

**City and County of San Francisco
Arts Commission
401 Van Ness Avenue, Suite 325
San Francisco, California 94102**

**Fourth Amendment to Agreement between the
City and County of San Francisco and Catherine Wagner LLC**

This Third Amendment to the Agreement (this “Amendment”), dated for convenience as of September 23, 2020 in San Francisco, California, by and between Catherine Wagner LLC (“Contractor”), and the City and County of San Francisco, a municipal corporation (“City”), acting by and through its Municipal Transportation Agency (“SFMTA) and its Arts Commission (“Commission”), for the purposes and on the terms and conditions set forth below.

RECITALS

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

WHEREAS, City and Contractor desire to modify the Agreement on the terms and conditions set forth;

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

SUMMARY OF FOURTH AMENDMENT

As more particularly described below, this Amendment modifies the Agreement to extend the term one additional year. The term extension is necessary because the construction of the Central Subway Project is delayed, and the Project will require Contractor’s services through the completion of construction and before the Project opens to the public.

In addition, this Amendment also adds additional scope and funding to replace a glass element of the artwork. The replacement was necessary to accommodate a change to the station architecture made after glass had been fabricated.

In addition, this Amendment also adds contract requirements mandated by federal procurement laws.

FOURTH AMENDMENT OF AGREEMENT

The Agreement is modified as follows:

1. Definitions. The following definitions shall apply to this Amendment:

1a. Agreement. The term “Agreement” shall mean the Agreement dated **June 1, 2011** between Contractor and City, as amended by the First Amendment to the Agreement, dated **July 3, 2012**, the Second Amendment to the Agreement, dated **November 16, 2018**, the Third

Amendment to the Agreement dated January 13, 2020, and this Fourth Amendment to the Agreement.

1b. Contract Monitoring Division. Effective July 28, 2012, with the exception of Sections 14B.9(D) and 14B.17(F), all of the duties and functions of the Human Rights Commission under Chapter 14B of the Administrative Code (LBE Ordinance) were transferred to the City Administrator, Contract Monitoring Division (“CMD”). Wherever “Human Rights Commission” or “HRC” appears in the Agreement in reference to Chapter 14B of the Administrative Code or its implementing Rules and Regulations, it shall be construed to mean “Contract Monitoring Division” or “CMD” respectively.

1c. Other Terms. Terms used and not defined in this Amendment shall have the meanings assigned to such terms in the Agreement.

2. Modification to the Agreement. The Agreement is hereby modified as follows:

2a. Section 2. Term of the Agreement

The Term of the Agreement is extended to **June 29, 2022** due to extended date of installation of artwork, received from the SFMTA Contractor.

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

2. Term of Agreement

The initial term of this Agreement shall be from June 1, 2011 to June 29, 2022, unless extended by subsequent contract modification pursuant to the contract modification requirements in this Agreement. Notwithstanding the above, this Agreement may be extended by mutual written agreement of the parties for a period not to exceed two years beyond the initial term, provided that such extension does not create a contract with a total aggregate term of more than ten years.

2b. Section 5. Compensation a. and b.

The total compensation amount payable to the Artist has increased by \$15,906.00 to allow for additional scope.

Section 5 a. and b. is hereby deleted and replaced in its entirety to read as follows:

5. Compensation.

a. Total Amount.

(1)The Total Amount payable to Artist under this Agreement (the "Contract Sum") for all Work performed by Artist, shall not exceed **Three Hundred Twenty**

Eight Thousand Three Hundred Seventy Six Dollars (\$328,376.00) 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 Fifty Five Thousand Three Hundred Seventy Six Dollars (\$155,376.00)** for Reimbursable Expenses based on the submittal of original receipts or invoices. The breakdown of Reimbursable Expenses associated with this Agreement appears in Appendix C, attached hereto and incorporated by reference as though fully set forth herein. Artist shall be entitled to reimbursement only to the extent Artist has actually incurred such costs, and City shall retain all funds remaining or saved from the costs set out in Appendix C and in the Budget as required in Appendix B (Phase I – Design) and as approved by the Commission. Further, notwithstanding any other provision of this Agreement, the City will reimburse Artist for only those expenses that are allowed under the principles set out in the Office of Management and Budget Circular A-87, "Cost Principles for State, Local, and Indian Tribal Governments" and as specifically authorized therein and as allowed under the compensability standards set out in 48 C.F.R. parts 31.105, 31.2, 31.6 and the Cost Accounting Standards set out in 48 C.F.R. part 9904 et seq. Reimbursable Expenses are as follows:

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

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

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

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

2c. Appendix B. Services to be Provided by Artist Catherine Wagner. PHASE II - CONSULTATION DURING FABRICATION OF ARTWORK

Due to a change in station architecture made after artwork was fabricated, certain glass elements will require refabrication in order to conform to new dimensions. This constitutes a change in the Artists' scope of work.

Appendix B. Phase II 1. Scope of Work is hereby deleted and replaced in its entirety to read as follows:

1. Scope of Work

- a. Fabricator. The City will engage a Fabricator to manufacture the Artwork based on the Artist's approved Final Design Documents. At the City's direction, the City may assign, and the Artist shall accept assignment of the Fabricator's contract so that the Fabricator is a subcontractor to the Artist, either prior to or after the Commission's final approval of the Design Development Documents. As directed by the Commission, the Artist shall assist the Commission in the selection of a Fabricator. As directed by the Commission, prior to and after the aforesaid assignment of contract, the Artist shall consult with the selected Fabricator to ensure that the Artwork conforms to the approved Design Development Documents.
- b. Shop Drawings. Artist and Artist's Engineer shall review and comment on Shop Drawings produced by the fabricator as needed to fabricate the Artwork, to include, but not limited, to all interfaces between the Artwork and the Moscone Station, all attachment systems, and all Artwork dimensions.
- c. Inspection of Artwork.
 - 1) Artist shall send photo documentation of Artwork fabrication at 25% and 50% completion. Documentation to be sent to Arts Commission Project Manager at each stage for review and approval prior to advancing with next Phase of fabrication.
 - 2) Artist shall notify the Commission 30 days in advance of 100% completion of all the Artwork elements so that the Arts Commission can do a field inspection of the Artwork at the fabricator.
- d. Refabrication of Artwork.
 - 1) Artist shall subcontract with the Fabricator to refabricate glass elements that no longer conform to the station architecture, as requested by the Arts Commission and SFMTA.

2c. Appendix C. ARTISTS APPROVED COSTS

Refabrication of glass art elements requires an increase in the artist's approved costs.

Appendix C. is hereby deleted and replaced in its entirety to read as follows:

Central Subway Artist Budget Appendix C		
Contractor: Catherine Wagner		
	Artist Fee	Reimbursables
Phase 1a: Conceptual Design		
Submittal of drawings and data for SFMTA's 65% construction documents		
Contractor Fee		
Contractor (Artist)	\$28,000.00	
Studio assistant	\$1,000.00	
Subconsultant		
Architectural consultant		\$4,250.00
Stone consultant		\$500.00
Other direct costs		
Digital drawing and scanning		\$1,300.00
Graphic designing		\$1,920.00
Total Artist Fee	\$29,000.00	
Total Reimbursables Expenses		\$7,970.00
Phase 1b: Design Development		
Submittal of any additional drawings and data for SFMTA's 100% construction documents		
Contractor Fee		
Contractor (Artist)	\$28,000.00	
Studio Assistant	\$2,000.00	
Subconsultants		
Architectural consultant		\$1,500.00
Stone consultant		\$3,000.00
Engineer		\$2,000.00
Lighting consultant		\$1,000.00
Other direct costs		
Drawings		\$2,500.00
Total Contractor Fee	\$30,000.00	
Total Reimbursable Expenses		\$10,000.00
Phase 1c Final Design		
Artwork construction docs and shop drawings		
Contractor fee		
Contractor (Artist)	\$45,000.00	
Studio assistant	\$4,000.00	

Subconsultants		
Architectural consultant		\$5,000.00
Stone consultant		\$20,000.00
Engineer		\$15,000.00
Stone prototype & metal attachments		\$7,500.00
Other direct costs		
High resolution digital imaging & scan		\$10,000.00
Granite panel samples		\$9,000.00
Travel (Artist)		\$7,500.00
Travel (stone consultant)		\$2,500.00
Shipping samples		\$1,500.00
Total Contractor Fee	\$49,000.00	
Total Reimbursable Expenses		\$78,000.00
Phase II Fabrication Consultation		
Contractor Fee		
Contractor (Artist)	\$38,000.00	
Studio assistant	\$4,000.00	
Subcontractors		
Architectural consultant		\$2,000.00
Stone consultant		\$20,000.00
Other direct costs		
Travel (artists)		\$5,000.00
Travel (stone consultant)		\$3,500.00
Total Contractor Fee	\$42,000.00	
Total Reimbursable Expenses		\$30,500.00
Phase III Installation Consultation		
Contractor Fee		
Contractor (Artist)	\$21,000.00	
Studio assistant	\$2,000.00	
Subconsultants		
Architectural consultant		\$2,000.00
Stone consultant		\$7,500.00
Other direct costs		
Travel (stone consultant)		\$3,500.00
Glass refabrication		\$15,906.00
Total Contractor Fee	\$23,000.00	
Total Reimbursable Expenses		\$28,906.00

2c. Appendix D. PAYMENT SCHEDULE

Refabrication of glass art elements requires an increase in the artist's approved costs and payment schedule.

Appendix D. is hereby deleted and replaced in its entirety to read as follows:

Appendix D Payment Schedule			
CATHERINE WAGNER	Artist Fee	Reimbursable Expenses	*Submittal Deadline
Payment 1: Invoice may be submitted upon receipt and approval by the SFAC and the SFMTA of all submittals, to include, but not limited to drawings, data, specifications, samples, mock-ups, required to the SFMTA's 65% construction documents. Subcontracts and documentation subcontractors and other pre-approved expenditures have been paid.	29,000.00	7,970.00	No later than June 15, 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.	30,000.00	10,000.00	No later than June 30, 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, 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.	49,000.00	78,000.00	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.	42,000.00	30,500.00	Artwork shall be delivered to City no later than September 30, 2015.
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.	23,000.00	28,906.00	TBD
Payment Schedule Notes:			

1. All payments are not-to-exceed amounts. Artist shall only invoice the Arts Commission for actual reimbursable expenses incurred and totaling less that 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.			

3. Effective Date. This Amendment shall be effective when fully executed (that is, signed by all parties; each of the modifications set forth in Section 2 shall be effective retroactive to June 1, 2011.

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

The remainder of this page has been intentionally left blank.

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

CITY

CONTRACTOR

Recommended by:

Catherine Wagner LLC

Joanne Lee

Joanne Lee
Deputy Director
Rebekah Krell
Acting Director of Cultural Affairs
San Francisco Arts Commission

DocuSigned by:
Catherine Wagner

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Catherine Wagner
308 Precita Avenue
San Francisco, CA 94110
City vendor number: 69181

APPROVED:

City vendor number: 87713

**SAN FRANCISCO MUNICIPAL
TRANSPORTATION AGENCY**

Jeffrey Tumlin

Jeffrey Tumlin
Director of Transportation
Date: November 5, 2020

Approved as to Form:

Dennis J. Herrera
City Attorney

By: *Robert Stone*

Robert K. Stone
Deputy City Attorney