

**City and County of San Francisco  
Office of Contract Administration  
Purchasing Division**

**Central Subway Project  
Tomie Arai Artwork for Chinatown Station**

**First Amendment**

THIS AMENDMENT (this "Amendment") is made as of **July 2, 2012**, in San Francisco, California, by and between **Tomie Arai** ("Contractor"), and the City and County of San Francisco, a municipal corporation ("City"), acting by and through its Director of the Office of Contract Administration.

**RECITALS**

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

WHEREAS, In consultation with the San Francisco Municipal Transportation Agency, the City's Arts Commission has identified an additional location for the installation of artwork for the Chinatown Station for the Central Subway Project, and therefore City and Contractor desire to modify the Agreement on the terms and conditions set forth herein to increase the scope of work and to increase the contract amount as approved by the Arts Commission in **Resolution 0604-12-173**;

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

- 1. Definitions.** The following definitions shall apply to this Amendment:
  - a. Agreement.** The term "Agreement" shall mean the Agreement dated **June 1, 2011** between Contractor and City, as amended by the:
  - b. Other Terms.** Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.
- 2. Modifications to the Agreement.** The Agreement is hereby modified as follows:
  - a. Section 5. Compensation. Section 5. Compensation, a. Total Amount, b. Reimbursable Expenses, c. Artist's Fee** of the Agreement currently reads as follows:
    - a. Total Amount.**
      - (1) The Total Amount payable to Artist under this Agreement (the "Contract Sum") for all Work performed by Artist, shall not exceed **Two Hundred Ninety Thousand Five Hundred Dollars (\$290,500.00)**, unless this Agreement is amended as

provided herein. Payment of the full Contract Sum is not guaranteed; to receive the full Contract Sum the Artist shall fully perform all Work described in this Agreement in compliance with the standards of performance described herein. All compensation due to Artist for Work performed under this Agreement shall be made in accordance with Appendices C and D, attached hereto.

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

**b. Reimbursable Expenses.** In addition to the Artist's Fee, as set forth below, Artist shall be reimbursed up to **One Hundred Forty Thousand Five Hundred Dollars (\$140,500.00)** for Reimbursable Expenses based on the submittal of original receipts or invoices. The breakdown of Reimbursable Expenses associated with this Agreement appears in Appendix C, attached hereto and incorporated by reference as though fully set forth herein. Artist shall be entitled to reimbursement only to the extent Artist has actually incurred such costs, and City shall retain all funds remaining or saved from the costs set out in Appendix C and in the Budget as required in Appendix B (Phase I – Design) and as approved by the Commission. Further, notwithstanding any other provision of this Agreement, the City will reimburse Artist for only those expenses that are allowed under the principles set out in the Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" and as specifically authorized therein and as allowed under the compensability standards set out in 48 C.F.R. parts 31.105, 31.2, 31.6 and the Cost Accounting Standards set out in 48 C.F.R. part 9904 et seq. Reimbursable Expenses are as follows:

(1) Actual direct salaries paid by Artist and subconsultants as shown in Attachment C; Overhead of Artist and subconsultants as shown in Attachment C (Summary of Fees), and as described herein.

(2) Actual costs or prices of approved Reimbursable Expenses for the Artist and subconsultants at any tier, net of any discounts, rebates, refunds, or other items of value received by Artist or any of its subconsultants that have the effect of reducing the cost or price actually incurred. Compensation for materials and expenses shall be at direct cost, without any mark-ups.

(3) Artist shall not "mark-up" or request additional compensation for Work performed by subconsultants.

(4) Costs for which Artist seeks compensation must be necessary in order to accomplish the Work, reasonable for the services performed, and approved by Commission in the Budget.

**c. Artist's Fee.**

(1) For all Work performed by the Artist's, except for those tasks and work specifically identified as Additional Work, the Commission shall pay the Artist an Artist's Fee in a sum total amount not to exceed **One Hundred Fifty Thousand Dollars (\$150,000.00)**.

(2) It is understood and agreed that the Artist's Fee is a fixed amount that cannot be exceeded because of any differences between the Contract Sum and actual costs of performing the Work required by this Agreement, and in no event shall payments to the Artist exceed said Contract Sum, adjusted as provided herein. The Commission may approve an increase in the Artist's Fee only if such reasonable and fair increase is required due to the City's requiring the Artist to perform Additional Work that increases the scope of the Work. Absent direction from the City to perform Additional Work, the Artist's Fee shall not be increased for Artist's additional level of effort to complete the original scope of the Work. It is further understood and agreed that the Artist's Fee is only due and payable for Work for which Commission has given Notice to Proceed and which the Artist has satisfactorily completed.

(3) The Artist's Fee is prorated and paid as part of the compensation for completion of Milestones in proportion to the Work satisfactorily completed, as provided in Appendix D (Performance and Payment Schedule). The proportion of Work completed shall be documented by invoices and payment shall be made as set out in Appendix D. Any portion of the Artists' Fee not previously paid for completed Milestones shall be included in the subsequent or final payment. The method of proration may be adjusted by Commission to reflect deletions or amendments in the Work that are approved as herein described.

**Such sections 5.a., 5.b., and 5.c. are hereby amended in its entirety to read as follows:**

**a. Total Amount.**

(1) The Total Amount payable to Artist under this Agreement (the "Contract Sum") for all Work performed by Artist, shall not exceed **Three Hundred Fifty One Thousand Dollars (\$351,000.00)**, unless this Agreement is amended as provided herein. Payment of the full Contract Sum is not guaranteed; to receive the full Contract Sum the Artist shall fully perform all Work described in this Agreement in compliance with the standards of performance described herein. All compensation due to Artist for Work performed under this Agreement shall made in accordance with Appendices C and D, attached hereto.

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

all other Reimbursable Expenses associated with the scope of the Work specified in this Agreement.

**b. Reimbursable Expenses.** In addition to the Artist's Fee, as set forth below, Artist shall be reimbursed up to **One Hundred Eighty Three Thousand Five Hundred Dollars (\$183,500.00)** for Reimbursable Expenses based on the submittal of original receipts or invoices. The breakdown of Reimbursable Expenses associated with this Agreement appears in Appendix C, attached hereto and incorporated by reference as though fully set forth herein. Artist shall be entitled to reimbursement only to the extent Artist has actually incurred such costs, and City shall retain all funds remaining or saved from the costs set out in Appendix C and in the Budget as required in Appendix B (Phase I – Design) and as approved by the Commission. Further, notwithstanding any other provision of this Agreement, the City will reimburse Artist for only those expenses that are allowed under the principles set out in the Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" and as specifically authorized therein and as allowed under the compensability standards set out in 48 C.F.R. parts 31.105, 31.2, 31.6 and the Cost Accounting Standards set out in 48 C.F.R. part 9904 et seq. Reimbursable Expenses are as follows:

(1) Actual direct salaries paid by Artist and subconsultants as shown in Attachment C; Overhead of Artist and subconsultants as shown in Attachment C (Summary of Fees), and as described herein.

(2) Actual costs or prices of approved Reimbursable Expenses for the Artist and subconsultants at any tier, net of any discounts, rebates, refunds, or other items of value received by Artist or any of its subconsultants that have the effect of reducing the cost or price actually incurred. Compensation for materials and expenses shall be at direct cost, without any mark-ups.

(3) Artist shall not "mark-up" or request additional compensation for Work performed by subconsultants.

(4) Costs for which Artist seeks compensation must be necessary in order to accomplish the Work, reasonable for the services performed, and approved by Commission in the Budget.

**c. Artist's Fee.**

(1) For all Work performed by the Artist's, except for those tasks and work specifically identified as Additional Work, the Commission shall pay the Artist an Artist's Fee in a sum total amount not to exceed **One Hundred Sixty Seven Thousand Five Hundred Dollars (\$167,500.00)**.

(2) It is understood and agreed that the Artist's Fee is a fixed amount that cannot be exceeded because of any differences between the Contract Sum and actual costs of performing the Work required by this Agreement, and in no event shall payments to the Artist exceed said Contract Sum, adjusted as provided herein. The Commission may approve an increase in the Artist's Fee only if such reasonable and fair increase is required due to the City's requiring the Artist to perform Additional Work that increases the scope of the Work. Absent direction from the City to perform Additional Work, the Artist's Fee shall not be increased for Artist's additional level of effort to complete the original scope of the Work. It is further understood and agreed that the Artist's Fee is only due and payable for Work for which Commission has given Notice to Proceed and which the Artist has satisfactorily completed.

(3) The Artist's Fee is prorated and paid as part of the compensation for completion of Milestones in proportion to the Work satisfactorily completed, as provided in Appendix D (Performance and Payment Schedule). The proportion of Work completed shall be documented by invoices and payment shall be made as set out in Appendix D. Any portion of the Artists' Fee not previously paid for completed Milestones shall be included in the subsequent or final payment. The method of proration may be adjusted by Commission to reflect deletions or amendments in the Work that are approved as herein described.

b. **Appendix A.** Appendix A Conceptual Artwork Proposal of the Agreement currently reads as follows:

## **APPENDIX A**

### **CENTRAL SUBWAY CHINATOWN STATION WAYFINDING ARTWORK**

**ARTIST TOMIE ARAI**

#### **CONCEPTUAL ARTWORK PROPOSAL**

**Proposal approved by Arts Commission Resolution 0802-10-216 on August 10, 2010, to be developed under this Agreement and subject to ongoing revisions, reviews and approvals by the Commission and the SFMTA.**

#### ***URBAN ARCHAEOLOGY***

The artist proposes to tell a story about San Francisco's Chinatown through a continuing visual timeline on all three station levels. The artists will collect archival photographs and take new photographs, to be collaged and reproduced in permanent materials such as laminated glass and etched metal panels for permanent installation in the Chinatown Station. Contemporary images of Chinatown will begin the timeline at the entryway, extending down to the platform level with panels depicting life prior to the establishment of San Francisco. Moving from level to level, subway passengers will be invited to experience the artwork in much the same way as archaeologist learn about the past, by sifting through layers of information to uncover shared histories.

Disembarking passengers on the platform level will encounter glass elevator towers with collaged images of life buried deep beneath the city streets that may include fauna and flora, fossils from prehistoric times and cultural artifacts from the indigenous peoples who first inhabited the Bay Area.

Ascending to the concourse level, the artwork will gradually shift from past to present, with images from the early settlement of San Francisco, the great San Francisco earthquake and the arrival of pioneers and immigrants from China and Asia. Actual artifacts collected from the community in the forms of photographs, coaching books, letters, et all, may be embedded in the glass.

Continuing up to the surface level, images of present day Chinatown will represent the vibrant community found at the juncture of Stockton and Washington streets.

Such section Appendix A is hereby amended in its entirety to read as follows:

**APPENDIX A**

**CENTRAL SUBWAY CHINATOWN STATION  
WAYFINDING ARTWORK**

**ARTIST TOMIE ARAI**

**CONCEPTUAL ARTWORK PROPOSAL**

**Proposal approved by Arts Commission Resolution 0802-10-216 on August 10, 2010 and revised by Resolution 0604-12-173 to be developed under this Agreement and subject to ongoing revisions, reviews and approvals by the Commission and the SFMTA.**

***URBAN ARCHAEOLOGY***

The artist proposes to tell a story about San Francisco's Chinatown through a visual timeline on two of the station levels: the surface entryway and the platform. The artist will collect archival and take new photographs to be collaged and reproduced in glass panels for permanent installation on these two levels in the Chinatown Station. Contemporary images of Chinatown will begin the timeline on panels on the parapet at the entryway and continue on with panels depicting life prior to the establishment of San Francisco on two facing walls at both ends of the platform level. Moving from level to level, subway passengers will be invited to experience the artwork in much the same way as archaeologists learn about the past--by sifting through layers of information to uncover shared histories.

On the platform level wall murals the artwork will focus on the past with images from the early settlement of San Francisco, the great San Francisco earthquake and the arrival of pioneers and immigrants from China and Asia. Images of artifacts collected from the community such as photographs, coaching books, and letters may be included in the final design.

Continuing up to the surface level, vibrant images of present day Chinatown will be included in the glass mural on the two adjacent parapets, one above the lobby facing Stockton and the other facing Washington Street.

c. **Appendix C.** Appendix C: Approved Costs of the Agreement currently reads as follows:

**Appendix C  
ARTIST'S APPROVED COSTS**

Contractor: Tomie Arai		
	Artist Fee	Reimbursable Expenses
Phase Ia Conceptual Design		
Submittal of drawings and data for SFMTA's 65% construction documents		
Contractor Fee (Artist)		
Artist Fee	\$25,000.00	
Subconsultants		
Architect/Engineer		\$10,000.00
Insurance		\$750.00
Phase Ib Design Development		
Submittal of any additional drawings and data for SFMTA's 100% construction documents		
Consultant Fee (Artist)		
Artist Fee	\$20,000.00	
Subconsultants		
Architect/Engineer		\$10,000.00
Other direct costs		
Travel (artist)		\$1,250.00
Phase Ic Final Design		
Submittal of artwork construction docs and shop drawings, final content		
Contractor Fee (Artist)		
Artist Fee	\$45,000.00	
Subconsultant		
Architect/Engineer		\$15,000.00
Other direct costs		
Mock-ups, samples		\$20,000.00
Photographer		\$3,500.00
Archival photo repro fees		\$2,500.00
Chinese Historical Society		\$3,000.00
Graphic and design drawings		\$20,000.00
Travel (artist)		\$10,000.00
Phase II Fabrication consultation		
Contractor fee (Artist)		
Artist Fee	\$40,000.00	
Subconsultant		

Architect/Engineer		\$18,000.00
Other direct costs		
Travel (artist)		\$5,000.00
Insurance		\$3,000.00
Phase III Installation consultation		
Contractor fee (Artist)		
Artist Fee	\$20,000.00	
Subconsultants		
Architect/Engineer		\$12,000.00
Other direct costs		
Travel		\$5,000.00
Insurance		\$1500.00
TOTAL	\$150,000.00	\$140,500.00

**Such section Appendix C is hereby amended in it's entirety to read as follows:**

**Appendix C  
ARTIST'S APPROVED COSTS**

Contractor: Tomie Arai		
	Artist Fee	Reimbursable Expenses
Phase Ia Conceptual Design		
Submittal of drawings and data for SFMTA's 65% construction documents		
Contractor Fee (Artist)		
Artist Fee	\$25,000.00	
Subconsultants		
Architect/Engineer		\$10,000.00
Insurance		\$750.00
Phase Ib Design Development		
Submittal of any additional drawings and data for SFMTA's 100% construction documents		
Consultant Fee (Artist)		
Artist Fee	\$20,000.00	
Subconsultants		
Architect/Engineer		\$30,000.00
Other direct costs		



Travel (artist)		\$1,250.00
Insurance		\$750
Phase Ic Final Design		
Submittal of artwork construction docs and shop drawings, final content		
Contractor Fee (Artist)		
Artist Fee	\$50,000.00	
Subconsultant		
Architect/Engineer		\$15,000.00
Other direct costs		
Mock-ups, samples		\$25,000.00
Photographer		\$3,500.00
Archival photo repro fees		\$3,500.00
Chinese Historical Society		\$3,000.00
Graphic and design drawings		\$25,000.00
Travel (artist)		\$10,000.00
Phase II Fabrication consultation		
Contractor fee (Artist)		
Artist Fee	\$50,000.00	
Subconsultant		
Architect/Engineer		\$25,000.00
Other direct costs		
Travel (artist)		\$10,000.00
Insurance		\$2,250.00
Phase III Installation consultation		
Contractor fee (Artist)		
Artist Fee	\$22,500.00	
Subconsultants		
Architect/Engineer		\$12,000.00
Other direct costs		
Travel		\$5,000.00
Insurance		\$1,500.00
TOTAL	\$167,500.00	\$183,500.00

**d. Appendix D: Appendix D: Payment Schedule** of the Agreement currently reads as follows:

**Appendix D**

## PAYMENT SCHEDULE

<b>Appendix D Payment Schedule</b>			
<b>TOMIE ARAI</b>	<b>Artist Fee</b>	<b>Reimbursable Expenses</b>	<b>Submittal Due Date</b>
Payment 1: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to drawings, data, specifications, samples, mock-ups, required to the SFMTA's 65% construction documents. Subcontracts and documentation subcontractors and other pre-approved expenditures have been paid.	25,000.00	10,750.00	No later than August 19, 2011
Payment 2: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to, additional drawings, data, specifications, samples, mock-ups required for the SFMTA's 100% construction documents. Subcontracts and documentation all subcontractors and other pre-approved expenditures have been paid.	20,000.00	11,250.00	No later than October 10, 2011
Payment 3: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to, artwork drawings, any imagery and text, construction documents, specifications, data, shop drawings, material samples, material data sheets, mock-ups, required tests for ease of maintenance and durability required for final approval and fabrication of the artwork.	45,000.00	74,000.00	No later than July 31, 2012
Payment 4: Invoice may be submitted upon approval of completed fabrication of the artwork by the SFAC and SFMTA, and approval of all required documents, and documentation that all subcontractors have been paid.	40,000.00	26,000.00	Artwork shall be delivered to site no later than 9/30/15
Payment 5: Invoice may be submitted upon approval of transported and installed artwork by the SFAC and the SFMTA, and approval of all remaining required submittals, and documentation that all subcontractors have been paid.	20,000.00	18,500.00	TBD
<b>Payment Schedule Notes:</b>			
1. All budget figures are not-to-exceed amounts. Artist shall only invoice the Arts Commission for actual reimbursable expenses incurred, totaling less than the not-to-exceed amount for each Phase.			
2. Receipts and invoices shall be submitted to the Arts Commission for all reimbursable expenses.			
3. All due dates are subject to change by the Arts Commission or SFMTA			

4. Artist shall not proceed to the next Phase, as indicated above, without written permission from the Arts Commission.			
5. Artist may request approval in writing by the Arts Commission in advance to submit invoices for additional interim payments for Work completed and approved within each Phase.			

**Such Appendix D is hereby amended in its entirety to read as follows:**

**Appendix D  
PAYMENT SCHEDULE**

<b>Appendix D Payment Schedule</b>			
<b>TOMIE ARAI</b>	<b>Artist Fee</b>	<b>Reimbursable Expenses</b>	<b>Submittal Due Date</b>
Payment 1: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to drawings, data, specifications, samples, mock-ups, required to the SFMTA's 65% construction documents. Subcontracts and documentation subcontractors and other pre-approved expenditures have been paid.	25,000.00	10,750.00	No later than August 19, 2011
Payment 2: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to, additional drawings, data, specifications, samples, mock-ups required for the SFMTA's 100% construction documents. Subcontracts and documentation all subcontractors and other pre-approved expenditures have been paid.	20,000.00	32,000.00	No later than December 31, 2012
Payment 3: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to, artwork drawings, any imagery and text, construction documents, specifications, data, shop drawings, material samples, material data sheets, mock-ups, required tests for ease of maintenance and durability required for final approval and fabrication of the artwork.	50,000.00	85,000.00	No later than July 31, 2013
Payment 4: Invoice may be submitted upon approval of completed fabrication of the artwork by the SFAC and SFMTA, and approval of all required documents, and documentation that all subcontractors have been paid.	50,000.00	37,250.00	Artwork shall be delivered to site no later than 9/30/15
Payment 5: Invoice may be submitted upon approval of transported and installed artwork by the SFAC and the SFMTA, and approval of all remaining required submittals, and documentation that all subcontractors have been paid.	22,500.00	18,500.00	No later than December 31, 2016

Payment Schedule Notes:			
1. All budget figures are not-to-exceed amounts. Artist shall only invoice the Arts Commission for actual reimbursable expenses incurred, totaling less than the not-to-exceed amount for each Phase.			
2. Receipts and invoices shall be submitted to the Arts Commission for all reimbursable expenses.			
3. All due dates are subject to change by the Arts Commission or SFMTA			
4. Artist shall not proceed to the next Phase, as indicated above, without written permission from the Arts Commission. 5. <b>Artist may request approval in writing by the Arts Commission in advance to submit invoices for additional interim payments for Work completed and approved within each Phase.</b>			

\*

**3. Effective Date.** Each of the modifications set forth in Section 2 shall be effective on and after **July 2, 2012**.

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

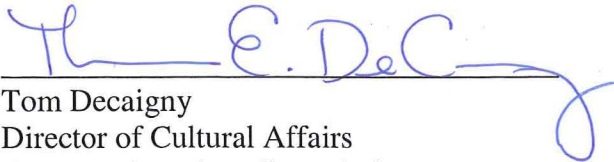
IN WITNESS WHEREOF, Contractor and City have executed this Amendment as of the date first referenced above.

**CITY**

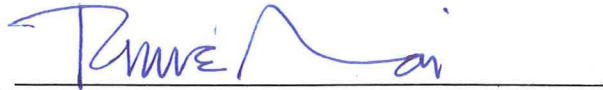
**CONTRACTOR**

APPROVED:

ARTIST



Tom Decaigny  
Director of Cultural Affairs  
San Francisco Arts Commission



Tomie Arai  
245 West 107<sup>th</sup> Street, 12H  
New York, NY 10025  
City vendor number: 55155

APPROVED:

San Francisco Municipal Transportation  
Agency



Edward Reiskin  
Executive Director/CEO  
San Francisco Municipal  
Transportation Agency  
Date: 12-18-12

Approved as to Form:

Dennis J. Herrera  
City Attorney

By:  12-18-12

Robert K. Stone  
Deputy City Attorney