P-600 INSTRUCTIONS

1. USE THIS P-600 PROFESSIONAL SERVICES AGREEMENT FOR MOST PROFESSIONAL SERVICES.

2. COMPLETE ALL GREEN FIELDS.

3. RESERVE SECTIONS BASED ON ***<INSTRUCTIONS>*** IN THIS DOCUMENT. REPLACE HEADINGS WITH "RESERVED (CLAUSE NAME)."

4. IF A LINK IS NOT ACCESSIBLE, CONTACT OCA@sfgov.org.

5. TRACK ALL CHANGES.

6. HAVE YOUR CITY ATTORNEY REVIEW THE PROPOSED REDLINED AGREEMENT BEFORE SENDING TO THE CONTRACTOR OR PUBLISHING THIS AGREEMENT WITH YOUR SOLICITATION.

7. MOST IMPORTANTLY, DELETE ALL RED INSTRUCTIONS AND MAKE SURE TO CHANGE THE GREEN FIELDS TO BLACK FONT BEFORE SENDING TO THE CONTRACTOR OR PUBLISHING THIS AGREEMENT WITH YOUR SOLICITATION.

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

Agreement between the City and County of San Francisco
and
[Insert name of contractor]
[Insert PeopleSoft Contract ID]

This Agreement is made this [insert day] day of [insert month], [insert year], in the City and County of San Francisco ("City"), State of California, by and between [name and address of Contractor] ("Contractor") and City.

Recitals

WHEREAS, the Arts Commission ("Commission") wishes to commission and acquire an artwork for [insert name of project], using funding that the City has allocated for such purpose under Section 3.19 of the San Francisco Administrative Code, which funding the Commission is authorized to supervise and control; and

WHEREAS, Contractor represents and warrants that it is qualified to perform the Services required by City as set forth under this Agreement; and

WHEREAS, this Agreement was competitively procured as required by San Francisco Administrative Code Chapter 21.1 through a Request for Qualifications ("RFQ") issued on [insert date], in which City selected Contractor as the highest qualified scorer pursuant to the RFQ; and

WHEREAS, this is a contract for Services and the Local Business Enterprise ("LBE") subcontracting participation requirement for the Services has been waived; and

WHEREAS, approval for the Agreement was obtained on July 16, 2018 from the Civil Service Commission under PSC number 4010-13/14 in the amount of $33,000,000 for a continuous period;

WHEREAS, the Commission approved this Agreement by [insert resolution number] on [insert date of Commission action] in the amount of [insert Dollar Amount]; and

WHEREAS, the Office of Contract Administration, in a letter dated July 1, 2026, authorized the Commission to procure, without further approval from the Office of Contract Administration, contracts for the planning, design, fabrication, documentation, and maintenance and repair of artworks.

Now, THEREFORE, the parties agree as follows:

Article 1 Definitions

The following definitions apply to this Agreement:

1.1 "Agreement" means this contract document, including all attached appendices, and all applicable City Ordinances and Mandatory City Requirements specifically incorporated into this Agreement by reference as provided herein.

1.2 "Appendices" means the appendices listed in Article 14 ("Appendices") herein.

1.3 "Artificial Intelligence" or "Artificial Intelligence Model" means an engineered or machine-based system that varies in its level of autonomy and that can, for explicit or implicit objectives, infer from the input it receives how to generate outputs that can influence physical or virtual environments.

1.4 "Artificial Intelligence System" means a machine-based system that is designed to operate with varying levels of autonomy and that may exhibit adaptiveness after deployment, and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.

1.5 "City" means the City and County of San Francisco, a municipal corporation, acting by and through both its Director of the Office of Contract Administration or the Director's designated agent, hereinafter referred to as "Purchasing" and the Arts Commission.

1.6 "City Data" means that data as described in Article 13 of this Agreement which includes, without limitation, all data collected, used, maintained, processed, stored, and/or generated by or on behalf of City in connection with this Agreement. City Data includes, without limitation, Confidential Information and Deliverable Data.

1.7 "CMD" means the Contract Monitoring Division of the City.

1.8 "Confidential Information" means confidential City information including, but not limited to, personal identifiable information ("PII"), protected health information ("PHI"), or individual financial information (collectively, "Proprietary or Confidential Information") that is subject to local, state or federal laws restricting the use and disclosure of such information Confidential Information includes, without limitation, City Data.

1.9 "Contractor" means [insert name and address of contractor].

1.10 "Deliverable Data" means any data that is required to be delivered to City as a Deliverable, or as a part of a Deliverable, under this Agreement.

1.11 "Deliverables" means Contractor's or its subcontractors' work product including any partially-completed work product and related materials resulting from the Services provided by Contractor to City during the course of Contractor's performance of the Agreement, including without limitation, the work product described in the "Scope of Services" attached as Appendix C.

1.12 Generative Artificial Intelligence" means Artificial Intelligence that can generate derived synthetic content, such as text, images, video, and audio, that emulates the structure and characteristics of the Artificial Intelligence's training data.

1.13 "Mandatory City Requirements" means those City laws set forth in the San Francisco Municipal Code, including the duly authorized rules, regulations, and guidelines implementing such laws that impose specific duties and obligations upon Contractor.

1.14 "Party" and "Parties" means City and Contractor either individually or collectively.

1.15 "Personal Identifiable Information (PII)" means information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household. Personal information includes, but is not limited to, the following if it identifies, relates to, describes, is reasonably capable of being associated with, or could be reasonably linked, directly or indirectly, with a particular individual or household as further defined in the California Consumer Privacy Act.

1.16 "Services" means the work performed by Contractor under this Agreement as specifically described in the "Scope of Services" attached as Appendix C, including all services, labor, supervision, materials, equipment, actions and other requirements to be performed and furnished by Contractor under this Agreement.

Article 2 Term of the Agreement

2.1 **Term.** The term of this Agreement shall commence on [insert Contractor's start date] and expire on [insert expiration date], unless earlier terminated as otherwise provided herein.

2.2 **Options to Extend.** City has the option to renew the Agreement for a period of [enter number] (#) additional years. City may exercise this option at City's sole and absolute discretion by modifying this Agreement as provided in Section 11.5, "Modification of this Agreement." Extensions may be for the whole or partial period provided for above.

Article 3 Financial Matters

3.1 Certification of Funds; Budget and Fiscal Provisions

3.1.1 **Termination in the Event of Non-Appropriation**. This Agreement is subject to the budget and fiscal provisions of Section 3.105 of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of City's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization. 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. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

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

3.1.2 **Maximum Costs**. City's payment obligation to Contractor cannot at any time exceed the amount certified by City's Controller for the purpose and period stated in such certification. Absent an authorized emergency per the City Charter or applicable Code, no City representative is authorized to offer or promise, nor is City required to honor, any offered or promised payments to Contractor under this Agreement in excess of the certified maximum amount without the Controller having first certified the additional promised amount and the

Parties having modified this Agreement as provided in Section 11.5, "Modification of this Agreement."

3.2 **Authorization to Commence Work.** Contractor shall not commence any work under this Agreement until City has issued formal written authorization to proceed, such as a purchase order, task order or notice to proceed. Such authorization may be for a partial or full scope of services.

3.3 **Compensation.**

3.3.1 **Contract Not to Exceed Amount.** The amount of this Agreement shall not exceed **[insert whole dollar amount in numbers and words in bold -- no pennies and no ".00"]**, the breakdown of which appears in Appendix B, "Payment Breakdown and Schedule." City shall not be liable for interest or late charges for any late payments. City will not honor minimum service order charges for any Services covered by this Agreement.

3.3.2 **Payment Limited to Satisfactory Services.** Contractor is not entitled to any payments until City approves the Services delivered. Payments to Contractor by City shall not excuse Contractor from its obligation to replace the unsatisfactory Services even if the unsatisfactory character was apparent or could have been detected at the time such payment was made. Non-conforming Services may be rejected by City and in such case must be replaced by Contractor without delay at no cost to City.

3.3.3 **Withhold Payments.** If Contractor fails to provide the Services in accordance with Contractor's obligations under this Agreement, City may withhold any and all payments due to Contractor until such failure to perform is cured, and Contractor shall not stop work as a result of City's withholding of payments as provided herein.

3.3.4 **Invoicing.** Contractor shall invoice the City for the Services provided under this Agreement on a timely basis, and in no event later than [30] days after delivery of the Services or as specified in Appendix B, "Payment Breakdown and Schedule.", except for the last invoice of the fiscal year which must be submitted within [15] days before the end of July. Invoices submitted by Contractor must be in a form acceptable to the Controller and City and include a unique invoice number and a specific invoice date. Payment shall be made by City as specified in Section 3.3.7, or in such alternate manner as the Parties have mutually agreed upon in writing. All invoices must show the PeopleSoft Purchase Order ID Number, PeopleSoft Supplier Name and ID, Item numbers (if applicable), complete description of Services performed, sales/use tax (if applicable), contract payment terms and contract price. Invoices that do not include all required information or contain inaccurate information will not be processed for payment.

3.3.5 **Reserved. (LBE Payment Utilization Tracking System).**

3.3.6 **Reserved (Grant Funded Contracts).**

3.3.7 **Payment Terms.**

(a) **Payment Due Date**: Unless City notifies the Contractor that a dispute exists, Payment shall be made within 30 calendar days, measured from (1) the rendering of the Services or (2) the date of receipt of the invoice, whichever is later. Payment is deemed to be made on the date City issued a check to Contractor or, if Contractor agreed to electronic payment, the date City has posted electronic payment to Contractor.

(b) **Reserved (Payment Discount Terms).**

3.4 **Audit and Inspection of Records**. Contractor agrees to maintain and make available to City, during regular business hours, accurate books and accounting records relating to its Services. Contractor will permit City to audit, examine and make copies of 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. Contractor 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 as conferred upon City by this Section. Contractor shall include the same audit and inspection rights and record retention requirements in all subcontracts.

3.5 **Submitting False Claims**. The full text of San Francisco Administrative Code Section 21.35, including the enforcement and penalty provisions, is incorporated into this Agreement. Any contractor or subcontractor who submits a false claim shall be liable to City for the statutory penalties set forth in that section.

<INSTRUCTIONS> Prevailing Wage. *Review the Prevailing Wage Requirements and Applicability Guidance to determine if Prevailing Wage applies and, if so, which law governs. If Prevailing Wage is not applicable to this contract, delete the text of Section 3.6 and change the caption to read "**Reserved (Payment of Prevailing Wages).**"*

3.6 **Payment of Prevailing Wages**

3.6.1 **Covered Services.** Services to be performed by Contractor under this Agreement will involve the performance of work covered by Articles 101 through 107 of the San Francisco Labor and Employment Code, as applicable, including without limitation the California Labor Code provisions incorporated therein (collectively, "Covered Services"), all of which is incorporated into this Agreement as if fully set forth herein and will apply to any Covered Services performed by Contractor and its subcontractors..

3.6.2 **Wage Rates.** The latest prevailing wage rates for private employment on public contracts as determined by the San Francisco Board of Supervisors as such prevailing wage rates may be changed during the term of this Agreement, are hereby incorporated as provisions of this Agreement. Contractor agrees that it shall pay not less than the highest general Prevailing Rate of Wages to all workers employed by Contractor who perform Covered Services under this Agreement. Copies of the Prevailing Rate of Wages as fixed and determined in accordance with Labor and Employment Code Section 103.2 are available from the City's Office of Labor Standards and Enforcement ("OLSE") and are on file at the Department's principal office or at the job site and shall be made available to any interested party on request.

3.6.3 **Subcontract Requirements.** Contractor shall insert in every subcontract for the performance of Covered Services under this Agreement a provision requiring subcontractor to pay all persons performing labor in connection with Covered Services under the subcontract not less than the highest general prevailing rate of wages as determined by the Board of Supervisors and DIR for such labor and services.

3.6.4 **Job Site Notices and Records.** Contractor shall prominently post at each job site a sign informing employees that the work is subject to the City's Prevailing Wage requirements and that these requirements are enforced by OLSE. Contractor shall also maintain a sign-in and sign-out sheet in a format prescribed by OLSE showing which employees are present on the job site.

3.6.5 **Payroll Records.** Contractor shall keep or cause to be kept, for a period of four years from the date of completion of the subject work, complete and accurate payroll records for all workers performing Covered Services, including without limitations time cards, trust fund reports, apprenticeship agreements, accounting ledgers, tax forms, proof of payment, and superintendent and foreperson daily logs for all trades workers performing work. Such records shall include the name, address and social security number of each worker who provided Covered Services, including apprentices, their classification, a general description of the Services each worker performed each day, the rate of pay (including rates of contributions for, or costs assumed to provide fringe benefits), daily and weekly number of hours worked, deductions made and actual wages paid. Every subcontractor who shall perform any part of Covered Services shall keep a like record of each person engaged in the execution of Covered Services under the subcontract. All such records shall at all times be available for inspection of and examination by City and its authorized representatives.

3.6.6 **Certified Payrolls.** Contractor shall prepare certified payrolls for the period involved for all employees, including those of subcontractors, who performed Covered Services. ***<INSTRUCTIONS>*** *The remaining text of this subsection may be deleted if this is a Covered Contract under Article 102 of the Labor and Employment Code and submission of certified payroll records is deemed by the Department to be unnecessary.* Contractor and each subcontractor performing Covered Services shall electronically submit certified payrolls to City using OLSE's certified payroll reporting system. Contractor and all subcontractors that will perform Covered Services shall attend a training session on the preparation and electronic submission of certified payroll records provided by City. Contractor and applicable subcontractors shall comply with electronic certified payroll requirements (including training) at no additional cost to City.

3.6.7 **Compliance Monitoring.** Covered Services performed under this Agreement are subject to compliance monitoring and enforcement of prevailing wage requirements by OLSE. Contractor and any subcontractors performing Covered Services will cooperate fully with OLSE and other City employees and agents authorized to assist in the administration and enforcement of the prevailing wage requirements. Contractor agrees that (i) OLSE shall have the right to engage in random inspections of job sites and have access to the employees of the Contractor, employee time sheets, inspection logs, payroll records and employee paychecks, and (ii) OLSE may audit such records of Contractor and any subcontractors as it reasonably deems necessary. Failure to comply with these requirements may result in penalties and forfeitures pursuant to the California Labor Code, including Section 1776(h), as amended from time to time, and San Francisco Labor and Employment Code Article 101 through 107, as applicable.

3.6.8 **Remedies.** Should Contractor, or any subcontractor performing Covered Services, fail or neglect to pay to the persons who perform Covered Services under this Agreement or subcontract for the Covered Services, the general prevailing rate of wages as herein specified, Contractor shall forfeit, and in the case of any subcontractor so failing or neglecting to pay said wage, Contractor and the subcontractor shall jointly and severally forfeit, back wages due plus the penalties set forth in the San Francisco Labor and Employment Code and/or California Labor Code Section 1775. City, when certifying any payment which may become due under the terms of this Agreement, shall deduct from the amount that would otherwise be due on such payment the amount of said forfeiture.

Article 4 Services and Resources

4.1 **Services Contractor Agrees to Perform**. Contractor agrees to perform the Services stated in Appendix C, "Scope of Services." Officers and employees of City are not authorized to request, and City is not required to compensate for Services beyond those stated.

4.2 **Qualified Personnel**. Contractor represents and warrants that it is qualified to perform the Services for which it is contracted to provide through this Agreement, and that all Services will be performed by competent personnel with the degree of skill and care required by current and sound professional procedures and practices. Contractor will comply with City's reasonable requests regarding assignment and/or removal of personnel, but all personnel, including those assigned at City's request, must be supervised by Contractor. Contractor shall commit sufficient resources for timely completion within the project schedule.

<INSTRUCTIONS> Subcontractor Names. *Naming the subcontractors in the following section is not required but encouraged as a means of documentation. Subcontractors may be key personnel in the agreement, and by naming them, contractors are unable to change them without approval. Subcontractors may also be named in the Appendices. When a named subcontractor is replaced and the change is approved by City and CMD (if needed when subcontractor is fulfilling LBE requirements), this must be done in a modification consistent with Section 11.5, "Modification of this Agreement."*

4.3 **Subcontracting**. Contractor may subcontract portions of the Services only upon prior written approval of City. Contractor is responsible for its subcontractors throughout the course of the work required to perform the Services. All subcontracts must incorporate the terms of Article 10 "Additional Requirements Incorporated by Reference" of this Agreement, unless inapplicable. Neither Party shall, on the basis of this Agreement, contract on behalf of, or in the name of, the other Party. Any agreement made in violation of this provision shall be null and void. ***<INSTRUCTIONS>*** *Use the following sentence and list desired subcontractors if a specific contractor is required for services – otherwise omit:* City's execution of this Agreement constitutes its approval of the subcontractors listed below and/or in Appendices.

[Insert names of desired approved subcontractors here]

4.4 **Independent Contractor; Payment of Employment Taxes and Other Expenses.**

4.4.1 **Independent Contractor**. For the purposes of this Section 4.4, "Contractor" shall be deemed to include not only Contractor, but also any agent or employee of Contractor. Contractor acknowledges and agrees that at all times, Contractor is an independent contractor, and is wholly responsible for the manner and means by which it performs the Services and work required under this Agreement. Contractor, including its agents and employees, will not represent or hold itself/themselves out to be employees of City at any time. Contractor shall not have employee status with City, nor be entitled to participate in any plans, arrangements, or distributions by City pertaining to or in connection with any retirement, health or other benefits that City may offer its employees. Contractor is liable for its acts and omissions. Contractor shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, FICA, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Contractor's performing Services and work, or any agent or employee of Contractor providing same. Nothing in this Agreement shall be construed as creating an employment or agency relationship between City and Contractor, or any of its agents or employees Contractor agrees to maintain and make available to City, upon request and during regular business hours, accurate books and accounting records demonstrating Contractor's compliance with Section 4.4. Should City determine that

Contractor is not performing in accordance with the requirements of Section 4.4, City shall provide Contractor with written notice of such failure. Within five (5) business days of Contractor's receipt of such notice, and in accordance with Contractor policy and procedure, Contractor shall remedy the deficiency. Notwithstanding, if City believes that an action of Contractor warrants immediate remedial action by Contractor, City shall contact Contractor and provide Contractor in writing with the reason for requesting such immediate action.

4.4.2 **Payment of Employment 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 Contractor 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 Contractor 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 Contractor for City, upon notification of such fact by City, Contractor shall promptly remit such amount due or arrange with City to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability). A determination of employment status pursuant to Section 4.4 shall be solely limited to the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of City. Notwithstanding the foregoing, Contractor agrees to indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them against any and all claims, losses, costs, damages, and expenses, including attorneys' fees, arising from Section 4.4.

4.5 **Assignment**. The Services to be performed by Contractor are personal in character. This Agreement may not be directly or indirectly assigned, novated, or otherwise transferred unless first approved by City by written instrument executed and approved in the same manner as this Agreement. Any purported assignment made in violation of this provision shall be null and void.

4.6 **Warranty.** Contractor warrants to City that the Services will be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the Services are performed so as to ensure that all Services performed are correct and appropriate for the purposes contemplated in this Agreement.

<INSTRUCTIONS> Liquidated Damages. *Liquidated damages are optional. It may be required if there are time-sensitive milestones for the Contractor's performance. If this Section 4.6 is not deleted, add the liquidated damages amount and make sure Appendix B includes measurable deadlines for submission of Deliverables to allow City to impose liquidated damages. If not used, delete the text of Section 4.6 and change the caption to read "**Reserved (Liquidated Damages).**" in bold.*

4.7 **Liquidated Damages.** By entering into this Agreement, Contractor agrees that in the event the Services are delayed beyond the scheduled milestones and timelines as provided in Appendix C, "Scope of Services, City will suffer actual damages that will be impractical or extremely difficult to determine. Contractor agrees that the sum of **[insert whole dollar amount in words and numbers -- no pennies and no ".00"]** per calendar day for each day of delay beyond scheduled milestones and timelines is not a penalty, but is a reasonable estimate of the loss that City will incur based on the delay, established in light of the circumstances existing at the time this Agreement was awarded. City may deduct a sum representing the liquidated

damages from any money due to Contractor under this Agreement or any other contract between City and Contractor. Such deductions shall not be considered a penalty, but rather agreed upon monetary damages sustained by City because of Contractor's failure to furnish deliverables to City within the time fixed or such extensions of time permitted in writing by City.

4.8 **Reserved. (Performance Bond).**

4.9 **Reserved. (Fidelity Bond or Crime Insurance).**

4.10 **Emergency - Priority 1 Service.** In case of an emergency that affects any part of the San Francisco Bay Area, Contractor will give the City and County of San Francisco Priority 1 service with regard to the Services procured under this Agreement unless preempted by State and/or Federal laws. Contractor will make every good faith effort in attempting to deliver Services using all modes of transportation available. In addition, the Contractor shall charge fair and competitive prices for Services ordered during an emergency and not covered under the awarded Agreement.

Article 5 Insurance and Indemnity

5.1 **Insurance.**

<INSTRUCTIONS> Overview. *The following types and amounts of insurance are those most commonly required in City contracts. However, departments should tailor the types and amounts of insurance to the particular risks associated with each contract. Examples of what will trigger higher policy limits and additional types of coverage include: the Agreement involving personal identifiable information (PII), personal health information (PHI), chemicals, fuel, transport hazardous waste, heavy equipment, aircraft, and any commodity or service that can cause significant property damage or bodily injury. Departments will need to determine the associated risks and insurance coverage requirements prior to issuing an RFP or the first draft of a sole source agreement being sent to a vendor. In addition, the Risk Management Division must be consulted prior to any reduction in the amount of insurance coverage required (if lower than minimum limits) or removal of these coverages. Such consultation must be documented when submitting the Agreement for approval. Removals should be indicated with a "**Reserved (Clause Name).**" in bold. See additional guidance for when Risk Management consultation is not needed in the instructions for each coverage line.*

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

<INSTRUCTIONS> **General Liability Insurance.** General Liability insurance is always required. Add "Policy must include Abuse and Molestation coverage." where Contractor will provide services for vulnerable clients such as minors and/or the elderly.

(a) Commercial General Liability Insurance with limits not less than $1,000,000 each occurrence for Bodily Injury and Property Damage, including Contractual

Liability, Personal Injury, Products and Completed Operations. Contractor shall obtain such insurance prior to commencing the fabrication of the Artwork and shall maintain through the transportation and installation of the Artwork at the Site.

<INSTRUCTIONS>*Auto Liability Insurance.** Auto Liability insurance is required unless the contractor submits a written statement that it will not use any vehicles to perform its contractual obligations*, for which Risk Management consultation is not needed*. If not applicable, delete *the text of subsection (b) and enter the* caption *to read* "**Reserved *(Commercial Auto Liability Insurance)." *in bold.*

(b) Commercial Automobile Liability Insurance with limits not less than $1,000,000 each occurrence, "Combined Single Limit" for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

<INSTRUCTIONS>*Workers' Compensation Insurance.** Workers' Compensation insurance is required for any company with employees. *If Contractor submits a written statement that* Workers' Compensation insurance is not applicable *(due to contractor being an individual, sole proprietor or independent contractor) Risk Management consultation is not needed. Delete the text of subsection (c) and enter the* caption *to read* "**Reserved *(Workers' Compensation Insurance). *" in bold.*

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

<INSTRUCTIONS>* Professional Liability Insurance.** Contractors that must be State-licensed as professionals to perform services, i.e., architects, engineers, certified public accountants, attorneys, brokers, etc., must provide professional liability insurance, also known as errors-and-omissions coverage. If the Contractor is such a professional, then include subsection (d) below. If the Contractor is not such a professional, then remove the body text of subsection (d) and replace solely with "**Reserved *(Professional Liability Insurance). *"* in bold.

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

(e) **Fine Arts Insurance** or other insurance against loss in an amount equal to the total payment specified under Section 3.3 (Compensation). Contractor shall obtain such insurance prior to commencing fabrication of the Artwork.

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

(g) **Reserved (Technology Errors and Omissions Insurance).**

(h) **Reserved (Cyber and Privacy Insurance).**

(i) **Reserved (Pollution Liability Insurance).**

5.1.2 **Additional Insured.**

(a) The Commercial General Liability Insurance policy must include Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees.

<INSTRUCTIONS> Commercial Automobile Liability Insurance Additional Insured Endorsement. If Auto Liability Insurance is not required, delete the text of subsection (b) below and enter the caption to read "Reserved (Commercial Automobile Liability Insurance Additional Insured Endorsement)." in bold.

(b) The Commercial Automobile Liability Insurance policy must include as Additional Insured the City and County of San Francisco, and its Officers, Agents, and Employees.

(c) **Reserved (Pollution Additional Insured Endorsement).**

<INSTRUCTIONS> Worker Compensation Insurance Waiver of Subrogation. If Worker Compensation Insurance is not applicable or if Contractor objects to providing this and only if it is NOT performing the Services on City property and/or premises, delete the text of Section 5.1.3 below and enter the caption to read "Reserved (Worker Compensation Insurance Waiver of Subrogation)." in bold. Seek City Risk Manager approval if Contractor is expected to enter City premises but is not willing to provide the waiver of subrogation endorsement

5.1.3 **Waiver of Subrogation.** The Workers' Compensation Insurance policy(ies) shall include a waiver of subrogation in favor of City for all work performed by the Contractor, and its employees, agents and subcontractors.

5.1.4 **Primary Insurance.**

(a) The Commercial General Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

<INSTRUCTIONS>* Auto Liability Insurance as Primary Insurance.** If Auto Liability Insurance is not required, delete (b) below and enter *the caption to read* "**Reserved *(Auto Liability Insurance as Primary Insurance)." in bold.

(b) The Commercial Automobile Liability Insurance policy shall provide 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 the insurance applies separately to each insured against whom claim is made or suit is brought.

(c) **Reserved (Pollution Liability Insurance as Primary Insurance).**

5.1.5 **Other Insurance Requirements**

(a) Thirty (30) days' advance written notice shall be provided to City of cancellation, intended non-renewal, or reduction in coverages, except for non-payment for which no less than ten (10) days' notice shall be provided to City. Notices shall be sent to City address set forth in Section 11.1 entitled "Notices to the Parties."

(b) Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, be maintained for a period of three (3) years beyond the expiration of this Agreement, to the effect that, should occurrences during the Agreement term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

(c) 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.

(d) 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.

(e) Before commencing any Services, Contractor shall furnish to City certificates of insurance including additional insured and waiver of subrogation status, as required with insurers with ratings comparable to A-, VIII or higher, that are authorized to do business in the State of California, and that are satisfactory to City, in form evidencing all coverages set forth above. Approval of the insurance by City shall not relieve or decrease Contractor's liability hereunder.

(f) If Contractor will use any subcontractor(s) to provide Services, Contractor shall require the subcontractor(s) to provide all necessary insurance and to name the City and County of San Francisco, its officers, agents and employees and the Contractor as additional insureds and waive subrogation in favor of City, where required.

5.1.6 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 Artwork shall be restored, reconstructed or abandoned. If the Commission determines that Contractor shall restore or reconstruct the Artwork, all insurance proceeds received by City shall be paid to Contractor to the extent the proceeds are used for such restoration or re-construction.

5.2 **Indemnification**.

5.2.1 Contractor shall indemnify and hold harmless City and its officers, agents and employees from, and, if requested, shall defend them from and against any and all liabilities (legal, contractual, or otherwise), losses, damages, costs, expenses, or claims for injury or damages (collectively, "Claims"), arising from or in any way connected with Contractor's performance of the Agreement, including but not limited to, any: (i) injury to or death of a person, including employees of City or Contractor; (ii) loss of or damage to property; (iii) violation of local, state, or federal common law, statute or regulation, including but not limited to privacy or personal identifiable information, health information, disability and labor laws or regulations; (iv) strict liability imposed by any law or regulation; or (v) losses arising from Contractor's execution of subcontracts not in accordance with the requirements of this Agreement applicable to subcontractors; except to the extent such indemnity is void or otherwise unenforceable under applicable law, and except where such Claims are the result of the active negligence or willful misconduct of City and are not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on, Contractor, its subcontractors, or either's agent or employee. The foregoing indemnity shall include, without limitation,

reasonable fees of attorneys, consultants, experts, and related costs, and City's costs of investigating any claims against City.

5.2.2 In addition to Contractor's obligation to indemnify City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such Claim is tendered to Contractor by City and continues at all times thereafter.

5.2.3 Contractor shall indemnify, defend, 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 arising directly or indirectly from the receipt by City, or any of its officers or agents, of Contractor's Services.

5.2.4 Under no circumstances will City indemnify, defend, or hold harmless Contractor.

Article 6 Liability of the Parties

6.1 **Liability of City**. CITY'S TOTAL LIABILITY UNDER THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ITS PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 3.3.1, "CONTRACT NOT TO EXCEED AMOUNT," OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL CITY BE LIABLE, 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 SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

6.2 **Liability for Use of Equipment**. City shall not be liable for any damage to persons or property, including Artwork, as a result of the use, misuse or failure of any equipment used by Contractor, or any of its subcontractors, or by any of their employees, even though such equipment is furnished, rented or loaned by City.

<INSTRUCTIONS> Liability for Incidental and Consequential Damages. *Contractors frequently ask to limit their general liability under the contract, cap incidental and consequential damages, and/or cap their indemnification obligation. Each situation raises unique issues, but revised terms may be negotiated. Consult with your assigned Deputy City Attorney to assist you in drafting this language if necessary. If removed, delete the text of Section 6.3 and change the caption to "**Reserved (Liability for Incidental and Consequential Damages).**" in bold.*

6.3 **Liability for Incidental and Consequential Damages**. Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions.

Article 7 Payment of Taxes

7.1 **Contractor to Pay All Taxes.** Except for any applicable California sales and use taxes charged by Contractor to City, Contractor shall pay all taxes, including possessory interest taxes levied upon or as a result of this Agreement, or the Services delivered pursuant hereto. Contractor shall remit to the State of California any sales or use taxes paid by City to Contractor under this Agreement. Contractor agrees to promptly provide information requested by City to verify Contractor's compliance with any State requirements for reporting sales and use tax paid by City under this Agreement.

7.2 **Possessory Interest Taxes.** Contractor acknowledges that this Agreement may create a "possessory interest" for property tax purposes. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to timely report on behalf of City to the County Assessor the information required by San Francisco Administrative Code Section 23.39, as amended from time to time, and any successor provision. Contractor 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.

7.3 **Withholding.** Contractor agrees that it is obligated to pay all amounts due to City under the San Francisco Business and Tax Regulations Code during the term of this Agreement. Pursuant to Section 6.10-2 of the San Francisco Business and Tax Regulations Code, Contractor further acknowledges and agrees that City may withhold any payments due to Contractor under this Agreement if Contractor is delinquent in the payment of any amount required to be paid to City under the San Francisco Business and Tax Regulations Code. Any payments withheld under this paragraph shall be made to Contractor, without interest, upon Contractor coming back into compliance with its obligations.

Article 8 Termination and Default

8.1 Termination for Convenience

8.1.1 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 Contractor written notice of termination ("Notice of Termination"). The Notice of Termination shall specify the date on which termination of the Agreement shall become effective ("Termination Date").

8.1.2 Upon receipt of the Notice of Termination, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to affect the termination of this Agreement on the Termination Date and to minimize the liability of Contractor and City to third parties as a result of the termination. All such actions shall be subject to the prior approval of City. Such actions may include any or all of the following, without limitation:

(a) Completing performance of any Services that City requires Contractor to complete prior to the Termination Date.

(b) Halting the performance of all Services on and after the Termination Date.

(c) Cancelling all existing orders and subcontracts by the Termination Date, and not placing any further orders or subcontracts for materials, Services, equipment or other items.

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

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

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

8.1.3 Within 30 days after the Termination Date, Contractor shall submit to City an invoice, which shall set forth each of the following as a separate line item:

(a) The reasonable cost to Contractor, without profit, for all Services provided prior to the Termination Date, for which City has not already made payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of 10% of Contractor's direct costs for Services. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.

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

(c) The reasonable cost to Contractor of handling and returning material or equipment delivered to City or otherwise disposed of as directed by City.

(d) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of such 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.

8.1.4 In no event shall City be liable for costs incurred by Contractor or any of its subcontractors after the Termination Date, except for those costs specifically listed in Section 8.1.3. Such non-recoverable costs include, but are not limited to, anticipated profits on the Services under 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 Section 8.1.3.

8.1.5 In arriving at the amount due to Contractor under this Section, City may deduct: (i) all payments previously made by City for Services covered by Contractor's final invoice; (ii) any claim which City may have against Contractor in connection with this Agreement; (iii) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection 8.1.4; and (iv) in instances in which, in the opinion of City, the cost of any Service performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected Services, the difference between the invoiced amount and City's estimate of the reasonable cost of performing the invoiced Services in compliance with the requirements of this Agreement.

8.1.6 **Payment Obligation.** City's payment obligation under Section 8.1, "Termination for Convenience," shall survive termination of this Agreement.

8.2 **Termination for Default; Remedies.**

8.2.1 Each of the following shall constitute an immediate event of default ("Event of Default") under this Agreement:

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

<INSTRUCTIONS> Events of Immediate Default. *Failure to comply with the following contract sections gives City cause to immediately terminate the Agreement. However, you may add other critical obligations that, when violated, also give City the right to immediately terminate the Agreement. Prior to finalization, confirm that the numbers on the table properly correspond to their location in this document.*

3.5	Submitting False Claims.	10.3.5	Alcohol and Drug-Free Workplace
4.5	Assignment	10.3.6	Working with Minors
Article 5	Insurance and Indemnity	11.10	Compliance with Laws
Article 7	Payment of Taxes	Article 13	Data and Security

(b) Contractor fails or refuses to perform the Services or to perform or observe any other term, covenant or condition contained in this Agreement, including any obligation imposed by ordinance or statute and incorporated by reference herein, and such default is not cured within ten (10) days after written notice thereof from City to Contractor or from when Contractor otherwise becomes aware of the Event of Default.. If Contractor defaults a second time in the same manner as a prior default cured by Contractor, in addition to all other remedies available to City, City may in its sole discretion immediately terminate the Agreement for default or grant an additional period not to exceed five days for Contractor to cure the default.

(c) Contractor (i) is generally not paying its debts as they become due; (ii) 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; (iii) makes an assignment for the benefit of its creditors; (iv) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property; or (v) takes action for the purpose of any of the foregoing.

(d) A court or government authority enters an order (i) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (ii) constituting an order for relief or approving a petition for relief, reorganization or arrangement, 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 (iii) ordering the dissolution, winding-up or liquidation of Contractor.

8.2.2 **Default Remedies.** On and after any Event of Default, City shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, where applicable, City shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to City on demand all costs and expenses incurred by City arising from the Event of Default and/or in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by

law. City shall also have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between City and Contractor: (i) all damages, losses, costs or expenses incurred by City as a result of an Event of Default; and (ii) any liquidated damages levied upon Contractor pursuant to the terms of this Agreement; and (iii), any damages imposed by any ordinance or statute that is incorporated into this Agreement by reference, or into any other agreement with City.

8.2.3 All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy. Nothing in this Agreement shall constitute a waiver or limitation of any rights that City may have under applicable law.

8.2.4 Any notice of default must be sent in accordance with Article 11.

8.3 **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 hereof 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.

8.4 **Rights and Duties upon Termination or Expiration.**

8.4.1 Section 8.4, "Rights and Duties upon Termination or Expiration," and the following Sections of this Agreement listed below, shall survive termination or expiration of this Agreement:

***<INSTRUCTIONS>* Survival Clauses.** The below sections will survive once this Agreement ends. *Prior to finalization, confirm that the numbers in the table properly correspond to their location in this document.*

3.3.2	Payment Limited to Satisfactory Services	11.8	Construction
3.3.6(b)	Grant Funded Contracts – Disallowance	11.9	Entire Agreement
3.4	Audit and Inspection of Records	11.10	Compliance with Laws
3.5	Submitting False Claims	11.11	Severability
Article 5	Insurance and Indemnity	Article 13	Data and Security
6.1	Liability of City	Article 6A	Risk of Loss; Responsibility for Site Conditions
6.3	Liability for Incidental and Consequential Damages	Article 7A	Instructions for Maintenance; Variable Media Guidelines; Anticipated Life Span of Artwork
Article 7	Payment of Taxes	Article 8A	Artist's Moral Rights; City's Ownership Rights
8.1.6	Payment Obligation	Article 9A	Intellectual Property and Publicity Rights

9.1	Ownership of Results	Article 10A	City Access to Artwork; Inspection of Artwork; Status Reports; Contractor Availability
9.2	Works for Hire	Article 11A	Contractor's Warranties
11.6	Dispute Resolution Procedure	Article 14A	Bonds
11.7	Agreement Made in California; Venue	Article 15A	Licensed Contractor Requirements

8.4.2 Subject to the survival of the Sections identified in Section 8.4.1, above, if this Agreement is terminated prior to expiration of the term specified in Article 2, this Agreement shall be of no further force or effect. Promptly upon expiration of this Agreement, or promptly upon receipt by Contractor of notice of termination of this Agreement, Contractor shall transfer title to City, and deliver in the manner, at the times, and to the extent, if any, directed by City, any Deliverables, 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.

Article 9 Rights in Deliverables

9.1 **Ownership of Results.** Except in the case of early termination of this Agreement, title to the Artwork shall transfer from Contractor to City upon the Commission's Final Acceptance of the Artwork. Title transfer shall be self-executing upon Commission's Final Acceptance. Contractor will cooperate in providing to City any title transfer documents City may request or require during or after the Term of this Agreement. Proposal, Conceptual Design, Design Development Documents, Construction Documents, Samples, Mock-ups (including paintings, drawings, photographs or other original artwork created for the purposes of the Artwork) and all other documents prepared and submitted by Contractor to the Commission pursuant to this Agreement shall belong to the Commission.

9.2 **Reserved. (Works for Hire).**

Article 10 Additional Requirements Incorporated by Reference

10.1 **Laws Incorporated by Reference**. The full text of the laws listed in this Article 10, including enforcement and penalty provisions, are incorporated by reference into this Agreement. The full text of the San Francisco Municipal Code provisions incorporated by reference in this Article and elsewhere in the Agreement ("Mandatory City Requirements") are available at http://www.amlegal.com/codes/client/san-francisco_ca/%20.

10.2 **Governmental Conduct Related Contractual Obligations.**

10.2.1 **Conflict of Interest.** By executing this Agreement, Contractor certifies that it does not know of any fact which constitutes a violation of Section 15.103 of the City's Charter; Article III, Chapter 2 of City's Campaign and Governmental Conduct Code; Title 9, Chapter 7 of the California Government Code (Section 87100 *et seq.*); or Title 1, Division 4, Chapter 1, Article 4 of the California Government Code (Section 1090 *et seq.*), and further agrees promptly to notify City if it becomes aware of any such fact during the term of this Agreement.

10.2.2 **Prohibition on Use of Public Funds for Political Activity.** In performing the Services, Contractor shall comply with San Francisco Administrative Code Chapter 12G, which prohibits funds appropriated by City for this Agreement from being expended to participate in, support, or attempt to influence any political campaign for a candidate or for a ballot measure. Contractor is subject to the enforcement and penalty provisions in Chapter 12G.

10.2.3 **Limitations on Contributions.** By executing this Agreement, Contractor acknowledges its obligations under Section 1.126 of the City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with, or is seeking a contract with, any department of 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, for a grant, loan or loan guarantee, or for a development agreement, from making any campaign contribution to (i) a City elected official if the contract must be approved by that official, a board on which that official serves, or the board of a state agency on which an appointee of that official serves; (ii) a candidate for that City elective office; or (iii) a committee controlled by such elected official or a candidate for that office, at any time from the submission of a proposal for the contract until the later of either the termination of negotiations for such contract or twelve (12) months after the date City approves the contract. The prohibition on contributions applies to each prospective party to the contract; each member of Contractor's board of directors; Contractor's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than ten percent (10%) in Contractor; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Contractor. Contractor certifies that it has informed each such person of the limitation on contributions imposed by Section 1.126 by the time it submitted a proposal for the contract and has provided the names of the persons required to be informed to the City department with whom it is contracting.

10.3 **Employment Related Contractual Obligations.**

10.3.1 **Local Business Enterprise and Non-Discrimination in Contracting Ordinance.** Contractor shall comply with all applicable provisions of San Francisco Administrative Code Chapter 14B ("LBE Ordinance"). Contractor is subject to the enforcement and penalty provisions in Chapter 14B.

<INSTRUCTIONS> SF Labor and Employment Code Article 111 MCO: *To determine if MCO applies, see MCO Requirements and Applicability. If MCO does not apply or is waived, delete the text of Section 10.3.2 and change the caption to read "**Reserved (Minimum Compensation Ordinance).**" in bold.*

10.3.2 **Minimum Compensation Ordinance.** San Francisco Labor and Employment Code Article 111 applies to this Agreement. Contractor shall pay covered employees no less than the minimum compensation required by Article 111, including a minimum hourly gross compensation, compensated time off, and uncompensated time off. Contractor is subject to the enforcement and penalty provisions in Article 111. Information about and the text of Article 111 is available on the web at http://sfgov.org/olse/mco. Contractor is required to comply with all of the applicable provisions of Article 111, irrespective of the listing of obligations in this Section. By signing and executing this Agreement, Contractor certifies that it complies with Article 111.

<INSTRUCTIONS> SF Labor and Employment Code Article 121: *To determine if HCAO applies, see HCAO Requirements and Applicability. If HCAO does not apply or is waived, delete*

*the text of Section 10.3.3 and change the caption to read "**Reserved (Health Care Accountability Ordinance).**" in bold.*

10.3.3 **Health Care Accountability Ordinance.** San Francisco Labor and Employment Code Article 121 applies to this Agreement. Contractor shall comply with the requirements of Article 121. For each Covered Employee, Contractor shall provide the appropriate health benefit set forth in Section 121.3 of the HCAO. If Contractor chooses to offer the health plan option, such health plan shall meet the minimum standards set forth by the San Francisco Health Commission. Information about and the text of Article 121, as well as the Health Commission's minimum standards, is available on the web at http://sfgov.org/olse/hcao. Contractor is subject to the enforcement and penalty provisions in Article 121. Any Subcontract entered into by Contractor shall require any Subcontractor with 20 or more employees to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in this Section.

***<INSTRUCTIONS> SF Administrative Code Chapter 83 FSHP:** To determine if FSHP applies, see FSHP Requirements and Applicability. If FSHP does not apply or is waived, delete the text of Section10.3.4 and change the caption to read "**Reserved (First Source Hiring Program).**" in bold.*

10.3.4 **First Source Hiring Program.** Contractor must comply with all of the applicable provisions of the First Source Hiring Program, Chapter 83 of the San Francisco Administrative Code, that apply to this Agreement; and Contractor is subject to the enforcement and penalty provisions in Chapter 83.

***<INSTRUCTIONS> Working with Minors.** Insert the following section if Contractor or any subcontractor provides services at a City park, playground, recreational center or beach in accordance with California Public Resources Code Section 5164. Otherwise delete the text of Section 10.3.5 and change the caption to read "**Reserved (Working with Minors).**" in bold.*

10.3.5 **Working with Minors.** Contractor shall not hire, and shall prevent its subcontractors from hiring, any person for employment or a volunteer position in a position having supervisory or disciplinary authority over a minor if that person has been convicted of any offense listed in Public Resources Code Section 5164. In addition, if Contractor, or any subcontractor, is providing services to City involving the supervision or discipline of minors or where Contractor, or any subcontractor, will be working with minors in an unaccompanied setting on more than an incidental or occasional basis, Contractor and any subcontractor shall comply with any and all applicable requirements under federal or state law mandating criminal history screening for such positions and/or prohibiting employment of certain persons including but not limited to California Penal Code Section 290.95.

10.3.6 **Alcohol and Drug-Free Workplace.** City reserves the right to deny access to, or require Contractor to remove from, City facilities personnel of any Contractor or subcontractor who City has reasonable grounds to believe has engaged in alcohol abuse or illegal drug activity which in any way impairs City's ability to maintain safe work facilities or to protect the health and well-being of City employees and the general public. City shall have the right of final approval for the entry or re-entry of any such person previously denied access to, or removed from, City facilities. Illegal drug activity means possessing, furnishing, selling, offering, purchasing, using or being under the influence of illegal drugs or other controlled substances for which the individual lacks a valid prescription. Alcohol abuse means possessing, furnishing, selling, offering, or using alcoholic beverages, or being under the influence of alcohol.

<INSTRUCTIONS> Federal or State Funds. *Include the following paragraph if the Contractor will be paid with federal or state funds. If not, delete the section.*

Contractor agrees in the performance of this Agreement to maintain a drug-free workplace by notifying employees that unlawful drug use is prohibited and specifying what actions will be taken against employees for violations; establishing an on-going drug-free awareness program that includes employee notification and, as appropriate, rehabilitation. Contractor can comply with this requirement by implementing a drug-free workplace program that complies with the ***[add the following if using Federal funds]*** Federal Drug-Free Workplace Act of 1988 (41 U.S.C. § 701) ***[add the following if using State funds]*** or California Drug-Free Workplace Act of 1990 Cal. Gov. Code, § 8350 et seq.

<INSTRUCTIONS> Article 131 Nondiscrimination. *The following clause is not required if the Agreement value is* ***$5,000 per fiscal year or less*** *from now until* ***March 31, 2026****, or if other waivers or exemptions apply. As of* ***April 1, 2026****, the following clause is not required if the Agreement value is* ***less than or equal to the Minimum Competitive Amount****. If that condition exists, or Article 131 is waived, please delete the text of Section 10.3.7 and change the caption to read "****Reserved (Nondiscrimination in Contracts).****" in bold.*

10.3.7 **Nondiscrimination in Contracts.** Contractor shall comply with the provisions of San Francisco Labor and Employment Code Articles 131 and 132. Contractor shall incorporate by reference in all subcontracts the provisions of Sections 131.2(a), 131.2(c)-(k), and 132.3 of the San Francisco Labor and Employment Code and shall require all subcontractors to comply with such provisions. Contractor is subject to the enforcement and penalty provisions in Articles 131 and 132.

<INSTRUCTIONS> SF Labor and Employment Code Article 131 Compliance: *To learn more about Article 131 compliance, see Article 131 Requirements and Applicability. The following clause is not required if the Agreement value is* ***$5,000 per fiscal year or less*** *from now until* ***March 31, 2026****, or if other waivers or exemptions apply. As of* ***April 1, 2026****, the following clause is not required if the Agreement value is* ***less than or equal to the Minimum Competitive Amount****. If that condition exists, or Article 131 is waived, please delete the text of Section 10.3.8 and change the caption to read "****Reserved (Nondiscrimination in the Provision of Employee Benefits).****" in bold.*

10.3.8 **Nondiscrimination in the Provision of Employee Benefits.** San Francisco Labor and Employment Code Article 131.2 applies to this Agreement. Contractor 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 employee benefits between employees with domestic partners and employees with spouses and/or between the domestic partners and spouses of such employees, subject to the conditions set forth in Article 131.2.

10.4 **Environmental Related Contractual Obligations.**

10.4.1 **Reserved. (Packaged Water Prohibition).**

10.4.2 **Tropical Hardwood and Virgin Redwood Ban.** Pursuant to San Francisco Environment Code Section 804(b), City urges Contractor not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

10.4.3 **Food Service Waste Reduction Requirements.** Contractor shall comply with the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including but not limited to the remedies for noncompliance provided therein.

10.4.4 **Reserved. (Sugar-Sweetened Beverage Prohibition).**

<INSTRUCTIONS> SF Administrative Code 12Y Slavery Era Disclosure: *Insert the following section for any Agreement in which the Contractor is providing (1) insurance or insurance services, (2) financial services, or (3) textiles. The clause is not required if the Agreement is value is* ***less than the Minimum Competitive Amount****, or if other waivers or exemptions apply. If this Section 10.5 does not apply or is waived, delete the text of the Section 10.5 and change the caption to read "****Reserved (Slavery Era Disclosure).****" in bold.*

10.5 **Slavery Era Disclosure.** Contractor shall comply with San Francisco Administrative Code Chapter 12Y, San Francisco Slavery Era Disclosure Ordinance, including but not limited to Contractor's affirmative duty to research and disclose evidence of Contractor, its parent or subsidiary entity, or its Predecessor Company's Participation in the Slave Trade or receipt of Profits from the Slave Trade. Contractor is subject to the enforcement and penalty provisions in Chapter 12Y.

10.6 ***<INSTRUCTIONS>*** *If the Contractor is not a nonprofit, delete the text of Section 10.6 and change the caption to read "****Reserved (Nonprofit Contractor Obligations).****" in bold.*

10.7 **Nonprofit Contractor Obligations.**

10.7.1 **Good Standing.** If Contractor is a nonprofit organization, Contractor represents that it is in good standing with the California Attorney General's Registry of Charitable Trusts and will remain in good standing during the term of this Agreement. Contractor shall immediately notify City of any change in its eligibility to perform under the Agreement. Upon City's request, Contractor shall provide documentation demonstrating its compliance with applicable legal requirements. If Contractor will use any subcontractors to perform the Agreement, Contractor is responsible for ensuring they are also in compliance with the California Attorney General's Registry of Charitable Trusts for the duration of the Agreement. Any failure by Contractor or its subcontractors to remain in good standing with applicable requirements shall be a material breach of this Agreement.

<INSTRUCTIONS> Public Access to Nonprofit Records and Meetings. *The clause is not required if the Agreement value is* ***less than $1,000,000 per fiscal year****, or if other waivers or exemptions apply. If that condition exists, please delete the text of Section 10.6.2 and change the caption to read "****Reserved (Public Access to Nonprofit Records and Meetings).****" in bold.*

10.7.2 **Public Access to Nonprofit Records and Meetings.** If Contractor is a nonprofit organization, provides Services that do not include services or benefits to City employees (and/or to their family members, dependents, or their other designated beneficiaries), and receives a cumulative total per year of at least $1,000,000 in City or City-administered funds, Contractor must comply with the City's Public Access to Nonprofit Records and Meetings requirements, as set forth in Chapter 12L of the San Francisco Administrative Code, including the remedies provided therein.

Article 11 General Provisions

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

To City:	Name Title Agency Address Email Phone
To Contractor:	Name Title Company Address Email Phone

Any notice of default or data breach must be sent by certified mail or other trackable written communication, and also by e-mail, with the sender using the receipt notice feature. Either Party may change the address to which notice is to be sent by giving written notice thereof to the other Party at least ten (10) days prior to the effective date of such change. If email notification is used, the sender must specify a receipt notice.

11.2 **Compliance with Laws Requiring Access for People with Disabilities.**

11.2.1 Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to people with disabilities. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against people with disabilities 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 Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

11.2.2 Contractor shall provide technical assistance to City when responding to reasonable accommodation requests from City employees respecting their use of the information content and technology ("ICT") and/or Services provided under this Agreement.

<INSTRUCTIONS> Web and Mobile Content Accessibility. *Federal law requires that City websites, online applications, and digital content be accessible to people with physical, sensory, or cognitive disabilities by meeting the Web Content Accessibility Guidelines ("WCAG") 2.1, Level AA standards, as specified in the Department of Justice's Title II Rule on the accessibility of web content and mobile applications. This requirement includes web and mobile app content generated by City contractors on behalf of City. If this Agreement will require contractor to create, host or publish publicly available web or mobile content for City, include Section 11.2.3. If this Agreement is for a program funded in whole or part by the federal government, additional accessibility requirements may be imposed by the granting agency under Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794d) and the applicable Revised Section 508 Standards published by the U.S. Access Board (https://www.access-board.gov/ict/). Departments should check with the federal funding agency to determine whether any additional requirements*

*apply. If the following section is not applicable, delete the text of Section 11.2.3 and change the caption to read "**Reserved (Web and Mobile Content Accessibility).**" in bold.*

11.2.3 Contractor shall adhere to the requirements of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. Sec. 1201 et seq.), including the Web Content Accessibility Guidelines (WCAG) 2.1, Level AA, as specified in the Department of Justice's Title II Rule on the accessibility of web content and mobile applications ***[if required by a federal funding agency, add the following:]*** Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794d), and the applicable Revised Section 508 Standards published by the U.S. Access Board (https://www.access-board.gov/ict/), as amended from time to time]. Contractor shall ensure that all ICT provided under this Agreement fully conforms to the Department of Justice's Title II rules and ***[if applicable]*** the applicable Revised 508 Standard, prior to delivery and before the City's final acceptance of the Services and/or Deliverables.

11.3 **Incorporation of Recitals.** The matters recited in the Recitals section of this Agreement are a substantive portion of this Agreement and are hereby incorporated into and made part of this Agreement.

11.4 **Sunshine Ordinance.** Contractor acknowledges that this Agreement and all records related to its formation, Contractor's performance of Services, and City's payment are subject to the California Public Records Act, (California Government Code §7920 et. seq.), and the San Francisco Sunshine Ordinance, (San Francisco Administrative Code Chapter 67). Such records are subject to public inspection and copying unless exempt from disclosure under federal, state or local law.

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

11.6 **Dispute Resolution Procedure**.

11.6.1 **Negotiation; Alternative Dispute Resolution.** The Parties will attempt in good faith to resolve any dispute or controversy arising out of or relating to the performance of services under this Agreement. The city may elect, in its sole discretion, to participate in informal dispute resolution proceedings. Disputes will not be subject to binding arbitration. The status of any dispute or controversy notwithstanding, Contractor shall proceed diligently with the performance of its obligations under this Agreement in accordance with the Agreement and the written directions of City. Neither Party will be entitled to legal fees or costs for matters resolved under Section 11.6.

11.6.2 **Government Code Claim Requirement.** No suit for money or damages may be brought against City until a written claim therefor has been presented to and rejected by City in conformity with the provisions of San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq. Nothing set forth in this Agreement shall operate to toll, waive or excuse Contractor's compliance with the California Government Code Claim requirements set forth in San Francisco Administrative Code Chapter 10 and California Government Code Section 900, et seq.

11.7 **Agreement Made in California; Venue**. The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California without regard to conflict of law provisions.. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

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

11.9 **Entire Agreement**. This Agreement including the Appendices, sets forth the entire agreement between the Parties, and supersedes all other oral or written provisions. This Agreement may be modified only as provided in Section 11.5, "Modification of this Agreement."

11.10 **Compliance with Laws**. Contractor shall keep itself fully informed of City's Charter, codes, ordinances and duly adopted rules and regulations of City and of all state, and federal laws in any manner applicable to the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

11.11 **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 (i) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (ii) 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.

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

11.13 **Order of Precedence.** If the Appendices to this Agreement include any Contractor terms, Contractor agrees that in the event of any discrepancy, inconsistency, gap, ambiguity, or conflict in language between City's terms and Contractor's terms, City's terms shall take precedence. Any hyperlinked terms included in Contractor's terms shall have no legal effect.

11.14 **Notification of Legal Requests.** Contractor shall immediately notify City upon receipt of any subpoenas, service of process, litigation holds, discovery requests and other legal requests ("Legal Requests") related to any City Data under this Agreement, and in no event later than twenty-four (24) hours after Contractor receives the request. Contractor shall not respond to Legal Requests related to City without first notifying City other than to notify the requestor that the information sought is potentially covered under a non-disclosure agreement. Contractor shall retain and preserve City Data in accordance with City's instruction and requests, including, without limitation, any retention schedules and/or litigation hold orders provided by City to Contractor, independent of where City Data is stored.

11.15 **No Third-Party Beneficiaries.** The representations, warranties and other terms contained herein are for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and they shall not be construed as conferring any rights on any other persons.

Article 12 Department Specific Terms

12.1 **Appendix A – Additional Terms and Conditions Related to Commissioned Artwork** is attached and incorporated herein by reference.

Article 13 Data and Security

13.1 Nondisclosure of Private, Proprietary or Confidential Information.

13.1.1 **Protection of Private Information.** If this Agreement requires City to disclose "Private Information" to Contractor within the meaning of San Francisco Administrative Code Chapter 12M, Contractor and subcontractor shall use such information only in accordance with the restrictions stated in Chapter 12M and in this Agreement and only as necessary in performing the Services. Contractor is subject to the enforcement and penalty provisions in Chapter 12M.

13.1.2 **City Data; Confidential Information.** In the performance of Services, Contractor may have access to, or collect on City's behalf, City Data, which may include proprietary or Confidential Information that if disclosed to third parties may damage City. If City discloses proprietary or Confidential Information to Contractor, or Contractor collects such information on City's behalf, such information must be held by Contractor in confidence and used only in performing the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary or Confidential Information.

13.2 Reserved. (Payment Card Industry ("PCI") Requirements).

13.3 Reserved (Business Associate Agreement).

13.4 Management of City Data.

13.4.1 **Use of City Data.** Contractor agrees to hold City Data received from, or created or collected on behalf of City, in strictest confidence. Contractor shall not use or disclose City Data except as permitted or required by the Agreement or as otherwise authorized in writing by City. Any work by Contractor or its authorized subcontractors using, or sharing or storage of, City Data outside the United States is prohibited, absent prior written authorization by City. Access to City Data must be strictly controlled and limited to Contractor's staff assigned to this project on a need-to-know basis only. City Data shall not be distributed, repurposed or shared across other applications, environments, or business units of Contractor. Contractor is provided a limited non-exclusive license to use City Data solely for performing its obligations under the Agreement and not for Contractor's own purposes or later use, provided, however, that no City Data may be used by Contractor to train, modify or improve any Artificial Intelligence Systems or Models without City's prior written consent, which may be withheld or withdrawn at City's sole discretion.. Nothing herein shall be construed to confer any license or right to City Data, by implication, estoppel or otherwise, under copyright or other intellectual property rights, to any third-party. Unauthorized use of City Data by Contractor, subcontractors or other third-parties is prohibited. For purpose of this requirement, the phrase "unauthorized use" means the data mining or processing of data and/or machine learning from the data, stored or transmitted by the service, for unrelated commercial purposes, advertising or advertising-related purposes, or for any purpose that is not explicitly authorized other than security or service delivery analysis.

<INSTRUCTIONS> Departments should consult with their Deputy City Attorney to review the applicability of Section 13.4.2 ("Use of Generative Artificial Intelligence in Deliverables") to the specific transaction.

13.4.2 **Use of Generative Artificial Intelligence in Deliverables.** Contractor is prohibited from using Generative Artificial Intelligence in the development of Deliverables without City's prior written consent. Contractor represents and warrants to City that Deliverables will not be developed in a manner that conflicts with the City's rights in and to the Deliverables

under Article 9, "Rights in Deliverables," or the City Data confidentiality and security requirements under Article 13, "Data and Security," of this Agreement.

13.4.3 **Disposition of City Data**. Except as otherwise provided for in this Agreement, upon City's request, termination or expiration of this Agreement, or the expiration of any required document retention period or litigation hold, Contractor shall promptly, but in no event later than thirty (30) calendar days, return all City Data given to, or collected or created by Contractor on City's behalf, which includes all original media. Once Contractor has received written confirmation from City that the City Data has been successfully transferred to City, Contractor shall, within ten (10) business days, securely dispose, clear, purge, and/or physically destroy, all copies of all City Data from its servers, files, hosted environments used in performance of this Agreement (including subcontractors' environments), work stations used to process or produce the data, and any other work files stored by Contractor in whatever medium. Contractor shall provide City with written certification that such secure disposal occurred within five (5) business days of the disposal. Secure disposal shall be accomplished by "clearing," "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88 or most current industry standard.

13.5 **Ownership of City Data.** The Parties agree that as between them, all rights, including all intellectual property rights, in and to City Data and any derivative works of City Data is the exclusive property of City..

13.6 **Loss or Unauthorized Access to City's Data; Security Breach Notification.** Contractor shall comply with all applicable laws that require the notification to individuals in the event of unauthorized release of PII, PHI, or other event requiring notification. Contractor shall notify City of any actual or potential exposure or misappropriation of City Data (any "Leak") within twenty-four (24) hours of the discovery of such, but within twelve (12) hours if the Data Leak involved PII or PHI. Contractor, at its own expense, will reasonably cooperate with City and law enforcement authorities to investigate any such Leak and to notify injured or potentially injured parties. **<INSTRUCTIONS> Add the following sentence if this contract involves sharing sensitive data with the Contractor. Otherwise, delete**. Contractor shall pay for the provision to the affected individuals of twenty-four (24) months of free credit monitoring services, if the Leak involved information of a nature reasonably necessitating such credit monitoring. The remedies and obligations set forth in this subsection are in addition to any other City may have. City shall conduct all media communications related to such Leak.

13.7 **Cybersecurity Risk Assessment.** If a Cybersecurity Risk Assessment ("CRA") was required before entering the Agreement, Contractor must complete an annual CRA to demonstrate that it has maintained the data privacy and information security program required for City contractors. If Contractor does not satisfactorily complete an annual CRA, the City shall have the right, without further obligation or liability to Contractor, to terminate this Agreement or exercise any of its other remedies hereunder. Any failure by Contractor to comply with this Section shall be a material breach of this Agreement.

Article 14 Appendices

<INSTRUCTIONS> Additional Appendices. Departments should include any additional appendices specific to the transaction below.

14.1 **Appendices.** The following appendices ("Appendices" in the plural and each an "Appendix" in the singular) are hereby attached and incorporated into this Agreement by reference as though fully set forth herein:

A: Additional Terms and Conditions Related to Commissioned Artwork

B: Contractor's Proposal

C: Scope of Services

D: Contractor's Approved Costs

E: Payment Breakdown and Schedule

F: Special Inspections

Article 15 MacBride And Signature

<INSTRUCTIONS> MacBride. The following clause is not required if the Agreement value is Minimum Competitive Amount or less, or if other waivers or exemptions apply. If that condition exists, please delete the text of the section and change the caption to read **"Reserved (MacBride Principles – Northern Ireland)."** in bold.

15.1 **MacBride Principles - Northern Ireland**. The provisions of San Francisco Administrative Code Chapter12F are incorporated herein by this reference and made part of this Agreement. By signing this Agreement, Contractor confirms that Contractor has read and understood that City urges companies doing business in Northern Ireland to resolve employment inequities and to abide by the MacBride Principles and urges San Francisco companies to do business with corporations that abide by the MacBride Principles.

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

CITY

Recommended by:

_____

L. Matthew Goudeau
Executive Director of Arts & Culture
Arts Commission

Approved as to Form:

David Chiu
City Attorney

By: _____
Lauren Curry
Deputy City Attorney

Approved: **[Note: Approval granted to Arts Commission under letter of July 1, 2026 by Sailaja Kurella, the Director and City Purchaser of the Office of Contract Administration, for contracts for the planning, design, fabrication, insurance, transportation, documentation, and maintenance and repair of artworks. No additional signature required from Office of Contract Administration/Purchaser; See Also S.F. Admin. Code Section 21.04(a) (Direct Purchasing Authority of Departments); See Also S.F. Admin. Code Section 6.75 (Contracting by the Arts Commission for the Development, Fabrication, Maintenance, Conservation, Removal and/or Installation of Artwork)]**

CONTRACTOR

[company name]

_____

[name of authorized representative]
[title]
[optional: address]
[optional: city, state, ZIP]

City Supplier Number: **[Supplier Number]**

Appendices

A: Additional Terms and Conditions Related to Commissioned Artwork
B: Contractor's Proposal
C: Scope of Services
D: Contractor's Approved Costs
E: Payment Breakdown and Schedule
F: Special Inspection and Structural Observation
G: Civic Art Collection Forms

Appendix A
Additional Terms and Conditions Related to Commissioned Artwork

Article 1A Definitions

In addition to the defined terms set forth in Article I. Definitions of the main body of this Agreement, the following additional definitions shall apply to this Appendix A:

1. "ADA" shall mean the Americans with Disabilities Act (including all rules and regulations thereunder), Title 24 (California Building Code) and all other applicable federal, state and local disabled access legislation, as the same may be amended, modified or supplemented from time to time.

2. "Alter" or "Alteration" shall mean, with respect to the Artwork, to alter, repair, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface.

3. "Approved Costs" shall mean such costs as are scheduled on Appendix D, "Contractor's Approved Costs," including the maximum expenditure authorized for each item.

4. "Architect" shall mean the firm of [insert name of architect].

5. "Artwork" shall mean the work of art designed by Contractor for the Site under the terms of this Agreement, as described and defined in Contractor Proposal, to be attached as Appendix B upon completion of Phase I, Conceptual Design, of the Services to be Provided by Contractor.

6. "Budget" shall mean a specific and detailed document identifying the cost of completion of all Services under this Agreement, including all modifications. The Budget shall include the costs for all design fees and costs; preliminary and final engineering requirements; estimates of ongoing maintenance needs; materials and labor for fabrication, including Contractor and subcontractors' costs; consultants, including engineers and specifications writers; transportation of Artwork; installation of Artwork, including any necessary permits; permits and licenses; required insurance; any sales tax; post-installation maintenance and staff operation or monitoring required for the Artwork by Contractor and a 10% Contingency Allowance. Budget shall also include anticipated costs associated with ongoing maintenance and operation of the Artwork and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying, supervising or operating Artwork.

7. "Client" shall mean the [insert name of client department/agency].

8. "Conceptual Design" shall mean drawings (in plan and elevation) and/or 3-dimensional models, a written description, proposed materials and samples and cost estimates at 30% design completion. The information provided in Conceptual Design shall be complete enough to fully illustrate the design intent of the Artwork.

9. "Construction Documents" shall mean final and complete architectural, structural, mechanical and engineering drawings, written specifications, structural and engineering calculations at 100% design completion, prepared by Contractor or Contractor's subcontractors, setting forth in detail the design and specifications of the Artwork and which are suitable for bidding. Construction Documents shall describe and fix the location, size, materials and character of the Artwork with respect to architectural, structural engineering, mechanical and electrical systems, materials, colors, method of attachment and fabrication methods, and other such elements as may be appropriate. Construction Documents must be signed and stamped by design professionals licensed in the State of California as required by the California Building Code and any local amendments thereto.

10. "Contingency Allowance" shall mean a portion of the Budget reserved by the Arts Commission for design, construction, installation or other related costs that, due to factors beyond the control of the Contractor, exceed the initial budget estimates.

11. "Contract Documents" shall mean any work, including but not limited to, Design and Construction Documents, Shop Drawings, Mock-ups, models, engineering calculations, approved installation plans, and all material samples and product data, project budget, and any and all additional documents and submittals produced under this Agreement that the Commission has approved and to which the completed Artwork is expected to conform.

12. "Controller" shall mean the Controller of City.

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

14. "Director of CMD" shall mean the Director of the Contracts Monitoring Division for the City or any other public official authorized to enforce the LBE Ordinance.

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

16. "General Contractor" shall mean the general contractor hired by City to construct the capital improvement for the Site.

17. "Mock-ups" or "Samples" shall mean illustrations such as standard schedules, performance charts, instructions, brochures, diagrams, and physical samples of all or any portion of the Artwork, and other information furnished by Contractor to illustrate materials or equipment for all or any portion of the Artwork. The purpose of the Mock-ups and Samples is to provide physical examples that illustrate materials, equipment or workmanship and establish the standards by which the Artwork will be judged. Mock-ups and Samples include paintings, drawings, photographs or other original artwork created for the purposes of the final Artwork.

18. "Proposal" shall mean the proposed visual, aesthetic, and artistic intent and design of the Artwork. It shall also include paintings, drawings, photographs and other original artwork created for the Artwork. The most recent design approved by the Commission is incorporated herein as Appendix B of the Contract Documents and is binding unless changes are approved by resolution of the Commission.

19. "Public Work" shall have the same meaning as under S.F. Administrative Code Section 6.1, as currently written or as may be amended from time to time.

20. "Services" shall mean the work of Contractor pertaining to providing the Commission with the services and deliverables as required under the Agreement. In addition to all other services and deliverables required, Services shall include the design, fabrication, delivery and installation of the Artwork.

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

22. "Site" shall mean [insert name/location of site].

23. "Variable Media" shall mean Artwork involving or incorporating electronic, digital, video, mechanical, living, variable, moving or other dynamic components.

24. "Variable Media Guidelines" shall have the meaning set forth in Article 7A (Instructions for Maintenance; Variable Media Guidelines; Anticipated Life Span of Artwork).

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

Article 2A Procedure for Execution of Artwork

1. Commission Liaison. In performing the services provided for in this Agreement, Contractor's liaison with the Arts Commission will be [insert project manager's name].

2. It is the general intent of the parties that Contractor will complete the design, fabrication and installation of the Artwork at the Site, provided that City determines, in its sole discretion, to go forward with the completion of the Artwork. The Services shall be completed in separately defined, successive stages ("Phases"). In addition to the Phase(s) set forth in Appendix C at the time this initial Agreement is entered into, the parties may modify this Agreement to include subsequent Phases. Each Phase shall be governed by this Agreement, and by any modifications to this Agreement setting forth specific terms and conditions governing each Phase of Service. Each modification will include the Phase for which the Commission has given authorization, the scope of services covered by that Phase, the schedule of deliverables, insurance requirements, and payment terms.

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

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

5. If requested to do so in writing by the Commission, Contractor shall enter into modifications of this Agreement to include later Phases of Service, up to and including final installation at City's option. Contractor's fee for such subsequent Phases shall be in accordance with the Budget approved by the Arts Commission. City must exercise its option to require a subsequent Phase within 3 years of completion of the prior Phase. If City fails timely to exercise its option, Contractor is released from its obligation under this Section. Contractor acknowledges that Commission has provided to Contractor a model contract template for Phases I through V of the Services, from conceptual design through fabrication and installation. Contractor agrees that, if City exercises its option to enter into subsequent Phases of Service, Contractor shall be bound to modify this Agreement to include such additional Phases of Service under the terms and conditions set forth in such model contract templates.

6. The Services to be completed by Contractor are unique and personal to Contractor, and may not be capable of completion by anyone other than Contractor. Therefore, if Contractor fails or refuses to modify this Agreement to include subsequent Phases after having been requested to do so by the Commission, or fails to complete the Services required by any Phase, the Commission may require that Contractor return all payments made under this Agreement from the initiation of the Agreement. If the Commission determines, in its sole and reasonable discretion, that Contractor's failure or refusal to complete subsequent Phases is justifiable and in good faith and for reasons beyond the control of Contractor, the Commission may authorize Contractor to keep payments made under this Agreement for prior completed Phases. In such case, the Commission may, at its option, engage another Contractor to complete the Artwork.

Article 3A Budget

Unless otherwise specified in a modification to this Agreement, at the completion of Design Development Documents, Contractor shall submit a final Budget for the entire cost of completion of the Artwork, including design, fabrication, transportation and delivery, installation and any post-installation maintenance required of Contractor. Budget shall also include anticipated costs associated with ongoing maintenance and operation of Artwork and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying, supervising or operating Artwork. Once adopted by the Commission as part of the approval of the Design Development phase, such Budget shall be binding upon Contractor. If Contractor is unable to provide the completed and installed Artwork to City within the approved Budget, Contractor will be considered to be in breach of this Agreement. The Budget, in addition to allowing for all costs anticipated for the design, fabrication, transportation and installation of the Artwork, shall also allow for a 10% Contingency Allowance. Contractor's use of the Contingency Allowance must be approved in advance in writing by Commission staff. Any balance remaining in the materials budget or Contingency Allowance at the conclusion of the Agreement reverts to the Commission. The Budget shall also include an estimate of the costs of on-going maintenance of the Artwork. Such maintenance costs shall not be provided out of the Contract Amount unless the Commission specifically requires in writing that the Contractor allocate a portion of the Contract Amount to on-going maintenance costs.

Article 4A Consultation

1. Contractor agrees to cooperate in good faith with the Commission and to be available as reasonably necessary for consultation with the Commission, Architect, Client, and General Contractor during all stages of the Services. Commission agrees to facilitate cooperation and arrange for and coordinate all necessary consultation among the Commission, Contractor, Architect, Client, and General Contractor.

2. Contractor shall incorporate into the Contract Documents any changes made by the Architect to the Site design during the design process.

3. Contractor shall copy Commission on all correspondence between Contractor, Architect, Client, Construction Management Team, or General Contractor in which Commission is not a party. Contractor shall notify Commission in writing of any verbal agreements and /or

understandings that are arrived at in conversations or meetings between Contractor and Architect, Client, Construction Management Team and/or General Contractor to which Commission is not a party. Contractor understands that failure to inform Commission of such agreements, and failure to confirm such agreements in writing with Commission and/or Client, Architect, Construction Management Team and/or General Contractor may result in such agreements not being honored.

Article 5A 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 Phase, 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**. Contractor shall advise the Commission in writing when Contractor 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 Contractor has not satisfactorily met, any defects in Contractor's performance, and the requirements for Contractor to cure any such default. Contractor shall have 20 days from dispatch of the Notice of Response to cure any defects in Contractor'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.

Article 6A Risk of Loss; Responsibility for Site Conditions

1. **Risk of Loss**. The risk of loss or damage to the Artwork shall be borne solely by Contractor until Final Acceptance of the Artwork by the Commission. Contractor shall take steps to protect the Artwork from loss or damage. The Commission staff shall make a good faith effort to inspect the Artwork within 15 days after completion so that the Commission can approve the Artwork by resolution in a timely fashion.

2. **Responsibility for Site Conditions**. Contractor, rather than City, is responsible for site conditions and the health and safety of Contractor's employees, subcontractors and agents, and all other persons that work on or visit the Site at the invitation of Contractor.

Article 7A Instructions for Maintenance; Variable Media Guidelines; Anticipated Life Span of Artwork

1. Unless specifically provided in this Agreement, Contractor shall not be responsible for ongoing maintenance of the Artwork. Contractor shall provide the Commission and Client [insert name of client department/agency] with a General Maintenance Plan for the

Artwork, with a detailed description of future anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating artwork and the frequency of such staff involvement; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork. Contractor shall also provide Commission and Client [insert name of client department/agency] with a description of all equipment and or machinery needed to operate the project (if applicable) and any anticipated or required staffing, supervision or operational needs. The Artwork shall be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Contractor shall ensure that all maintenance requirements will be reasonable in terms of time and expense. The Contractor shall submit this information using the forms attached as Appendix F (Civic Art Collection Forms), with such additional pages as may be required to adequately explain the maintenance plan.

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

3. 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.

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

Article 8A Contractor's Moral Rights; City's Ownership Rights

1. The Commission, having expended considerable public funds to commission the Artwork, and pursuant to its Charter responsibilities, intends to display the Artwork at the Site as originally created by Contractor and to maintain the Artwork in good condition. Public artworks commissioned by the Commission are sometimes integrated into their site, such that they become an integral, permanent and site-specific part of the building's architecture or landscaped

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

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

3. 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:

A. Notice. Where time permits, Commission shall make reasonable good faith efforts to notify Contractor at least 20 calendar days prior to authorizing any Alteration of the Artwork, at the last phone number or address provided by Contractor 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 Contractor within 30 calendar days after such Alteration.

B. Consultation. After receiving such notice, Contractor 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 Contractor unless otherwise specifically agreed in writing. If City intends to remove the Artwork, Contractor shall consult regarding methods to minimize or repair any Alteration to the Artwork caused by such removal and the potential costs of such removal.

C. Restoration. If the Artwork is Altered, with or without prior notice to Contractor, and City intends to maintain the Artwork on display, City shall make a reasonable good faith effort to engage Contractor in the restoration of the Artwork and to compensate Contractor for Contractor's time and efforts at fair market value, which may be the subject of a future Agreement between Contractor and City. However, City has no obligation under this Agreement to restore the Artwork to its original condition, to compensate Contractor for any restoration work, or to maintain the Artwork on display. If Contractor 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 Contractor's lifetime, City shall make best efforts not to display or deaccession only a portion of the Artwork without Contractor's consent.

D. Removal by Contractor. Where time permits, if City intends to take action that will destroy or significantly Alter the Artwork, such as destruction of all or part of the Site, and City determines that it will not remove the Artwork itself, City shall allow Contractor to remove the Artwork at Contractor's expense within 60 days of notice from the City of the need to remove the Artwork, in which case title shall revert to Contractor. If Contractor fails to remove the Artwork within that 60 day period, City may Alter the Artwork in any manner, including destroying it, in City's sole discretion.

E. Remedies. If City breaches any of its obligations under this Section, Contractor'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 Contractor a required prior notice of Alteration, Contractor shall be given the first right of refusal to restore the Artwork at the same location and City shall make reasonable efforts to provide funding for the restoration. If City funds cannot be made available after reasonable efforts are made to secure such funding, Contractor may, but is not obligated to, restore the Artwork at Contractor's expense. If Contractor 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.

4. If City Alters the Artwork without Contractor's consent in a manner that is prejudicial to Contractor's reputation, Contractor 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).

5. Except as provided in this Agreement, with respect to third parties who are not officers, employees, agents, successors or assigns of City, Contractor retains Contractor'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 Contractor 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.

Article 9A Intellectual Property and Publicity Rights

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

2. **City's Intellectual Property License**. Contractor 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 Artwork and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

A. Implementation, Use and Display. City may use and display the Artwork and any related graphic representations or models. To the extent the Artwork involves design elements that are incorporated by City into the design of the Site, City may implement such elements at the Site.

B. Reproduction and Distribution. City may make and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional reproductions. City may use such reproductions for any City-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, gifts for the Commission benefactors, documentation of City's Civic Art Collection, and catalogues or similar publications. City shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the Commission. The proceeds from the sale of any such reproductions shall be used to maintain and support City's Civic Art Collection or for any other public purposes that City deems appropriate. The license granted hereunder does not include the right to create 3-dimensional reproductions on items such as tote-bags, T-shirts, coffee mugs and similar merchandise. Such reproductions may only be created pursuant to separate license agreements with Contractor.

C. For Artworks of Variable Media, the City may duplicate the Artwork specifically and exclusively for preservation purposes.

D. Public Records Requests. Any documents provided by Contractor 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.

3. **Third Party Infringement**. The Commission is not responsible for any third party infringement of Contractor's copyright and not responsible for protecting the intellectual property rights of Contractor.

4. **Credit.** Contractor hereby agrees that all formal references to the Artwork and any reproductions of the Artwork in any form shall include the following credit: "Collection of the City and County of San Francisco, San Francisco Arts Commission." City shall credit Contractor for the Artwork upon publication of any two dimensional reproductions of the Artwork. Wherever the City finds practicable, the City shall make an effort to ensure that all reproductions by City shall contain a copyright notice substantially in the following form: "Copyright (c), Contractor's name, date," in such a manner and location as shall comply with the U.S. Copyright laws.

5. **Publicity.** City shall have the right to use Contractor's name, likeness, and biographical information, in connection with the display or reproduction and distribution of the Artwork including all advertising and promotional materials regarding City or the Commission.

Contractor shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the Artwork.

6. **Trademark.** In the event that City's use of the Artwork creates trademark, service mark or trade dress rights in connection with the Artwork, City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.

7. **Unique**. Contractor warrants that the design of the Artwork as expressed in the Proposal is an edition of one, and that neither Contractor nor Contractor'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. Contractor 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 Contractor plus 70 years or for the duration of the Artwork's copyright protected status, whichever is longer, and shall be binding on Contractor and Contractor's heirs and assigns. In the case where the Contractor is working with two or more individual persons or a group of people to complete the Artwork, the measuring life shall be the life of the last surviving individual person comprising Contractor's team. Recognizing that City has no adequate remedy at law for Contractor's violation of this warranty, Contractor agrees that, in the event Contractor breaches this warranty, City shall be entitled to enjoin Contractor's breach. Nothing hereunder shall be construed to constrain Contractor from creating posters, note cards, or other reproductions of the Artwork with appropriate credit to the Commission.

Article 10A City Access to Artwork; Inspection of Artwork; Status Reports; Contractor Availability

1. **City Access to Artwork; Inspection of Artwork.** City shall have the right to inspect the Contractor's work, including the Artwork, at the Site during any phase of the project at any time. In the event that all or part of the Artwork is created in a location other than the Site, the City shall have the right to inspect the Artwork at any phase of the project following 48 hours written notice from the City to the Contractor. The Contractor shall be responsible for facilitating City's prompt access to Contractor's property or the property of the Contractor's subcontractors where the Artwork or portions of the Artwork are being fabricated or installed.

2. **Status Reports.** Contractor shall submit written reports regarding the status of the Services, including the Artwork, 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.

3. **Contractor Availability.** Contractor or Contractor's authorized agent shall be available at Contractor's sole expense for up to [insert number of required visits – if no number is specified the default number shall be 4] visits to San Francisco to ensure the proper installation and operation of the Artwork. During each visit to San Francisco, unless otherwise agreed upon

by the Arts Commission, the Contractor's visits shall last for at least a full 8 hour day. Travel shall be reimbursed in accordance with Appendix E ("Payment Breakdown and Schedule").

Article 11A Contractor's Warranties

1. Warranty of Title. Contractor represents and warrants that Contractor is the sole author of the Artwork and that Contractor is the sole owner of any and all copyrights pertaining to the Artwork. Contractor further represents that the Artwork is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights or any other rights in the Artwork or any parts of the Artwork.

2. Warranty of Workmanship. Contractor represents and warrants that, for a period of three years after final acceptance, the Artwork [insert any additional information regarding the Work if needed (i.e. including but not limited to X, Y, and Z] will be free of defects in workmanship or materials, including Inherent Defects (as defined below), and that the Artwork will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at the Site. "Inherent Defect" refers to a quality within the material or materials, which comprise the Artwork which, either alone or in combination, results in the tendency of the Artwork to destroy itself. "Inherent Defect" does not include any tendency to deteriorate that is specifically identified in the Contract Documents approved by the Commission. Contractor shall, at Contractor's sole cost and expense, remedy any defects in workmanship or materials that appear within a period of three years from the date of final acceptance of the Artwork by City.

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

4. Manufacturer's Warranties. To the extent the Artwork incorporates products covered by a manufacturer's warranty, Contractor shall provide copies of such warranties to City.

5. Warranty of Acceptable Standard of Display and Operation. Contractor represents and warrants that:

A. The Artwork will conform with design specifications and, where Artwork involves electronic, digital, video, mechanical, living, variable, moving or other dynamic components, the Artwork will also operate, function or perform in accordance with Contractor's representations to the City without any costs beyond the final Budget for the Artwork or any additional staff assistance.

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

C. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display; and

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

Article 12A ADA Compliance

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

Article 13A Subcontracting

Important note: If Contractor is not a licensed contractor, Contractor shall not be able to subcontract with licensed contractors for on-site fabrication and/or installation of the Artwork or any portion of the Artwork under this Agreement.

1. Any approved subcontracts shall be itemized in Appendix C by each phase of work and Contractor shall provide a copy of each approved subcontract to the City. In addition, Contractor shall provide the Commission with the name, address and telephone number of suppliers and subcontractors whose total invoices are expected to exceed one thousand dollars ($1,000.00) prior to Contractor beginning work under this Agreement, or as such expenses are incurred by Contractor after certification of this Agreement.

2. Documentation of Subcontracts. Contractor shall provide a description of the Services to be performed under any subcontract and the amount of the subcontract, and shall provide the Commission with written copies of Contractor's agreements with each subcontractor. Contractor shall include by reference, and include in each and every contract, the requirements of this Agreement relating to the following: submitting false claims; inspection and audit of records; Administrative Code Chapters 12B (non-discrimination), 14B (LBE Ordinance), 12P (minimum compensation of employees), 12Q (Health Care Accountability Ordinance), 12T (consideration of criminal history); indemnity provisions; bond and insurance requirements; consideration of criminal history in hiring and employment; provisions regarding City Access to Artwork/Inspection of Artwork; required deliverables and City's right to use and implement the Artwork. Contractor shall include a statement in the subcontract requiring that the subcontractor shall comply with all Agreement requirements applicable to the Contractor, including compliance with applicable Federal, State and local laws, including any City contracting requirements applicable to the Contractor.

3. Fabrication and Installation Subcontracts. In addition, if the Contractor is a licensed contractor and plans to subcontract the fabrication or installation of any portion of the work under this Agreement, the City must grant prior approval of such contractors and the Contractor shall require such subcontractors to:

A. Name the City and County of San Francisco as a third-party beneficiary to the subcontract by expressly stating that "the parties agree that the City and County of San

Francisco shall be a third-party beneficiary to this agreement and shall have the right to enforce the terms of this agreement" and Contractor shall provide the City with a copy of each such subcontract.

B. Name the City and County of San Francisco as an additional insured on the subcontractor's general liability insurance policy.

C. The Subcontractor shall agree to indemnify and hold harmless the City and County of San Francisco (consistent with the "Indemnification" provisions contained herein as Section 5.2.). In the event the Subcontractor does not agree to any or all of the indemnity provisions in Section 5.2, Contractor agrees that under Section 5.2 of the Agreement, Contractor shall indemnify and hold harmless the City and County of San Francisco for any claims arising directly or indirectly from the subcontract.

D. If any fabrication and/or installation subcontract qualifies as a "Public Work" under this Agreement and the San Francisco Administrative Code and is **in excess of $25,000**, the subcontractor shall also be responsible for providing any performance bond required under this Agreement on the City's form and shall name the City and Contractor as dual obligees of such performance bond. In the event of Contractor or any of Contractor's subcontractors' failure to perform, Contractor shall assign all rights under any Performance and Payment or Labor and Materials bond in favor of City.

E. Subcontractor shall certify that he or she has all applicable licenses required by the State for subcontractor to perform the fabrication or installation work specified in the subcontract and that subcontractor warrants that such licenses are valid for the full term of this Agreement and during the period in which the subcontractor performed fabrication and installation work under this Agreement.

Article 14A Bonds

1. Labor and Materials (Payment) and Performance Bonds: To the extent that the fabrication and/or installation of any artwork is a "Public Work" as defined by San Francisco Administrative Code Section 6.1, and any contract amount, including any subcontract amount, for such fabrication or installation exceeds $25,000, the Contractor or Contractor's sub-contractors shall provide performance and payment bonds from a City-approved surety under San Francisco Administrative Code Section 6.22(a). The bonds shall each be in an amount of not less than one hundred percent of the agreement for project-specific work. The performance bond shall name the City and County of San Francisco as sole obligee if provided by the Contractor. The bonds shall be on a City-approved form provided by the City to the Contractor. The Contractor shall submit the bonds to the Arts Commission for approval.

2. Bonds Provided by Subcontractors: Bonds provided by the Contractor's sub-contractor shall identify the project and name as dual obligees the Contractor and the City and County of San Francisco. Upon written request by the City, in the event of any of Contractor's subcontractors' failure to perform, Contractor shall assign all rights under any Performance and Payment or Labor and Materials bond in favor of City. The bonds shall be on a City-approved form provided by the City to the Contractor. The Contractors shall submit the bonds to the Arts Commission for approval.

3. Labor and Materials (Payment) and Performance Bonds required at Commission's Discretion: To the extent that the fabrication and/or installation of any artwork and the contract amount, including any subcontract amount for such fabrication or installation exceeds $25,000, the Commission may, at the Commission's sole discretion, require Payment and Performance Bonds, whether or not the fabrication and or installation of the Artwork is defined as a "Public Work" by the San Francisco Administrative Code. In such event, all the above requirements shall apply.

Article 15A Licensed Contractor Requirements.

If the fabrication and/or installation of the Artwork or any portion of the Artwork under this Agreement is a "Public Work" as defined by San Francisco Administrative Code Section 6.1 (I) and requires a licensed contractor, Contractor shall be solely responsible for ensuring that Contractor and Contractor's subcontractors (if any) have valid appropriate licenses under California law or the applicable jurisdiction. If the Contractor and/or any of Contractor's subcontractors are unlicensed during any phase of the project under this Agreement, the City shall have the right to bar Contractor from receiving any payment for Contractor's services. **If Contractor is not a licensed contractor, Contractor shall not be able to subcontract with licensed contractors for on-site fabrication and/or installation of the Artwork or any portion of the Artwork under this Agreement.**

Article 16A Timely Provision of Services; Damages for Delayed Performance

1. **Time is of the essence in this Agreement**. Contractor agrees to provide all deliverables in accordance with the timelines specified herein unless changes are approved in writing by the Commission.

2. **Damages for Delayed Performance**

A. Illness, Injury, Death or Incapacity. Should Contractor die, become ill, injured or otherwise incapacitated (collectively, "incapacitated") such that Contractor is unable to work for any period not 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 Artwork, the Project, the Architect, the General Contractor and the Client. City may require Contractor to provide medical certification of any claimed incapacity. In the event Contractor is incapacitated such that Contractor 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 Artwork in Contractor's absence, so long as the final Artwork is substantially similar to that designed by Contractor. If City undertakes to complete the Artwork, City shall give due consideration to Contractor's suggestions, and Contractor may disclaim authorship of the Artwork. If City exercises its option to implement the Artwork in Contractor's absence, any compensation paid or payable to Contractor shall be reduced by the costs and expenditures of City in completion and installation of the Artwork. In case of incapacity exceeding 30 days, the following person shall be Contractor's representative vis-à-vis the City for purposes of this Section: **<<Name of Representative, Relationship of Representative to Contractor, Contact Information including Address, Phone and Email>>** unless otherwise directed in writing by the Contractor.

B. In case of delay in Contractor's services through no fault of Contractor, including construction delay, Contractor shall store the Artwork at no additional cost to City for up to 6 months. If Contractor's work is delayed due to construction delays at the Site or other delays caused by City or its contractors, so that Contractor suffers documented direct cost impacts in the form of increased costs of materials and/or labor, Contractor may apply to the City for reimbursement of those expenses, which City may award in its sole discretion.

Article 17A Assignment or Transfer

Contractor guarantees that Contractor will consistently give personal attention to the faithful execution of this Agreement, including any work performed by employees, agents or subcontractors. Contractor shall keep the Services under Contractor's control and shall not assign or subcontract the Services, in whole or in part, except as provided in this Agreement. All transactions with subcontractors shall be made through Contractor, and no subcontract, assignment or other transfer by Contractor or any member of his or her team shall relieve Contractor of any of Contractor's liability or obligations under this Agreement.

City may assign this Agreement to the General Contractor on such terms and conditions as are acceptable to City.

Article 18A Modifications

INTERNAL CLARIFICATIONS TO PROPOSAL AND SCOPE OF SERVICES. NOTWITHSTANDING THE ABOVE PROVISION REGARDING AGREEMENT MODIFICATIONS, THE COMMISSION AND CONTRACTOR, BY MUTUAL WRITTEN AGREEMENT SIGNED BY BOTH PARTIES, MAY CLARIFY THE APPENDIX B ("CONTRACTORS PROPOSAL") AND/OR APPENDIX C ("SCOPE OF SERVICES"), BY FURTHER OUTLINING, CORRECTING, CLARIFYING AND REFINING THE SUBSTANCE OF EACH OF THE PHASES I THROUGH V, INCLUDING THE DATE(S) OF DELIVERABLES (INCLUDING MODIFYING OR CHANGING THE ORDER OF THE DUE DATE(S) FOR DELIVERABLES), THE COSTS ASSOCIATED WITH EACH PHASE AND THE PAYMENT SCHEDULE. SUCH CHANGES SHALL BE KEPT ON FILE AT THE ARTS COMMISSION. BUT SUCH CLARIFICATIONS SHALL NOT ALTER THE OVERALL SCOPE OF SERVICES OR THE TOTAL MAXIMUM TERM OR MAXIMUM COMPENSATION ALLOWED IN ARTICLE 2 (TERM OF THE AGREEMENT) AND SECTION 3.3 (COMPENSATION), RESPECTIVELY.

Appendix B
Contractor's Proposal

1. "Proposal" shall mean 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.

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

b. Contractor's proposal will be developed, fabricated and installed in accordance with Appendix C, Scope of Services. It is incorporated herein by reference upon Arts Commission approval of each Phase by Resolution. No work shall be authorized under a subsequent Phase until the work required by the previous Phase has been completed and approved by the Commission.

Appendix C
Scope of Services

Design, Fabrication, Transportation and Installation of Artwork for (<<INSERT NAME OF PROJECT>>)

Authorization: Phases **(<<INSERT PHASES APPROVED TO DATE BY COMMISSION>>)** of this Agreement have been authorized by Arts Commission Resolution Number **(<<INSERT AC RESOLUTION #>>)**. The Commission must approve Contractor's work at each phase of development before the Contractor proceeds to the next phase.

Phase I
DESIGN

1. Scope of Services.

a) General

i) Contractor shall deliver a Proposal for the Artwork ("Proposal"). The scope of services under this phase includes the development of the proposal through all phases of design, including Conceptual Design, Design Development and Construction Documents.

ii) The Commission must approve the proposal at each phase of development before the Contractor proceeds to the next phase. If the Commission does not accept the Proposal at any design phase, the Contractor agrees to submit one alternate proposal or design alternative at no additional cost.

iii) The Proposal shall reflect the requirements of the Client, Architect and Commission, as expressed in the Request for Qualifications and as further discussed in communications with the Commission, Client and Architect.

iv) Contractor shall attend project meetings and make presentations to City staff, Architects, Commissions, and other individuals and organizations, as needed.

v) Contractor agrees to collaborate closely with Architect through in-person meetings and other necessary means of communication to allow Architect to thoroughly integrate the Proposal into architectural drawings (if applicable) throughout all phases of design. **Contractor shall coordinate his/her communications with the Architect through the Arts Commission Project Manager.**

vi) Contractor shall deliver subcontracts of all or any Services pursuant to Article 13A (Subcontracting), as well as documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner (collectively, "Subcontracts and Documentation").

[PM Notes: Delete Section 1.b. Conceptual Design below if the artist already has a prepared and approved conceptual design proposal]

b) **Conceptual Design**: The Proposal at Conceptual Design shall include:

i) Drawings (in plan and elevation) and/or 3-dimensional models, proposed materials and samples, colors, finishes, textures and patinas, the specific location and orientation of the work relative to the site and a written description of the Artwork in sufficient detail that Contractor's design intent is clearly expressed.

i) Budget for the cost of design, fabrication, insurance, transportation and installation of the Artwork with documentation of the sources and/or assumptions upon which the Budget figures are based regardless of whether these services are provided by Contractor, Contractor's subcontractors or by third parties under a separate agreement. Budget shall also reflect the costs associated with any onsite project manager or staff to ensure that Artwork operates properly as installed at the Site.

ii) Mock-ups may include drawings, paintings, photographs or other original works created by the Artist as part of the process of completing this project. These original works shall be considered part of the final deliverables and should be budgeted accordingly, unless otherwise reviewed and approved by the Arts Commission. Arts Commission shall have first right of refusal in the acquisition of such original works. [PM NOTE: Conversation with PAP Director and Senior Registrar to determine if original work should be accessioned into Civic Art Collection. If so, PM to work with Contractor to incorporate cost (can use Market Value as basis for cost) into budget.]

ii) Maintenance Report: describing the estimated maintenance requirements of the Artwork, including any manufacturer's warranties or specifications for the durability of any proposed materials.

c) Design Development

i) Design Development Materials and Documents shall incorporate the further development and refinement of the Proposal, Budget and Maintenance Report developed under Conceptual Design.

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

iii) Contractor and Contractor's structural engineer and fabricator shall review all Design Development drawings, materials and documents for consistency and constructability, and report any engineering, structural concerns, or constructability concerns to the

City. Modifications to the design necessitated by this review shall be submitted and approved by the City prior to beginning the production of Construction Documents and incorporated therein.

iv) Artist shall deliver subcontracts of all or any Work pursuant to Article 13A (Subcontracting), as well as documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner (collectively, "Subcontracts and Documentation").

v) Maintenance Plan. At the time Contractor submits Contractor's proposal for review by the Arts Commission and as part of the Design Development Documents, Contractor shall provide the Commission and Client (**<<INSERT NAME OF CLIENT DEPARTMENT/AGENCY>>)** with a General Maintenance Plan for the Artwork, with a detailed description of future anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating artwork and the frequency of such staff involvement; list of files/file types and samples to be provided to the Arts Commission upon final installation of artwork that allow for re-fabrication or re-installation of artwork; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork. Contractor shall also provide Commission and Client (**<<INSERT NAME OF CLIENT DEPARTMENT/AGENCY>>)** with a description of all equipment and or machinery needed to operate the project (if applicable) and any anticipated or required staffing, supervision or operational needs. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Contractor shall ensure that all maintenance requirements will be reasonable in terms of time and expense. The Contractor shall be responsible for making any updates or clarifications to this Maintenance Plan if the maintenance requirements and estimates change over the course of the project. For this specific, the following documents will be required from the Contractor for long-term care of the Artwork:

a. List specific documents or files that should be gathered for long-term care and possible re-fabrication/re-installation of artwork [PM to check-in with Collections based on proposal to develop this list].

d) Construction Documents:

i) Construction Documents for construction and/or installation of the proposed Artwork as approved, which must be signed and stamped by design professionals licensed in the State of California, as required by the California Uniform Building Code and any San Francisco amendments to the Building Code. Construction Documents shall include completion of Appendix H: Special Inspections and Structural Observations.

ii) Contractor shall deliver Mock-ups and Samples, as required by the Commission or its staff.

(a) Mock-ups may include drawings, paintings, photographs or other original works created by the Artist as part of the process of completing this project. These original works shall be considered part of the final deliverables and should be budgeted accordingly, unless otherwise reviewed and approved by the Arts Commission. Arts Commission shall have first right of refusal in the acquisition of such original works. [For PM: Conversation with PAP Director and Senior Registrar to determine if original work should be accessioned into Civic Art Collection. If so, PM to work with Contractor to incorporate cost (based on Market Value) into budget. A note that this discussion should happen during proposal phase so that it is incorporated into the budget).

(b) Contractor shall coordinate approved samples with Arts Commission to ensure that at project completion, Arts Commission retains 1 approved sample for color and material matching in the event of future replacement. [PM to coordinate with Registrar.]

iii) Contractor shall review Architect's Design Development and/or Construction Documents for accuracy of the integration of Contractor's Proposal within the Site and provide the Commission and Architect with written comments and/or corrections.

iv) If the anticipated maintenance requirements and estimates have changed, Contractor shall provide the Commission with a revised Maintenance Plan.

v) Contractor shall deliver a schedule describing Contractor's specific timelines for completing the Artwork.

vi) Contractor shall deliver subcontracts of all or any Work pursuant to Article 13A (Subcontracting), as well as documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner (collectively, "Subcontracts and Documentation").

2. Schedule of Deliverables.

Deliverable	Due Date
Evidence of General Commercial Liability and Automobile Liability Insurance	
Conceptual Proposal and Budget	
Design Development Documents and Budget (Including Maintenance Plan)	
Construction Documents, Budget, Material Samples, Written Cost Estimates, Schedule Maintenance Plan	
Subcontracts and Documentation	

3. Compensation. Contractor's compensation for Phase I shall be in accordance with Appendix D, Contractor's Approved Costs, which is incorporated herein by reference. Such compensation shall cover all of Contractor's costs and fees for Phase I.

4. Payment Schedule. Contractor's payment schedule and milestones shall be in accordance with Appendix E, Payment Breakdown and Schedule, which is incorporated herein by reference.

5. Insurance: Contractor shall comply with all the other insurance requirements specified under Section 5.1.1 through 5.1.9 in the body of this Agreement.

(a) **Commercial General Liability** as specified in Section 5.1.1(a).

(b) **Automobile Liability Insurance** as specified in Section 5.1.1(b).

(c) **Workers Compensation Insurance** as specified in Section 5.1.1(c).

(d) **Professional Liability Insurance** as specified in Section 5.1.1(d).

6. Approved Subcontractors and corresponding insurance requirements

The Arts Commission approves the Contractor's subcontracts to provide structural engineering documents and other design development deliverables, and other consultants as necessary to provide project assistance. Subcontractors are subject to the same insurance requirements.

Approved Subcontractors:

<<INSERT NAME OR TYPE OF SUBCONTRACTORS>>

7. Other Requirements

Contractor shall design an artwork for **<<INSERT PROJECT SITE>>** that can be designed, fabricated and installed for an amount not to exceed **<<INSERT TOTAL PROJECT BUDGET>>**. This budget must cover all costs associated with the project, whether or not the work is performed by the Contractor, Contractor's subcontractors, or by another contractor under a separate agreement with City. Costs include, but are not limited to: Contractor fees, consultants, fabrication, installation, lighting, and any modifications made to the site to accommodate the Contractor's work, including but not limited to design fees charged by the architects and their consultants. Contractor is responsible for verifying all costs associated with the fabrication and installation of the project as part of Contractor's deliverables under this agreement. In the event that cost estimates indicate that the Contractor's Proposal cannot be executed within the above budget, the Contractor hereby agrees to redesign or modify the Proposal so that the work can be fabricated and installed within the available budget.

Phase II
Fabrication of Artwork

1. Scope of Services.

a) Contractor shall deliver subcontracts prior to the start of fabrication of all or any Artwork pursuant to Article 13A (Subcontracting), as well as documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner (collectively, "Subcontracts and Documentation").

b) Contractor shall fabricate the Artwork in accordance with all Contract Documents approved by the Commission through Phase I.

c) Shop Drawings. Contractor shall deliver Shop Drawings as needed for sculpture armature, foundation and attachment hardware, produced by Contractor or Contractor's fabricator. The Shop Drawings shall be signed and stamped by a structural engineer as required by the California Uniform Building Code and any San Francisco amendments to the Building Code. Contractor shall also deliver as-built shop drawings that document any changes to the drawings during fabrication or upon completion of installation.

d) Inspection of Artwork:
   i) Contractor shall send photo documentation of artwork fabrication at ___% 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.

   ii) Contractor 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.

   iii) Contractor's structural engineer shall inspect the completed artwork fabrication to verify in writing that the Artwork has been fabricated according to the signed stamped engineering drawings.

e) Contractor's structural engineer shall review results of special inspection reports and structural observations, as identified in Construction Documents.

   i) Regarding structural observations, Contractor's structural engineer shall provide a written report to the Arts Commission stating the site visits that have been made and identifying any reported deficiencies that, to the best of the structural engineer's knowledge, have not been resolved.

   ii) Contractor's structural engineer shall prepare a signed and stamped letter stating that all items requiring special inspection and structural observation were performed in accordance with the approved plans.

f) Transportation Plan. Contractor shall deliver a written list of the workers, vehicles, and equipment that will be involved in the transportation of the Artwork to the Site. Evidence of insurance of the Artwork during transportation must be provided by the company or individual hired to transport the Artwork.

g) Installation Plan. Contractor shall deliver an installation plan indicating the staging and sequence of all aspects of installation. The Installation Plan must include a detailed description of the estimated duration of installation, the equipment to be used, and all workers who will be on site to assist. Liability Insurance must be provided for all persons contracted by the Contractor or his subcontractor to perform any work on site.

□ OR delete and use below if City is installing the Artwork.

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

3. Schedule of Deliverables.

Deliverable	Due Dates
Delivery of Required Proof of Insurance	
Signed and Stamped Shop Drawings	
Fabrication of Artwork	
Transportation and Installation Plan	
Subcontracts and Documentation	

4. Compensation. Contractor's total compensation for Phase II shall be in accordance with Appendix D, Contractor's Approved Costs, which is incorporated herein by reference. Such compensation shall cover all of Contractor's costs and fees for Phase II.

5. Payment Schedule: Contractor's payment schedule and milestones shall be in accordance with Appendix E, Payment Breakdown and Schedule, which is incorporated herein by reference.

6. Insurance and/or Bond Requirements. Contractor shall obtain or maintain if effect the insurance and/or bonds required under Articles 5 and 14A before commencement of Phase II:

7. Approved Subcontractors and corresponding insurance requirements
The Arts Commission approves the Contractor's subcontracts with fabricators and other consultants as necessary to provide project assistance. Subcontractors are subject to the same insurance requirements as listed above.

Approved Subcontractors:
<<INSERT NAME OR TYPE OF SUBCONTRACTORS>>

8. Other Requirements (i.e., liquidated damages): See section 4.7 (Liquidated Damages), if applicable

Phase III
Transportation and Installation of Artwork

1. Scope of Services.

a) Contractor shall provide for the transportation of the Artwork in accordance with the Transportation Plan approved by the Commission in Phase II. Contractor shall not transport the Artwork until access to the Site has been approved and scheduled by the Commission in coordination with the Client. Contractor shall prepare the Artwork for transportation in accordance with customary industry standards for the transportation of fine works of art, and in accordance with the following additional specifications: **[Insert additional specifications or delete].**

□ Delete (b) if Contractor is not installing Artwork.

b) Contractor shall install the Artwork in accordance with Contract Documents approved in Phase I.

c) Contractor's structural engineer shall review results of special inspection reports and structural observations, as identified in Construction Documents.

i) Regarding structural observations, Contractor's structural engineer shall provide a written report to the Arts Commission stating the site visits that have been made and identifying any reported deficiencies that, to the best of the structural engineer's knowledge, have not been resolved.
ii) Contractor's structural engineer shall provide as-built drawings that reflect any changes that were made during installation.
iii) Contractor's structural engineer shall prepare a signed and stamped letter stating that all items requiring special inspection and structural observation were performed in accordance with the approved plans.

d) Contractor shall provide as-built drawings for the fabrication and installation of the artwork. These drawings are required in the event that re-fabrication and replacement of artwork components, or the removal and possible re-installation of the artwork at a different location are necessary. [SFAC PM see options below]
(a) For glass projects, as-built drawings shall include final production files from the art glass fabricator, and specifications related to printer type and settings for the production of the glass.
(b) For tile projects, as-built drawings shall include final production files from tile fabricator, and any specifications related to printer type and settings for the production of the tile.
(c) For other types of projects, PM shall coordinate with Collections Team to determine the types of files that will be required.

d) Contractor shall consult with the Commission, the Project Construction Management Team and General Contractor prior to and during the installation of the Artwork. Contractor shall coordinate Contractor's activities on site with the General Contractor through the Construction Management Team and/or the Commission staff.

e) Maintenance Documents. Contractor shall deliver all information necessary for the Commission to properly care for and maintain the Artwork, including information regarding the physical make-up of the Artwork, methods and materials, and information about the artistic intent of Contractor in the Design, Fabrication and Installation of the Artwork (attached as Appendix F: Civic Art Collection Forms).

f) Contractor shall deliver subcontracts of all or any Artwork pursuant to Article 13A (Subcontracting), as well as documentation establishing that all employees, subcontractors and suppliers have been paid in a timely manner (collectively, "Subcontracts and Documentation").

□ Delete (g) if Contractor is not installing Artwork.

g) Contractor is responsible for rental of crane, and all other equipment needed for installation. Contractor shall supply all hardware and personnel necessary for installation. Contractor is responsible for repairing or paying for the repair of any damage to the Site, the Artwork, or the work of other Contractors to the extent such damage is caused by Contractor, Contractor's agents, employees, subcontractors or Contractors. At the completion of installation, Contractor shall clean and restore the Site and the work area to the condition it was in at the beginning of installation.

h) Approval of Site: The preparation of the Site for installation of the Artwork shall be the responsibility of the General Contractor in accordance with a separate written agreement between City and the General Contractor. Where Contractor's Services are associated with that of the General Contractor, or any other Contractor engaged by the City to do work on the Site, Contractor shall examine the work of such other Contractor and report in writing to the Commission any visible defect or condition preventing the proper execution of Contractor's Services. If Contractor proceeds without giving notice, the Contractor shall be held to have approved the work or material and the existing conditions, and shall be responsible for any defects in Contractor's own work consequent thereon, and shall not be relieved of any obligation or any guarantee because of any such condition or imperfection. To the extent that any part of the Contractor's work is to interface with work performed or installed by the General Contractor or other Contractor engaged by City to perform work on the Site, Contractor shall inspect and measure the in-place work and promptly report to the City any defect in such in-place work that will impede or increase the cost of Contractor's interface unless corrected. City and/or its authorized representatives will require the party responsible for the defective work to make corrections so as to conform to its contract requirements, or if the defect is the result of a default or omission in the contract documents, may issue a change order. If Contractor fails to measure, inspect and/or report defects that are reasonably discoverable, all costs of accomplishing the interface shall be borne by Contractor. The forgoing does not apply to latent defects. Contractor shall report to City any latent

defects in another Contractor's work at any time such defects become known. City or its authorized representatives shall promptly thereafter take such steps as may be appropriate. Any difference or conflict that may arise between Contractor and the General Contractor, or other Contractors engaged by City to perform work on the Site, shall be adjusted as determined by City, its agents, or its authorized representatives when necessary to facilitate the work of Contractor and/or other Contractors or workers. No damages or claims by Contractor will be allowed other than an extension of time for the completion of the Services. Such an extension will be for the period of time City shall consider Contractor to have been delayed in the completion of the Services by reason of the work of other Contractors or workers.

3. Schedule of Deliverables.

Deliverable	Due Date
Delivery of Required Proof of Insurance	
Transportation of Artwork	
Installation of Artwork	
Installation Documentation, including Special Inspection and Structural Observation Report	
Maintenance Documents	
Subcontracts and Documentation	

4. Compensation. Contractor's total compensation for Phase III shall be as set forth in Appendix D, Contractor's Approved Costs, which is incorporated herein by reference.

5. Insurance and/or Bond Requirements. Contractor shall obtain or maintain if effect the insurance and/or bonds required under Articles 5 and 14A before commencement of Phase III

6. Payment Schedule. Completion milestones and payment schedule for Phase III shall be as set forth in Appendix E, Payment Breakdown and Schedule, and is incorporated herein by reference.

7. Approved Subcontractors and corresponding insurance requirements.
The Arts Commission approves the Contractor's subcontracts for the installation and transportation of the Artwork and other consultants as necessary to provide project assistance. Subcontractors are subject to the same insurance requirements as listed above.

Approved Subcontractors:
<<INSERT NAME OR TYPE OF SUBCONTRACTORS>>

8. Other Requirements (i.e., liquidated damages): TBD

Appendix D
Contractor's Approved Costs

<<[TO BE INSERTED]>>

As noted in Article 3A, Contractor's use of the Contingency Allowance must be approved in advance in writing by Commission staff. Any balance remaining in the reimbursables budget or Contingency Allowance at the conclusion of the Agreement reverts to the Commission.

Travel Reimbursement

Reimbursements follow the U.S. General Services Administration per-diem rates which can be found on the website: https://www.gsa.gov/

PLEASE NOTE: All travel costs must be approved by SFAC **in advance of travel**. If Contractor is combining travel with other business, costs of travel shall be shared with other projects. Exceptions to the guidelines below may be permitted but only if approved by SFAC in advance of travel.

For Air Travel:

- Airfare should be booked for economy/coach class only. Business or First class is not reimbursable. Upgrades are not reimbursable.
- If Contractor is flying from a location that is further from destination (i.e. San Francisco for site visit or installation; or location of fabricator) than place of residence, airfare will only be reimbursed between place of residence and destination.
- Air ticket must be purchased in advance to take advantage of the most economical fares available. Same day or near travel day ticket purchases are not reimbursable.

For Auto Transportation:

- For Contractors who reside more than 25 miles from place of destination (i.e. San Francisco for site visits or installation, or location of fabricator) mileage may be reimbursed according to the Federal GSA rate if using personal car.
- Rental cars, parking costs may be reimbursed.

Lodging:

- The maximum reimbursement is the Federal per-diem GSA rate.
- City only reimburses for "standard" room rates. Upgrades are not reimbursed.

Meals and incidentals:

- Reimbursed according to the Federal per-diem GSA rates, in lieu of itemized receipts.
- Only applicable for overnight travel.

APPENDIX E
Payment Breakdown and Schedule

The total payment amount due to Contractor under this Agreement shall not exceed **<<INSERT WHOLE DOLLAR AMOUNT IN NUMBERS AND WORDS -- NO PENNIES AND NO ".00"]>>**. This total amount shall include Contractor's fee and all reimbursable expenses. Out of the total contract amount, Contractor shall be responsible for paying all of Contractor's costs and expenses associated with the Artwork, including the costs of suppliers, subcontractors, fees, taxes, permits, insurance, transportation to and from meetings, and all other expenses associated with the scope of the Services specified in this Agreements (hereinafter "Contractor's Costs").

Services Provided by Attorneys. Any services to be provided by a law firm or attorney must be reviewed and approved in writing in advance by the City Attorney. No invoices for services provided by law firms or attorneys, including, without limitation, as subcontractors of Contractor, will be paid unless the provider received advance written approval from the City Attorney.

Fee: Contractor's fee for coordinating and producing the Artwork (hereinafter "Contractor's Fee") is **<<INSERT WHOLE DOLLAR AMOUNT IN NUMBERS AND WORDS -- NO PENNIES>>.**

Reimbursables: In addition to Contractor's fee, as set forth immediately above, Contractor shall be reimbursed up to **<<INSERT WHOLE DOLLAR AMOUNT IN NUMBERS AND WORDS -- NO PENNIES>>** for Approved Contractor's Costs based on the submittal of original receipts or invoices. The breakdown of Approved Costs associated with this Agreement appears below:

Phase I, Design	Artist Fees	Reimbursable Costs	Total Payment	Total Contract Amount
Payment #1: Upon contract certification and submission of required insurance documentation and endorsements.	[10%]	*Subcontractor reimbursable amount should align with subcontract payment schedule(s).*		
Payment #2: Upon completion and Arts Commission approval of Design Development phase materials (final design).	[10%]	*Subcontractor reimbursable amount should align with subcontract payment schedule(s).*		
Payment #3: Upon completion and Arts Commission approval of Construction Documents, including stamped and signed structural drawings and calculation, Special Inspections form (Appendix F), material sample(s), and technical data sheets.	[10%]	*Subcontractor reimbursable amount should align with subcontract payment schedule(s).*		
Total Payment Phase I:				

Phase II, Fabrication	Artist Fees	Reimbursable Costs	Total Payment	
Payment #4: Upon submission of all fabrication subcontracts, insurance documents and endorsements, and issuance of Notice to Proceed by SFAC project manager.	[10%]	[25-50% Fabrication] *Fabrication reimbursable amount should align with subcontract payment schedule(s).*		
Payment #5: Upon 50% completion of artwork fabrication as approved by SFAC Project Manager, and submittal of artwork transportation and protection plan. PM to indicate what 50% fabrication means for specific artwork.		[0-25% Fabrication] *Fabrication reimbursable amount should align with subcontract payment schedule(s).*		
Payment #6: Upon 100% completion of artwork fabrication and all work associated with this phase as approved by SFAC project manager.	[20%]	[50% Fabrication] *Fabrication reimbursable amount should align with subcontract payment schedule(s).*		
Total Payment Phase II:				
Phase III, Transportation and Consulting Services During Installation	**Artist Fees**	**Reimbursable Costs**	**Total Payment**	
Payment #7: Upon completion of artwork installation as approved by Arts Commission Project Manager, and consulting services during installation.	[20%]			
Payment #8: Upon submittal of Civic Art Collection forms and all associated materials and data.	[20%]			
Total Payment Phase III:				
Total Contract Payment:				
Contingency [10%]				
Contract Total:				
Installation (Under Separate Contract w/City)*				
Project Total				

Contractor shall be entitled to reimbursement only to the extent Contractor has actually incurred such costs, and City shall retain all funds remaining or saved from the costs estimated herein and in the Budget as required in Appendix C (Phase I – Design) and as approved by the Arts Commission.

APPENDIX F
Special Inspections

SPECIAL INSPECTION AND STRUCTURAL OBSERVATION

A COPY OF THIS DOCUMENT SHALL BE KEPT WITH THE APPROVED STRUCTURAL DRAWING SET

JOB ADDRESS_____ APPLICATION NO._____ADDENDUM NO.___

OWNER NAME_____ OWNER PHONE NO. (_____)_____

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

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

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

24. **Structural observation per Sec. 1704.5 (2013 SFBC) for the following:** [ ] Foundations [ ] Steel framing
    [ ] Concrete construction [ ] Masonry construction [ ] Wood framing
    [ ] Other:_____

25. Certification is required for: [ ] Glu-lam components

Prepared by: _____ Phone: (_____)_____
Engineer/Architect of Record

Required information:
FAX: (_____)_____ Email: _____

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

****

APPROVAL (Based on submitted reports.)

_____
DATE DBI Engineer or Plan Checker / Special Inspection Services Staff

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

APPENDIX G
Civic Art Collection Form

1. Purpose
The Civic Art Collection Form (the "Form") is required to document final artist, artwork, and project information necessary for project close-out, official accessioning of the Artwork into the City's Civic Art Collection, and ongoing stewardship and conservation, and for public records purposes.

2. Incorporation by Reference
The Form, available at the following URL, is incorporated into and made a part of this Agreement by reference as if fully set forth herein:
https://docs.google.com/forms/d/e/1FAIpQLSf9WzsYYCtWWFGVEgImWgW2vyjAu5lnq5yMe5tpOpFLgRnM9g/viewform?usp=header

3. Submission Requirement
Contractor shall fully and accurately complete and submit the Form in accordance with all instructions therein as a required condition of project close-out and final acceptance of the Artwork by the City. ***Submission of the Form is required prior to processing of the Contractor's final payment***.

4. Relationship to Contract Performance
Submission of the Form constitutes a contractual deliverable and is required to:

- Support the City's formal accessioning of the Artwork into its Civic Art Collection;
- Establish official records regarding authorship, materials, dimensions, fabrication methods, and installation conditions;
- Support long-term conservation, maintenance, risk management, and public access obligations; and
- Complete the Contractor's documentation obligations under this Agreement.

5. Availability
The City shall provide a copy of the Form in alternative format or hard copy upon request.