimensions and materials as the Artwork, and (3) is not displayed in an environment that is the same or substantially similar to the environment in which the Artwork is to be displayed at the Site. 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 Team 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 Team. 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 with appropriate credit to the Commission.

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.

24. Maintenance of Artwork.

The City shall be responsible for ongoing maintenance of the Artwork only as provided herein. 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 anticipated life span of the Artwork is twenty five (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 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.

General Provisions

25. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non- Appropriation.

This Agreement is subject to the budget and fiscal provisions of City's Charter. Charges will accrue only after prior written authorization certified by the Controller. City's obligation under this Agreement shall not at any time exceed the amount certified for the purpose and period stated in such certification.

This Agreement will terminate without penalty, liability or expense of any kind to City at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

City has no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation. Artist's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

THIS SECTION 25 CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

26. 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.

27. Audit and Inspection of Records; Reports.

a. Audit and Inspection of Records. Artist agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Artist will permit City to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Artist shall maintain such data and records in an accessible location and condition for a period of not less than five years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon City by this Section.

b. Records. Artist shall submit written reports as requested by the Commission. The Commission shall determine the format for the content of such reports. The timely submission of all reports is a necessary and material term and condition of this Agreement. The reports, including any copies, shall be submitted on recycled paper and printed on double-sided pages to the maximum extent possible.

28. Conflict of Interest.

Through its execution of this Agreement, Artist 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.

29. Left blank by agreement of Parties.

30. Submitting False Claims; Monetary Penalties.

Pursuant to San Francisco Administrative Code sections 6.80 to 6.83 and 21.35, and pursuant to applicable federal law, any contractor (including Artist), subcontractor or consultant who submits a false claim shall be liable to the City for the statutory penalties set forth in those ordinances and statutes, including but not limited to statutory fines, treble damages, costs and attorneys fees. The text of Sections 6.80 to 6.83 and 21.35, along with the entire San Francisco Administrative Code are available on the web at <http://www.municode.com/Library/clientCodePage.aspx?clientID=4201>. Artist or any contractor, subcontractor or consultant will be deemed to have submitted a false claim to the City if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or

statement to get a false claim paid or approved by the City; (c) conspires to defraud the City by getting a false claim allowed or paid by the City; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the City; or (e) is a beneficiary of an inadvertent submission of a false claim to the City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the City within a reasonable time after discovery of the false claim. Artist agrees that remedies under local law are cumulative and in addition to the remedies and penalties provided for false claims under federal law.

31. Disallowance, Disputed Amounts, and Debarment.

a. If Artist claims or receives payment from City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Artist shall promptly refund the disallowed amount to City upon City's request. At its option, City may offset the amount disallowed from any payment due or to become due to Artist under this Agreement or any other agreement between the Artist and the City.

b. Any Compensation or reimbursement received by Artist under this Agreement does not constitute a final decision or waiver of decision by the City as to whether said payment meets the terms and requirements of this Agreement. If following audit or other review, the City determines that the Artist and/or subconsultants are not entitled to certain compensation requested or received, the City shall notify the Artist stating the reasons therefore.

c. Acceptance of the Artwork, or any portion of the Work under this Agreement, will not Alter Artist's or a subconsultant's obligations to return any funds due the City as a result of later refunds, corrections, or other transactions, nor Alter the SFMTA or its funding agencies' rights to disallow or otherwise not recognize costs on the basis a later audit or other review. The City may reasonably withhold payment to the Artist pending resolution, in an amount equal to questioned, disputed or disapproved amounts, or for work not satisfactorily completed or delivered as required by this Agreement or for amounts incurred by the City in connection with the Artist's negligent errors or omissions. Payments for other amounts due on the same or other invoice shall not be unreasonably withheld or delayed.

d. By executing this Agreement, Artist certifies that Artist is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Artist acknowledges that this certification of eligibility to receive federal funds is a material term of the Agreement.

32. Taxes.

a. Except as specifically provided herein, any taxes levied upon the Agreement, the transaction, or the equipment or services delivered under this Agreement, including possessory interest taxes and California sales and use taxes, shall be paid by Artist. To the extent allowed by law, the costs to Artist of sales, use, and possessory interest taxes arising out of the Work performed under this Agreement are Reimbursable Expenses.

b. Artist recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Artist to possession, occupancy, or use of City property for private gain. Only agencies with jurisdiction over tax matters have the authority to determine if a possessory interest has been created; the Commission and

SFMTA have no authority to make such determination. If a taxing authority determines that a possessory interest is created, then the following shall apply:

(1) Artist, on behalf of himself and any permitted successors and assigns, recognizes and understands that Artist, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;

(2) Artist, on behalf of himself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Artist accordingly agrees on behalf of herself and its permitted successors and assigns to report on behalf of City to the County Assessor the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.

(3) Artist, on behalf of himself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest (see, e.g., Rev. & Tax. Code section 64, as amended from time to time). Artist accordingly agrees on behalf of herself and its permitted successors and assigns to report any change in ownership to the County Assessor, the State Board of Equalization or other public agency as required by law.

(4) Artist further agrees to provide such other information as may be requested by City to enable City to comply with any reporting requirements for possessory interests that are imposed by applicable law.

(5) The Commission and the SFMTA consider Artist's presence on SFMTA property while performing Work under this Contract to be necessary to the Work and a convenience to the Project. Taxes for any possessory interest created by the Artist's presence on SFMTA property will be considered a Reimbursable Expense.

33. Earned Income Credit (EIC) Forms.

THIS SECTION 33 SHALL ONLY APPLY IF ARTIST HAS EMPLOYEES DURING THE TERM OF THIS AGREEMENT.

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

Artist shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty days following the date on which this Agreement becomes effective (unless Artist has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Artist; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Artist of the terms of this Agreement. If, within thirty days after Artist receives written notice of such a breach, Artist fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty days, Artist

fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, City may pursue any rights or remedies available under this Agreement or under applicable law.

Any Subcontract entered into by Artist shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

34. Small Business Enterprise Program.

THIS SECTION 34 SHALL ONLY APPLY IF ARTIST HAS EMPLOYEES DURING THE TERM OF THIS AGREEMENT.

a. **General.** The City is committed to a Small Business Enterprise Program ("SBE Program") for the participation of SBEs in contracting opportunities. An SBE is a for-profit, small business concern with a three (3) year average gross revenue not exceeding Twelve Million Dollars (\$12,000,000) and is certified under any of the following programs: the State of California's Small Business Program ("State Program"), the City and County of San Francisco's LBE Program ("City Program"), or the California Unified Certification Program ("Federal DBE Program").

b. **Compliance with SBE Program.** Artist shall comply with the SBE provisions contained in the attached Attachment G, which are incorporated by reference as though fully set forth herein, including, but not limited to, achieving and maintaining the SBE goal set for the total dollar amount awarded for the services to be performed under this Agreement. Failure of Artist to comply with any of these requirements shall be deemed a material breach of this Agreement.

c. Artist must also comply with all applicable federal regulations regarding Disadvantaged Business Enterprise (DBE) participation, as set out in Title 49, Part 26 of the Code of Federal Regulations (49 C.F.R. Part 26), with respect to DBEs performing work under this Agreement. More information on federal DBE requirements can be found on the internet at: <http://www.fta.dot.gov/library/admin/BPPM/ch7.html>.

35. Nondiscrimination; Penalties.

SECTIONS 35b, 35c, and 35e SHALL ONLY APPLY IF ARTIST HAS EMPLOYEES DURING THE TERM OF THIS AGREEMENT.

a. **Artist Shall Not Discriminate.** In the performance of this Agreement, Artist agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with Artist, in any of Artist's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Artist.

b. **Subcontracts.** Artist shall incorporate by reference in all subcontracts the provisions of §12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative

Code and shall require all subcontractors to comply with such provisions. Artist's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

c. Nondiscrimination in Benefits. Artist does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for City elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the San Francisco Administrative Code.

d. Condition to Contract. As a condition to this Agreement, Artist shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the HRC.

e. Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Artist shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Artist understands that pursuant to §§12B.2(h) and 12C.3(g) of the Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Artist and/or deducted from any payments due Artist.

36. MacBride Principles—Northern Ireland.

Pursuant to San Francisco Administrative Code §12.F.5, City urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. City urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, Artist acknowledges and agrees that Artist Team has read and understood this section.

37. Tropical Hardwood and Virgin Redwood Ban.

Artist shall not 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.

38. Drug-Free Workplace Policy.

Artist acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Artist agrees that any violation of this prohibition by Artist, its employees, agents or assigns will be deemed a material breach of this Agreement.

39. Resource Conservation.

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

40. Compliance with Americans with Disabilities Act.

Artist acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through Artist, shall be accessible to the disabled public. Artist shall provide the services specified in this Agreement in a manner that complies with the ADA. Artist shall not discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Artist, its employees, agents or assigns will constitute a material breach of this Agreement.

Artist 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, Artist shall engage a consultant, as part of the project Budget, to review the Artwork for compliance with the ADA.

41. Sunshine Ordinance.

Pursuant to San Francisco Administrative Code §67.24(e), contracts, Artist's bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available by City to the public upon request.

42. Public Access to Meetings and Records.

If the Artist receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, Artist shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Artist agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Artist further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Artist acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Artist further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

43. Limitations on Contributions.

Through execution of this Agreement, Artist acknowledges that it is familiar with section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any

person who contracts with the City for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or the board of a state agency on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Artist acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of \$50,000 or more. Artist further acknowledges that the prohibition on contributions applies to each prospective Party to the contract; each member of Artist's board of directors; Artist's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Artist; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Artist. Additionally, Artist acknowledges that Artist must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Artist further agrees to provide to City the names of each person, entity or committee described above.

44. Requiring Minimum Compensation for Employees.

THIS SECTION 44 SHALL ONLY APPLY IF ARTIST HAS EMPLOYEES DURING THE TERM OF THIS AGREEMENT.

- a. Artist agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Sections 12P.5 and 12P.5.1 of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at www.sfgov.org/olse/mco. A partial listing of some of Artist's obligations under the MCO is set forth in this Section. Artist is required to comply with all the provisions of the MCO, irrespective of the listing of obligations in this Section.
- b. The MCO requires Artist to pay Artist's employees a minimum hourly gross compensation wage rate and to provide minimum compensated and uncompensated time off. The minimum wage rate may change from year to year and Artist is obligated to keep informed of the then-current requirements. Any subcontract entered into by Artist shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. It is Artist's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, City may pursue any of the remedies set forth in this Section against Artist.
- c. Artist shall not take adverse action or otherwise discriminate against an employee or other person for the exercise or attempted exercise of rights under the MCO. Such actions, if taken within 90 days of the exercise or attempted exercise of such rights, will be rebuttably presumed to be retaliation prohibited by the MCO.

d. Artist shall maintain employee and payroll records as required by the MCO. If Artist fails to do so, it shall be presumed that the Artist paid no more than the minimum wage required under State law.

e. The City is authorized to inspect Artist's job sites and conduct interviews with employees and conduct audits of Artist

f. Artist's commitment to provide the Minimum Compensation is a material element of the City's consideration for this Agreement. The City in its sole discretion shall determine whether such a breach has occurred. The City and the public will suffer actual damage that will be impractical or extremely difficult to determine if the Artist fails to comply with these requirements. Artist agrees that the sums set forth in Section 12P.6.1 of the MCO as liquidated damages are not a penalty, but are reasonable estimates of the loss that the City and the public will incur for Artist's noncompliance. The procedures governing the assessment of liquidated damages shall be those set forth in Section 12P.6.2 of Chapter 12P.

g. Artist understands and agrees that if it fails to comply with the requirements of the MCO, the City shall have the right to pursue any rights or remedies available under Chapter 12P (including liquidated damages), under the terms of the contract, and under applicable law. If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Artist fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Artist fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City shall have the right to pursue any rights or remedies available under applicable law, including those set forth in Section 12P.6(c) of Chapter 12P. Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City.

h. Artist represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

i. If Artist is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000, but Artist later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Artist shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Artist and this department to exceed \$25,000 in the fiscal year.

45. Requiring Health Benefits for Covered Employees.

THIS SECTION 45 SHALL ONLY APPLY IF ARTIST HAS EMPLOYEES DURING THE TERM OF THIS AGREEMENT.

Unless exempt, Artist agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance (HCAO), as set forth in San Francisco Administrative Code Chapter 12Q, including the remedies provided, and implementing regulations, as the same may be amended from time to time. The provisions of section 12Q.5.1 of Chapter 12Q are incorporated by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is available on the web at www.sfgov.org/olse. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

- a. For each Covered Employee, Artist shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO. If Artist chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission.
- b. Notwithstanding the above, if the Artist is a small business as defined in Section 12Q.3(e) of the HCAO, it shall have no obligation to comply with part (a) above.
- c. Artist's failure to comply with the HCAO shall constitute a material breach of this agreement. City shall notify Artist if such a breach has occurred. If, within 30 days after receiving City's written notice of a breach of this Agreement for violating the HCAO, Artist fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Artist fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, City shall have the right to pursue the remedies set forth in 12Q.5.1 and 12Q.5(f)(1-6). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to City.
- d. Any Subcontract entered into by Artist shall require the Subcontractor to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section. Artist shall notify City's Office of Contract Administration when it enters into such a Subcontract and shall certify to the Office of Contract Administration that it has notified the Subcontractor of the obligations under the HCAO and has imposed the requirements of the HCAO on Subcontractor through the Subcontract. Each Artist shall be responsible for its Subcontractors' compliance with this Chapter. If a Subcontractor fails to comply, the City may pursue the remedies set forth in this Section against Artist based on the Subcontractor's failure to comply, provided that City has first provided Artist with notice and an opportunity to obtain a cure of the violation.
- e. Artist shall not discharge, reduce in compensation, or otherwise discriminate against any employee for notifying City with regard to Artist's noncompliance or anticipated noncompliance with the requirements of the HCAO, for opposing any practice proscribed by the HCAO, for participating in proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.
- f. Artist represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the HCAO.
- g. Artist shall maintain employee and payroll records in compliance with the California Labor Code and Industrial Welfare Commission orders, including the number of hours each employee has worked on the City Contract.
- h. Artist shall keep herself informed of the current requirements of the HCAO.
- i. Artist shall provide reports to the City in accordance with any reporting standards promulgated by the City under the HCAO, including reports on Subcontractors and Subtenants, as applicable.
- j. Artist shall provide City with access to records pertaining to compliance with HCAO after receiving a written request from City to do so and being provided at least ten business days to respond.

- k. Artist shall allow City to inspect Artist's job sites and have access to Artist's employees in order to monitor and determine compliance with HCAO.
- l. City may conduct random audits of Artist to ascertain its compliance with HCAO. Artist agrees to cooperate with City when it conducts such audits.
- m. If Artist is exempt from the HCAO when this Agreement is executed because its amount is less than \$25,000 (\$50,000 for nonprofits), but Artist later enters into an agreement or agreements that cause Artist's aggregate amount of all agreements with City to reach \$75,000, all the agreements shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between Artist and the City to be equal to or greater than \$75,000 in the fiscal year.

46. Prohibition on Political Activity with City Funds.

In accordance with San Francisco Administrative Code Chapter 12.G, Artist may not participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure (collectively, "Political Activity") in the performance of the services provided under this Agreement. Artist agrees to comply with San Francisco Administrative Code Chapter 12.G and any implementing rules and regulations promulgated by the City's Controller. The terms and provisions of Chapter 12.G are incorporated herein by this reference. In the event Artist violates the provisions of this section, the City may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement, and (ii) prohibit Artist from bidding on or receiving any new City contract for a period of two (2) years. The Controller will not consider Artist's use of profit as a violation of this section.

47. Preservative-treated Wood Containing Arsenic.

Artist 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" means 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. Artist 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 Artist from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" means a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

48. Modification of Agreement.

- a. Except as provided herein, 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.
- b. Artist shall cooperate with the Arts Commission and the SFMTA's Office of Contract Compliance to submit to the OCC any amendment, modification, supplement or change

order that would result in a cumulative increase of the original amount of this Agreement by more than 20%.

c. The Commission and Artist, by written agreement signed by both Parties, may clarify provisions of Appendix A ("Artists Proposal") and/or Appendix B ("Services to be Provided by Artist"), by further outlining, correcting, clarifying and refining the substance of each of the Steps of the Work as to the date(s) of deliverables (including modifying or changing the order of the due date(s) for deliverables), the costs associated with each Step and the Performance and Payment Schedule. Such changes shall be kept on file at the Commission. Such clarifications shall not Alter the total maximum term or maximum compensation allowed in Section 2 (Term of the Agreement) and section 5 (Compensation), respectively.

49. Administrative Remedy for Agreement Interpretation.

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to Director of Cultural Affairs of the Commission who shall decide the true meaning and intent of the Agreement.

50. 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.

51. Construction of Agreement.

a. The statements recited in Part I and the definitions of words and phrases set out in Part II are incorporated into this Agreement by reference. Should any part of the Summary of Agreement in Part II conflict with a more specific provision of the Agreement as set out in Part IV, the more specific provision of Part IV shall govern.

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

c. This Agreement is the product of negotiations between the City and the Artist, each of which has opportunity to consult with legal counsel of its choosing as to the terms and conditions set out herein. No statute or rule of construction or interpretation that would require that an ambiguity in this Agreement be construed against the drafter shall apply to this Agreement, but the Agreement shall be construed to implement the intent of the Parties.

d. The services and Work that Artist shall provide and perform for the Project are described in this Agreement, the RFP, and the Proposal. All requirements of the RFP and the representations made in the Artist's Proposal that are not in conflict with provisions of this Contract are hereby incorporated by reference and made an integral part of the contract as though fully set forth herein. With respect to any conflict or ambiguity between this Agreement and the RFP or the Proposal, this Agreement shall control except where the RFP or the Proposal refers to services not otherwise mentioned in this Agreement, in which case and to such extent the RFP shall control. The Proposal shall control only where an issue or subject is not addressed in either the RFP or this Agreement. A modification to the Agreement shall control over all other

documents. In case of conflict among modifications to the Agreement, the latest modification shall have precedence over any earlier modification.

52. Entire Agreement.

This Contract and the documents incorporated by reference herein sets forth and memorializes the entire agreement between the Parties, and supersedes all other oral or written understandings or provisions. In the course of negotiating this Agreement, certain provisions have been translated into written Chinese or have been discussed orally between the Parties through a translator, but those written and verbal translations are not part of this Agreement. This Contract may be modified only as provided in Section 48 (Modification of Agreement).

53. Compliance with Laws.

Artist shall keep herself 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.

54. Services Provided by Attorneys.

Artist shall not engage any law firm or attorney to provide services to the Central Subway Project. Attorneys fees and other legal costs incurred by the Artist arising from legal services provided to the Artist in negotiating or performing this Agreement shall not be separately compensated or reimbursed, but are inclusive to the Artist's Fee.

55. 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.

56. Protection of Private Information.

Artist has read and agrees to the terms set forth in San Francisco Administrative Code Sections 12M.2, "Nondisclosure of Private Information," and 12M.3, "Enforcement" of Administrative Code Chapter 12M, "Protection of Private Information," which are incorporated herein as if fully set forth. Artist agrees that any failure of Contactor to comply with the requirements of Section 12M.2 of this Chapter shall be a material breach of the Contract. In such an event, in addition to any other remedies available to it under equity or law, the City may terminate the Contract, bring a false claim action against the Artist pursuant to Chapter 6 or Chapter 21 of the Administrative Code, or debar the Artist.

57. Graffiti Removal.

Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the City's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti shall be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Artist shall remove all graffiti from any real property owned or leased by Artist in the City and County of San Francisco within forty eight (48) hours of the earlier of Artist's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti from the Department of Public Works. This section is not intended to require Artist to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code or the San Francisco Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.). Any failure of Artist to comply with this section of this Agreement shall constitute an Event of Default of this Agreement.

58. Food Service Waste Reduction Requirements.

Artist agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth. This provision is a material term of this Agreement. By entering into this Agreement, Artist agrees that if it breaches this provision, City will suffer actual damages that will be impractical or extremely difficult to determine; further, Artist agrees that the sum of one hundred dollars (\$100) liquidated damages for the first breach, two hundred dollars (\$200) liquidated damages for the second breach in the same year, and five hundred dollars (\$500) liquidated damages for subsequent breaches in the same year is reasonable estimate of the damage that City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amount shall not be considered a penalty, but rather agreed monetary damages sustained by City because of Artist's failure to comply with this provision.

59. Dispute Resolution Procedure.

If agreed to by both Parties, disputes may be resolved through an Alternative dispute resolution process, such as mediation.

60. Federal Requirements.

a. Federal Contract Requirements and Applicable Law. The provisions set out in this Section 63 are required by federal law. If there is any conflict between said provisions or any federal law, regulation or requirement, including such limitations and requirements as the FTA may impose, such federal requirements, terms and conditions shall take precedence over any terms and conditions set out in this Agreement. The City and County of San Francisco is a chartered City and County with home rule powers under the Constitution of the State of California. The terms of this Agreement are governed by California Law and the ordinances and Charter of the City and County of San Francisco. Except as expressly provided for in this Agreement, the Federal Acquisition Regulations (FAR) shall not apply to this Agreement, except as to provide guidance as to accounting and auditing standards, including but not limited to calculation of compensable costs and overhead.

b. Incorporation of Federal Transit Administration (FTA) Terms.

(1) All contractual provisions required by DOT, as set forth in FTA Circular 4220.1F, (http://www.fta.dot.gov/laws/circulars/leg_reg_8641.html), as amended and the Master Grant Agreement (<http://www.fta.dot.gov/documents/15-Master.pdf>), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Artist shall not perform any act, fail to perform any act, or refuse to comply with any City request that would cause the City to be in violation of the FTA terms and conditions.

(2) The FTA Master Agreement obligates SFMTA to incorporate certain provisions into this Agreement and any lower tier subcontracts at any level and to take appropriate measures to ensure that Artist and its lower tier subcontractors at any level comply with certain applicable requirements set forth in the Master Agreement. The FTA Master Agreement is hereby incorporated by reference into this Agreement, and Artist shall comply with all such requirements.

(3) Copies of the FTA Master Agreement are available from the Commission.

c. Applicability of Federal Grant Contract.

(1) This procurement may be subject to one or more financial assistance contracts between SFMTA and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1F as amended. U.S. Department of Transportation's level of financial assistance may be between zero and eighty percent (0-80%). The Artist is required to comply with all terms and conditions prescribed for third Party contracts in these documents.

(2) Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Agreement is established and may apply to this Agreement. To assure compliance with changing federal requirements, Contract Award indicates that the Artist agrees to accept all changed requirements that apply to this Agreement.

d. Federal Funding Limitation. Artist understands that funds to pay for Artist's performance under this Agreement are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA. The City's obligation hereunder is payable from funds that are appropriated and allocated by FTA for the performance of this Agreement. If funds are not allocated, or ultimately are disapproved by FTA, the City may terminate or suspend Artist's services without penalty. The Commission shall notify Artist promptly in writing of the non-allocation, delay, or disapproval of funding.

e. No Federal Government Obligation to Third Parties. Artist agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third Party contractor, or any other person not a Party to the Grant Agreement in connection with this Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third Party contract, the Federal Government continues to have no obligations or liabilities to any Party, including a subrecipient or third Party contractor.

f. Federal Lobbying Restrictions.

(1) This Agreement is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 C.F.R. Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an officer or employee of Congress or an employee of any Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Consultants and Subcontractors at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Artist shall submit the "Certification Regarding Lobbying" included in this document. The Artist's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts, which exceed \$100,000, and that all such subcontractors shall certify and disclose accordingly. SFMTA is responsible for keeping the certification form of the Artist, who is in turn responsible for keeping the certification forms of subcontractors. Further, by executing the Agreement, the Artist agrees to comply with these laws and regulations.

(2) If the Artist has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, the Artist must disclose these activities. In such a case, the Artist shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities". SFMTA must also receive all disclosure forms.

(3) The Artist and any subcontractors shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:

(a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or

(b) A change in the person(s) influencing or attempting to influence this federally funded Agreement; or

(c) A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

g. Lobbying Certification and Disclosure. Pursuant to 49 C.F.R. Part 20 (which is by this reference incorporated herein), the Artist shall execute and return the Certification Regarding Lobbying by Artist form set forth in Attachment H with the execution of this agreement.

h. Certification Regarding Debarment, Suspension And Other Responsibility Matters.

(1) Pursuant to Executive Order 12549 and 12689, "Debarment and Suspension," 31 USC § 6101 and federal regulations in 49 C.F.R. 29, entities and individuals who are debarred or suspended by the federal government are excluded from obtaining federal assistance funds under this Contract. To assure that such entities and individuals are not involved as participants on this FTA-financed contract, if the contract exceeds \$25,000 each Artist shall complete and submit, as part of its Proposal, the certification form, contained in these documents. The inability of Artist to provide a certification will not necessarily result in denial of consideration for contract award. Artist that is unable to provide a certification must submit a complete explanation attached to the certification form. Failure to submit a certification or explanation may disqualify the Artist from participation under this Contract. SFMTA, in conjunction with FTA, will consider the certification or explanation in determining contract award. No contract will be awarded to a potential third-Party contractor submitting a conditioned debarment or suspension certification, unless approved by the FTA.

(2) The certification is a material representation of fact upon which reliance is placed in determination of award of contract. If at any time the Artist learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, it shall immediately provide written notice to SFMTA. If it is later determined that the Artist knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may disqualify the Artist. If it is later determined that the Artist knowingly rendered an erroneous certification, or failed to notify SFMTA immediately of circumstances which made the original certification no longer valid, SFMTA may terminate the contract, in addition to other remedies available including FTA suspension and/or debarment.

(3) Further, the Artist shall not knowingly enter into any subcontract with an entity or person who is proposed for debarment under 48 C.F.R. Part 9, Subpart 9.4, debarred, suspended, or who has been declared ineligible from obtaining federal assistance funds. As such, the Artist shall require all subcontractors seeking

subcontracts to complete and submit the same certification form contained in these documents before entering into any agreement with said subcontractor.

i. Exclusionary Or Discriminatory Specifications. Apart from inconsistent requirements imposed by Federal statute or regulations, the Artist agrees that it will comply with the requirement of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

j. Conservation. The Artist shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State Energy Action plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

k. Clean Water. The Artist agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Artist agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Artist also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

l. Clean Air. The Artist agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Artist agrees to report each violation to the City and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office. The Artist also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

m. Fly America. International air transportation of any persons involved in or property acquired for the Project must be provided by U.S. flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. 40118, in accordance with U.S. GAO regulations, "Uniform Standards and Procedures for Transportation Transactions," 4 C.F.R. Part 52, and U.S. GAO Guidelines for Implementation of the "Fly America Act" B-138942, 1981 U.S. Comp. Gen. LEXIS 2166. March 31, 1981.

n. Seismic Safety. The Artist agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 C.F.R. Part 41 and will certify to compliance to the extent required by the regulation. The Artist also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

o. National Intelligent Transportation Systems Consultature and Standards. The Artist agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Consultature and Standards as required by Section 5206(e) of TEA-21, 23 U.S.C. § 502-, and with FTA Notice, "Federal Transit Administration National ITS Consultature Policy on Transit Projects" 66 Fed. Reg. 1455 et seq., January 8, 2001, and other subsequent Federal directives that may be issued.

p. Electronic and Information Technology. When providing reports or other information to the SFMTA, or to the Federal Transit Administration (FTA), among others,

on behalf of the SFMTA, the Artist agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

q. Nondiscrimination. In addition to the provisions prohibiting discrimination set out in Sections 10.4 and 24.1, above, the Artist shall ensure compliance by it and its subcontractors with all requirements imposed by Title VI of the Civil Rights Act of 1964 (42 USC 2000d), federal Executive Order No. 11246, regulations of the U. S. Department of Labor issued thereunder, the regulations of the federal Department of Transportation issued thereunder, and the Americans with Disabilities Act, as they may be amended from time to time. Accordingly, during the performance of this Agreement, the Artist, for herself, her assignees, and successors in interest (hereinafter referred to as the "Artist"), agrees as follows:

(1) The Artist shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter "DOT"), Title 49, Code of Federal Regulations, Part 21 ("Nondiscrimination in Federally-Assisted Programs of the Dept. of Transportation"), as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Agreement.

(2) In all solicitations either by competitive bidding or negotiation made by the Artist for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the Artist of the Artist's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, creed, sex, sexual orientation, disability, age, or nationality.

(3) The Artist shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or FTA to be pertinent to ascertain compliance with such regulations, orders, and instructions. Where any information is required of a contractor or subcontractor that is in the exclusive possession of another who fails or refuses to furnish this information, the Artist shall so certify to SFMTA, or FTA, as appropriate, and shall set forth what efforts it has made to obtain the information.

(4) In the event of the Artist's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or FTA may determine to be appropriate, including, but not limited to:

(a) Requiring the Artist to take remedial action to bring the Artist into compliance;

(b) Withholding of payments to the Artist under the Agreement until the Artist complies; and/or

(c) Cancellation, termination, or suspension of the Agreement, in whole or in part.

(5) The Artist shall include the provisions of these Subsections 62.17.1 to 62.17.4 in every subcontract, including procurements of materials and leases of

equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The Artist shall take such action with respect to any subcontract or procurement as SFMTA or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Artist becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Artist may request SFMTA to enter into such litigation to protect the interests of SFMTA and, in addition, the Artist may request the United States to enter into such litigation to protect the interest of the United States.

r. Title VI Compliance. During the performance of this Agreement, Artist, for herself, her assignees, and its successors in interest agrees as follows:

(1) **Compliance with Regulations:** Artist shall comply with the Regulations relative to nondiscrimination in federally-assisted programs of the Department of Transportation (hereinafter, "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made part of this Agreement.

(2) **Nondiscrimination:** Artist, with regard to the work performed by it during the Agreement, shall not discriminate on the grounds of race, religion, color, sex, age, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. Artist shall not participate either directly or indirectly in the discrimination prohibited by 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.

(3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by Artist for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Artist of Artist's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, religion, color, sex, age, or national origin.

(4) **Information and Reports:** Artist shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by SFMTA or the FTA to be pertinent to ascertain compliance with such Regulations, orders, and instructions. Where any information required of Artist is in the exclusive possession of another who fails or refuses to furnish this information, Artist shall so certify to SFMTA, or the FTA as appropriate, and shall set forth what efforts it has made to obtain the information.

(5) **Sanctions for Noncompliance:** In the event of Artist's noncompliance with the nondiscrimination provisions of this Agreement, SFMTA shall impose such contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to:

(a) Withholding of payments to Artist under the Agreement until Artist complies, and/or,

(b) Cancellation, termination or suspension of the Agreement, in whole or in part.

(6) **Incorporation of Provisions:** Artist shall include the provisions of Subsection 62.18.1 through 62.18.5 of this Section in every subcontract, including procurements of

materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. Artist shall take such action with respect to any subcontract or procurement as SFMTA or the FTA may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that, in the event Artist becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, Artist may request SFMTA to enter into such litigation to protect the interests of SFMTA, and, in addition, Artist may request the United States to enter into such litigation to protect the interests of the United States.

s. Requirements of Americans with Disabilities Act. The Artist is required to comply with all applicable requirements of the Americans with Disabilities Act of 1990 (ADA), 42 USC §§ 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; and 49 USC § 5301(d), and the following regulations and any amendments thereto:

(1) U.S. Department of Transportation regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. Department of Transportation regulations, "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 27;

(3) U.S. Department of Justice (DOJ) regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35;

(4) DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36;

(5) U.S. General Services Administration regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19;

(6) U.S. Equal Employment Opportunity Commission (EEOC) "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630;

(7) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 C.F.R. Part 64, Subpart F; and

(8) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 C.F.R. Part 609.

(9) Any implementing requirements that the FTA may issue.

t. Recycled Products. To the extent practicable and economically feasible, the Artist agrees to provide a competitive preference for recycled products to be used in the Project pursuant to the U.S. Environmental Protection Agency Guidelines at 40 C.F.R. Parts 247, implementing Section 6002 of the Resource Conservation and Recovery Act, as amended, 42 USC § 6962. If possible, the Artist shall use both sides of paper sheets for copying and printing and shall use recycled/recyclable products wherever practical at the fulfillment of this Agreement.

u. Privacy.

(1) Should the Artist, or any of its subcontractors, or their employees administer any system of records on behalf of the federal government, the Privacy Act of 1974, 5 USC § 552a, imposes restrictions on the Party administering the system of records.

(2) For purposes of the Privacy Act, when the Agreement involves the operation of a system of records on individuals to accomplish a government function, SFMTA and any Consultants, third-Party contractors, subcontractors, and their employees involved therein are considered to be government employees with respect to the government function. The requirements of the Act, including the civil and criminal penalties for violations of the Act, apply to those individuals involved. Failure to comply with the terms of the Act or this provision of this Agreement will make this Agreement subject to termination.

(3) The Artist agrees to include this clause in all subcontracts awarded under this Agreement that require the design, development, or operation of a system of records on individuals subject to the Act.

v. False or Fraudulent Statements and Claims.

(1) The Artist recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Project. Accordingly, by signing this Agreement, the Artist certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered Grant Agreement, Cooperative agreement, Contract or Project. In addition to other penalties that may be applicable, the Artist acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Artist, to the extent the Federal Government deems appropriate.

(2) The Artist also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Artist the penalties of 18 U.S.C. § 1001, 31 USC §§ 3801, et seq., and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.

(3) The Artist agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

w. Drug-Free Workplace Policy. Artist acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, 41 U.S.C. 702, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Artist agrees that any violation of this prohibition by Artist, its employees, agents or assigns will be deemed a material breach of this Agreement.

61. Included Appendices.

The Appendices listed below are incorporated to the Agreement by reference.

- A: Artist's Proposal
- B: Civic Art Collection Forms


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

CITY

ARTIST

APPROVED:

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.




 J.B. Beltran
 Interim Director of Cultural Affairs
 San Francisco Arts Commission

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

APPROVED

SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY




 Edward Reiskin
 Director of Transportation
 Date: 10-31-11



 Yumei Hou
 90 Broadway Street, Apt. 2115
 San Francisco, CA 94109
 City vendor number: 83325

Approved as to Form:

Dennis J. Herrera
City Attorney

By 

 Robert K. Stone
 Deputy City Attorney

Return to:
Civic Art Collection Program
San Francisco Arts Commission
25 Van Ness Ave., Suite 240
San Francisco, CA 94102

Appendix A

**CENTRAL SUBWAY CHINATOWN STATION
LANDMARK ARTWORK**

ARTIST YUMEI HOU

CONCEPTUAL ARTWORK PROPOSAL

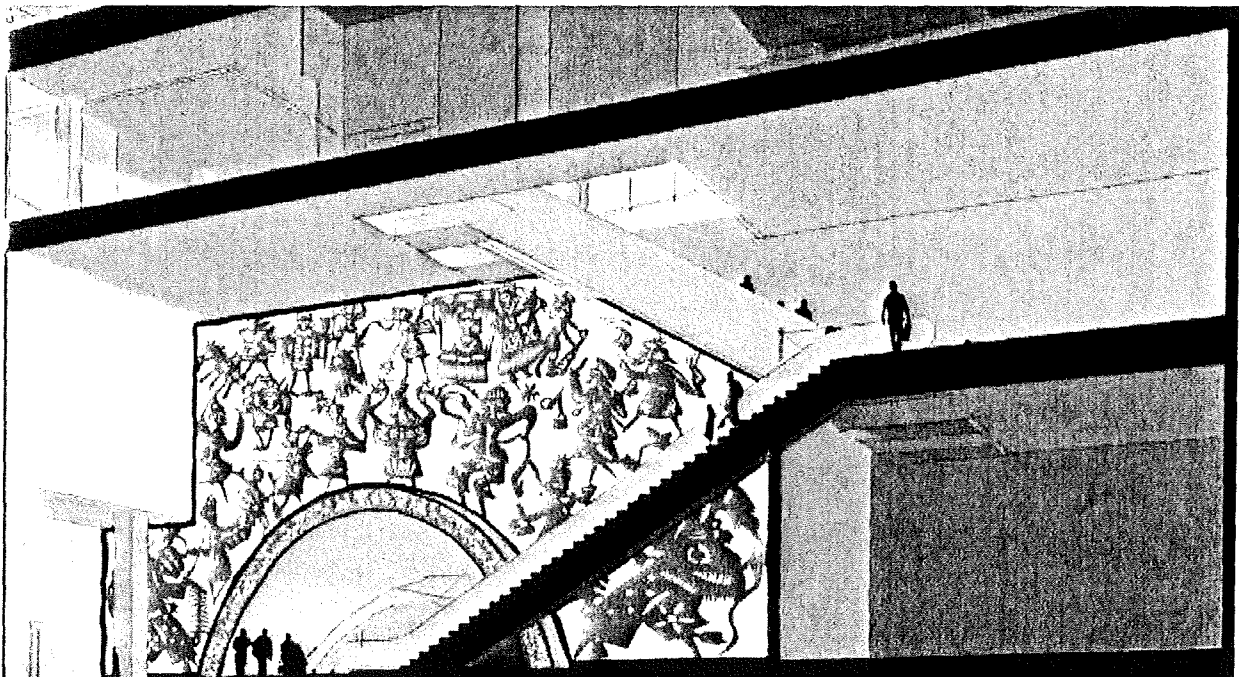
Proposal approved by Arts Commission Resolution 0802-10-214 on August 10, 2010, to be developed under this Agreement and subject to ongoing revisions, reviews and approvals by the Commission and the SFMTA.

YANG GE DANCE OF NORTHEAST CHINA

The Artist, an accomplished traditional paper cut artist will create paper cuts by hand to be enlarged and reproduced by a fabricator contracted by the City in a permanent material, such as painted laser cut metal, for permanent installation on one large wall of the Chinatown Station. The paper cuts will depict numerous images of Yang Ge, a Sprout Dance, which is a spontaneous outdoor folk dance traditional to the northeastern provinces of China where the artist grew up. This form of Yang Ge Dance is typically a group dance, involving people of all ages, and both men and women. The costumes are varied and colorful, the movement is vigorous and lively. The dance typically celebrates happy occasions such as Chinese New Year, graduation, elderly birthdays, grand openings of businesses, and so on. Participants join the formation voluntarily, and can involve as few or as many people as wish to join in. Yang Ge dance is very popular in China, with each community developing its own unique variations.

The artwork mural will represent some of the more popular Yang Ge dances, such as the well-known folk tale of the Monkey King, the tale of the White Snake, the story of the Four Monsters, as well as depictions of daily life.

Conceptual Proposal Display Board Image



Return to:
Civic Art Collection Program
San Francisco Arts Commission
25 Van Ness Ave., Suite 240
San Francisco, CA 94102

**Appendix B
CIVIC ART COLLECTION FORMS**

I. ARTIST BIOGRAPHY

Artist Surname:		Given Name:	
Birth Date:	Birth Place:		Sex:
Ethnicity: (optional)			
Contact Information: (current address, phone number and e-mail)			
Attach Artist Resume: (curriculum vitae or resume)			

II.

III. OBJECT INFORMATION

Title of Artwork:
Object Description: (describe the artwork and the components that comprise the complete installation)
Installation Location:
In the interest of history, as well as for future conservation and restoration, should that become necessary, please complete the attached Technical and Maintenance Record Sheet . Describe all materials used to create this work of art, providing trade names wherever possible.

Please print or type answers

to be completed before final payment

Return to:
Civic Art Collection Program
San Francisco Arts Commission
25 Van Ness Avenue, Suite 240
San Francisco, CA 94102

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.