



126-0062021-002

Agenda Item **No.5(a)**
Meeting of June 1, 2021

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Sally Oerth, Interim Executive Director

SUBJECT: Authorizing a Memorandum of Understanding with the Arts Commission for the implementation of the Art Requirement on City Property in Mission Bay South, transferring Art Requirement In-Lieu Fees, which initially total \$1,125,424, to the Arts Commission, and approving the Public Art Project Plan for Mission Creek Park; Mission Bay South Redevelopment Project Area

EXECUTIVE SUMMARY

The Redevelopment Plan for the Mission Bay South Redevelopment Project ("Redevelopment Plan") requires developers in Mission Bay to either (a) install and maintain works of art ("Public Art") costing an amount equal to 1 percent of the hard costs of initial construction of a retail or commercial project exceeding 25,000 gross square feet of floor area or (b) pay to the Successor Agency to the San Francisco Redevelopment Agency, commonly known as the Office of Community Investment and Infrastructure, ("OCII") an in-lieu fee equal to one percent of the hard costs of initial construction ("Public Art Requirement"). This Redevelopment Plan provision is similar to a Planning Code requirement imposing a public art fee on downtown developers. Planning Code § 429.3. To date, OCII has collected \$1,125,424 in fees under the Public Art Requirement for the installation and maintenance of public art in in the Mission Bay South Project Area ("Project Area").

The Redevelopment Agency of the City and County of San Francisco ("Former Agency") and the Arts Commission of the City and County of San Francisco ("SFAC") entered into the Mission Bay South Memorandum of Understanding ("1999 MOU") dated January 4, 1999 (attached as Attachment A) to confirm SFAC's authority, under the City Charter, in reviewing and approving final designs for public structures and for private structures and works of art on City property in the Project Area and to establish a process whereby the Former Agency and SFAC would work cooperatively and expeditiously in reviewing and approving those matters within the SFAC's authority.

London N. Breed
MAYOR

Sally Oerth
INTERIM
EXECUTIVE DIRECTOR

Miguel Bustos
CHAIR

Mara Rosales
Bivett Brackett
Efrem Bycer
Dr. Carolyn Ransom-Scott
COMMISSIONERS

One S. Van Ness Ave.
5th Floor
San Francisco, CA
94103

415 749 2400

www.sfocii.org

OCII and the SFAC now desire to expand on the 1999 MOU and enter into a Memorandum of Understanding ("MOU") (attached as Attachment B). As per the proposed MOU, SFAC will use the in-lieu fees to commission, and fund an artist or artist team to design, engineer, fabricate, transport and install artwork in the future P2 section of Mission Creek Park, and reimburse the selected artist/artist team for the costs of design, fabrication and installation. There is the potential that additional in-lieu art fees will be collected so the MOU allows for OCII to engage SFAC to provide additional services to create more public art. This approach is not only consistent with the 1999 MOU, but also with the City's Public Art Fee Requirement for certain developers subject to the Planning Code. The proposed MOU requires, for each artwork, the SFAC to submit a Public Art Project Plan for approval to OCII, include OCII participation in the selection process, and requires the SFAC present the proposed artwork to the Mission Bay CAC and OCII Commission for comment prior to any final approval. For the artwork in the future P2 section of Mission Creek Park, SFAC has submitted a Public Art Project Plan (attached as Attachment C).

The SFAC will retain the authority to approve the final design. Upon completion of the project and final payment to the artist, the City shall assume responsibility for the artwork consistent with the jurisdiction of SFAC.

Staff recommends authorizing the OCII Executive Director to enter an MOU (in a form similar to Attachment B) with the SFAC for the administration and coordination of commissioning an artist or artist team to design, engineer, fabricate, transport and install artwork in the future P2 section of Mission Creek Park in the Project Area and approve the Public Art Project Plan for artwork in the future P2 section of Mission Creek Park.

BACKGROUND

Section 304.9 of the Redevelopment Plan establishes, among other things, that certain commercial development within the Project Area shall comply with the "Public Art Requirement," defined as:

The installation and maintenance of works of art costing an amount equal to 1 percent of the hard costs of initial construction (excluding therefrom the costs of Infrastructure and tenant improvements) of a Project for retail or commercial uses exceeding 25,000 gross square feet of floor area prior to the issuance of the first certificate of occupancy or such later time as may be determined by the Agency not to exceed one year thereafter; provided, however, that where the works of art are proposed to be included within an Open Space Parcel, such installation may occur any time prior to completion of the improvements to the Open Space Parcel. Such works may include sculpture, bas-relief, murals, mosaics, decorative water features, fountains, tapestries or other artwork and shall be located in and permanently affixed to a Project, its grounds or an Open Space Parcel or the surrounding area.

In Mission Bay there are 41 acres of Open Space Parcels. This open space is owned by the City and County of San Francisco ("City") or the Port of San Francisco ("Port") and is leased to OCII for administration of maintenance until 2045. The Public Art Requirement is based on a similar program under the City Planning Code whereby private developers in the downtown area are required to provide on-site public art or contribute a public art fee to the SFAC. Planning Code § 429.3.

Most developers have chosen to comply with the Public Art Requirement by installing and maintaining the public art in a public area on their property. However, a few developers have opted to pay an in-lieu fee instead of installing the public art. In some instances, the developer has installed art, but the cost of the artwork does not meet the one percent requirement. In those situations, the developer, in addition to installing artwork on their property, makes an in-lieu fee payment so the artwork and in-lieu fee equal one percent of the total hard costs. As per the Public Art Requirement, this in-lieu fee is to be used to install public art in the Public Open Space within the Project Area. To date OCII has collected \$1,125,424 of in-lieu fees.

The Former Agency and SFAC entered into the 1999 MOU dated January 4, 1999 to confirm the SFAC authority, under the City Charter, in reviewing and approving final designs for public structures and for private structures and works of art on City property and to establish a process whereby the Former Agency and SFAC would work cooperatively and expeditiously in reviewing and approving those matters within the SFAC's authority in the Project Area. Under the City Charter, the SFAC has the authority to "[a]pprove the design and location of all works of art before they are acquired, transferred or sold by the City and County, or are placed upon or removed from City and County property, or are altered in any way; maintain and keep an inventory of works of art owned by the City and County; and maintain the works of art owned by the City and County" City Charter Section 5.103.

DISCUSSION

Because SFAC has authority in reviewing and approving final designs of the artwork and the art will ultimately be part of the Civic Art Collection, SFAC is the appropriate governmental entity to provide these services for the administration and coordination of commissioning an artist or artist team to design, engineer, fabricate, transport and install artwork in Park P2 in the Mission Bay Open Space.

Public Art Project Plan

The Public Art Project Plan will identify the art opportunities, project scope, budget, selection process, level of community involvement and timeline for the project. SFAC has provided a Public Art Project Plan for Park P2, and the major elements of the Public Art Project Plan are described below. There is the potential that additional in-lieu art fees will be collected so the MOU allows for OCII to engage the SFAC to provide additional services to create more public art. A Public Art Project Plan will be required for any additional artwork. Those Public Art Project Plans will be approved by the OCII Executive Director.

Location of the Art

Park P2, which runs along Mission Creek in Mission Bay South, is in predevelopment. Construction is scheduled to begin by the end of 2021. SFAC and OCII identified the bluff in Park P2 near the Mission Bay Drive traffic circle as the ideal location for the artwork (See Exhibit B of the MOU). This location provides great visibility of the artwork for people traveling in and out of Mission Bay.

In-Lieu Fee and Art Budget

As of May 2021, there is \$1,125,424 of in-lieu fees. SFAC has proposed a \$1,125,000 budget for an art piece at Park P2. Seventy percent of the budget or \$787,500 will fund the Art, which is the cost of creating the artwork. The cost of the Art includes the artwork, site work and installation, artist selection costs, a ten percent contingency, and miscellaneous expenses. Twenty percent of the budget or \$225,000 will fund Administration, which is SFAC's cost to administer and coordinate the process for commissioning an artist or artist team to design, engineer, fabricate, transport, and install the artwork. Ten percent of the budget, which is \$112,500, will fund Conservation, which is long-term maintenance and repair of the artwork.

Cost	Percentage	Amount
Art	70%	\$787,500
Admin	20%	\$225,000
Conservation	10%	\$112,500
Total	100%	\$1,125,000

Currently Uber and SOMA Hotel are finalizing the public art on their respective development sites on Mission Bay South Blocks 26-27 and Block 1. If either developer needs to pay a partial in-lieu fee to meet the 1 percent Art Requirement or any future in-lieu fees are collected from future developments, those funds will be added to the Park P2 artwork budget or used to create additional public art. Expenditure of these funds for additional artwork will be negotiated through the creation of a new Public Art Project Plan, which will require Commission approval.

On a quarterly basis, the SFAC will invoice OCII for labor and non-labor charges associated with this project. OCII will pay the invoice through an intergovernmental revenue transfer. Upon completion of the artwork, OCII shall transfer a maintenance and conservation fee equal to 10 percent of the total funds administered by the Public Art Project Plan to the SFAC for conservation.

Artist Outreach

The SFAC will post an RFQ, which is open to professional practicing artists who reside in the United States. In addition to the RFQ applicants, artists in other Arts Commission prequalified pools may also be considered. Recruitment will focus on artists with a meaningful connection to the City and County of San Francisco, which may include if the artist currently resides, has resided in San Francisco, or has another significant connection to San Francisco. Artists will be asked to address their connection as part of the application process, and the review panel will be instructed to consider this connection as part of their scoring criteria.

SFAC has a strong record of hiring San Francisco and Bay Area artists. In 2019, 8 of the 15 artists were from San Francisco and an additional 5 of the 15 artists were from the Bay Area. In 2020, 5 of the 10 artists were from San Francisco and an additional 2 of the 10 artists were from the Bay Area.

Selection Criteria for Artists and Artwork

Artists and artwork will be selected in accordance with the Mission and Goals of the Civic Art Collection and in accordance with the criteria below. The SFAC may consider artworks in all media and will consider the following factors when scoring an artist's application for a commission and/or acquisition of artwork:

- **Artistic Merit:** Artistic Merit may be judged by such measures as originality of concept and artistic vision; the degree to which the work engages the viewer emotionally, intellectually, spiritually; the quality of craftsmanship or mastery of skills and techniques. Artistic merit may also be credited to artwork that reflects a significant or direct relationship between the artist and distinct racial or cultural communities.
- **Relevant Skills & Experience:** Review Panels and the SFAC shall consider the assessed ability of an artist to successfully implement a proposed project, such as the ability to work constructively with other project stakeholders, meet deadlines, willingness to resolve issues as they arise, and generally manage the demands of the project. Cultural competency and/or significant connection between the artist and the project constituency, or experience that may particularly qualify an artist to meet project goals may also be considered.
- **Meet Project Goals:** The proposed artwork (or the assessed ability of an artist to design a proposal) meets the specific goals of the project as defined in the Project Outline and/or RFQ or RFP as approved by the SFAC.
- **The Artwork is Appropriate to the Site:** The artwork or proposed artwork is appropriate for its intended display location in terms of scale, media, design or imagery and is judged to be relevant within the context of the surrounding community and is compatible with the mission and operations of the client department.
- **Feasibility, maintainability:** Proposed objects shall be evaluated relative to their feasibility and evidence of the artist's ability to successfully complete the work as proposed. Factors to be considered include, but are not limited to: project budget, timeline, and the artist's experience. Due consideration shall be given to the structural and surface soundness, and to inherent resistance to theft, vandalism and weathering, and to the cost and amount of ongoing maintenance and/or repair anticipated.
- **Contributes to the Quality of the Civic Art Collection:** The artwork is judged to support and improve the city's collection in terms of artistic quality and diversity of artists represented. The SFAC is committed to acquiring art works that reflect diversity in style, scale, media, and artistic sources as well as diverse cultural communities and perspectives. The Arts SFAC also encourages exploratory types of work as well as established art forms.

- **Public Safety and Accessibility:** Artwork shall be evaluated to ensure that it does not present a hazard to public safety and complies Americans with Disability Act (ADA) and with all other applicable building codes.
- **Duplication:** Artists will be asked to warrant, as a condition of their agreement with the City, that the artwork commissioned or purchased is unique and an edition of one and shall not be duplicated unless it is part of a limited edition or otherwise stated to the contrary in the artist's contract with the SFAC.

Per City contracting requirements, artist applicants who are registered as a Local Business Enterprise will be given a rating bonus of ten percent relative to other applicants.

Artist Qualification Panel

The purpose of the Artist Qualification Panel is to review all project applicants to develop a short list (usually between 15 - 30 applicants) deemed most qualified for the project opportunity. This qualified list is submitted for further review to the Artist Review Panel.

Artist Qualification Panel Composition

The Artist Qualification Panel Composition shall consist of:

- a Public Art Program staff member,
- a panelist chosen by OCII, and
- a panelist from outside the department.

The outside reviewers may also serve on the Artist Review Panel.

Artist Review Panel

In accordance with the approved Project Plan, the Artist Review Panel will review and evaluate the following: 1) candidates applying for a public art commission 2) proposals for public art commissions submitted by finalist candidates or 3) make recommended selections of existing artworks.

Artist Review Panel Composition

The following represent typical composition of review panels; but Representation may be varied if warranted by the circumstances of a particular project.

- Two (2) Representatives of OCII.
- One (1) Representative of the of the Visual Arts Committee.
- Three (3) arts professionals of recognized professional stature. When possible, one should be a representative of the community or constituency affected by the project.
- One (1) or more community members or other project stakeholders Representative of the Design Team, (such as the project architect); optional at the discretion of the CAC/PAP Director.

If the Review Panel selects finalists for further review, the same panel will reconvene for this review.

Final Design Review and Approval

SFAC will have final design review authority over the selection of the works of art funded by this MOU. However, as per the proposed MOU, the SFAC will hold workshops at the OCII Commission and the Mission Bay Citizens Advisory Committee (“CAC”). At these workshops, the artist finalists will present their proposals and each body will be allowed to provide feedback on their proposals.

Ownership and Maintenance of Art

Upon completion of the project, the artwork will be accessioned into the Civic Art Collection in accordance with Section 3 of the Policies and Guidelines for the Civic Art Collection of the City and County of San Francisco.

The SFAC shall be responsible for implementing the Artwork Maintenance Plan which includes the specialized maintenance and conservation of the artwork that may include activities that minimize chemical and physical deterioration and damage, and that prevent loss of informational content. Specialized maintenance may include graffiti removal, significant repair, and other activities intended to prolong the existence of cultural property and should be undertaken or overseen by a professional conservator.

OCII, under its lease with the City and Port which covers Mission Creek Park, will assist SFAC in providing standard maintenance which may involve the removal of superficial dirt or debris build-up on the surface of the artwork, or the cleaning of non-art support material such as a pedestal or plaque.

CITIZENS ADVISORY COMMITTEE REVIEW PROCESS

The CAC reviewed the proposed MOU at the April 8, 2021 and voted unanimously in favor of OCII entering into the proposed MOU. The CAC also voted unanimously to approve the proposed location of the artwork in Park P2.

On May 13, 2021 the CAC reviewed the Public Art Project Plan and voted unanimously in favor of it. A member of the CAC was also selected to represent the community on the Artist Review Panel.

MISSION BAY PROGRAM IN DIVERSITY

The Mission Bay Program in Diversity requires developers to adhere to OCII's policies on nondiscrimination, Small Business Enterprises (SBEs), local construction workforce hiring, and prevailing wages. As per the proposed MOU, the SFAC will adhere to City contracting requirements, including Chapters 21 and 6 of the San Francisco Administrative Code, which address incentives for the use of local business enterprises (recognized as SBEs by OCII), and local construction workforce hiring and prevailing wages on public works projects related to the installation of artwork. The City's contracting requirements are consistent with OCII's policies on nondiscrimination, Small Business Enterprises (SBEs), local construction workforce hiring, and prevailing wages.

CALIFORNIA ENVIRONMENTAL QUALITY ACT

Approval of the MOU with the SFAC is categorically exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15303 because it involves OCII funding of the construction and location of small, new artwork structures on Mission Bay South Park P2.

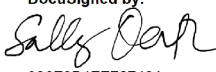
STAFF RECOMMENDATION

Staff recommends authorizing the OCII Executive Director to enter an MOU (in a form similar to Attachment B) with the SFAC services for the administration and coordination of commissioning an artist or artist team to design, engineer, fabricate, transport and install artwork in the future P2 section of Mission Creek Park in the Mission Bay South Project Area, approving the Public Art Project Plan for artwork in the future P2 section of Mission Creek Park, appointing Chair Bustos to the Artist Qualification and Review Panels and appointing Commissioner Bycer to the Artist Review Panel.

NEXT STEPS

Upon approval of the MOU and Public Art Project Plan, SFAC will draft and post a Request For Qualifications.

(Originated by Marc Slutzkin, Project Manager)

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Sally Oerth

Interim Executive Director

Attachment A: 1999 MOU
Attachment B: Proposed MOU
Attachment C: Public Art Project Plan

MISSION BAY SOUTH
MEMORANDUM OF UNDERSTANDING
(Arts Commission)

THIS MISSION BAY SOUTH MEMORANDUM OF UNDERSTANDING (this "MOU") dated as of January 4, 1999, is between the ARTS COMMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO (the "Arts Commission") and the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic of the State of California (together with any successor public agency designated by or pursuant to law, the "Agency"), and is made with reference to the Interagency Cooperation Agreement for Mission Bay South dated as of November 16, 1998 (the "Interagency Cooperation Agreement"), between the City and County of San Francisco (the "City") and the Agency. Unless otherwise defined in this MOU, all initially capitalized terms used in this MOU shall have the meanings given them in the Interagency Cooperation Agreement and the documents referred to therein.

THIS MOU is made with reference to the following facts and circumstances:

A. In accordance with the Community Redevelopment Law of California (Health & Safety Code Section 33000 et seq.), the City, acting through its Board of Supervisors, has approved a Redevelopment Plan for the Mission Bay South Redevelopment Project and the Interagency Cooperation Agreement by Ordinance No. 335-98 adopted by the Board and approved by the Mayor on November 2, 1998. The Interagency Cooperation Agreement provides for cooperation between the City and the Agency in administering the process for control and approval of subdivisions and all other applicable land use, development, construction, improvement, infrastructure, occupancy and use requirements for the South Plan Area and in establishing the City Regulations, policies and procedures relating to such approvals, and declares the City's intent to undertake and complete actions and proceedings necessary to be carried out by the City under the Mission Bay South Redevelopment Plan and Plan Documents. A copy of the Land Use Plan and Project Description for the South Plan Area is attached hereto as Exhibit A.

B. The Owner will generally develop the Improvements in the South Plan Area in Major Phases. Each of the Major Phases will contain subphases, including individual building Projects on the Owner's property, together with public Infrastructure, including streets and open space. Design review is mainly under the purview of the Agency, in accordance with the Design for Development, Mission Bay Subdivision Ordinance and Regulations and other Plan Documents.

C. Under Section 5.103 of the City's Charter, the Arts Commission has the authority to "approve the designs for all public structures, any private structure which extends over or upon any public property and any yards, courts, set-backs or usable open spaces which are an integral part of any such structures."

D. With respect to the South Plan Area, the Arts Commission has design review authority over certain structures to be constructed on land owned (or to be owned) by the City, which will be developed as public streets, public open space and community facilities, as well as over art to be placed on public open space and other City property in the South Plan Area, except as otherwise provided below. "Structures," over which the Arts Commission has design review authority, consist of objects that are constructed and permanently affixed to City property, such as buildings, bridges, viaducts, elevated ways, approaches, gates, fences, lamps and other permanently affixed street furniture on City streets. The term "structures" as used in this MOU shall have the meaning given in the preceding sentence. The Arts Commission's Charter authority over structures and art (as described in the next paragraph) does not apply to any land or improvements that the City does not and will not own, including, but not limited to, privately owned property. Furthermore, the Arts Commission does not have design review authority over any structures built on property under the jurisdiction of the City's Port Commission where such property is improved in furtherance of uses permitted under the Burton Act ("Port property"), as is the case of the public streets and open space to be built on Port property in the South Plan Area. In addition, the Arts Commission does not have design review authority over landscaping on City property except to the extent such landscaping constitutes structures as defined above or constitutes works of art under Section 5.103 of the Charter. Accordingly, any review of landscaping by the Arts Commission other than structures or works of art on City property shall be advisory only and, if the Arts Commission provides any comments on such landscaping in connection with its review of structures, it shall clearly designate such comments as advisory only. The Arts Commission's design review authority over structures on City property extends solely to the aesthetic aspects of the design and does not encompass review of proposed land uses.

E. Under Section 5.103 of the City's Charter, the Arts Commission also has the authority to "approve the design and location of all works of art before they are ... placed upon ... City and County property..." The Mission Bay South Redevelopment Plan contains an art requirement applicable to development of Projects. The Arts Commission has design review authority over works of art placed on City property, including public streets and open space, in the South Plan Area, except for Port property as provided above.

F. The Interagency Cooperation Agreement and related Plan Documents (including, but not limited to, the Design Review and Document Approval Procedure and Mission Bay Subdivision Ordinance and Regulations) set forth time periods for design review approvals of Major Phases and Projects by City Agencies. With regard to Major Phases, all applicable City Agencies, including, without limitation, the Arts Commission, shall, at their earliest convenience but no later than fifty (50) days from the Agency's certification of a complete application by the Owner for approval of Concept Plans, provide any comments and recommendations (including, where applicable, approval, conditional approval or disapproval) on the elements of the Concept Plans within such City Agency's jurisdiction, to the Executive Director of the Agency. (The Agency has up to three (3) days after certification of complete application to provide relevant copies to City Agencies). With respect to Projects, all applicable City Agencies shall, at their earliest convenience but no later than (40) days from the Agency's certification of a

complete application by the Owner for Basic Concept Design approval of a Project, provide any comments or recommendations (including, where applicable, approval, conditional approval or disapproval) on the elements of the Basic Concept Design within such City Agency's jurisdiction, to the Executive Director of the Agency. (Again, the Agency has up to three (3) days after certification of complete application to provide relevant copies to City Agencies). In addition, once the Basic Concept Design has been approved for a Project the following maximum time periods apply to the Agency's review and approval (or conditional approval or disapproval) of subsequent documents: 45 days from the Agency's certification of a complete application for Schematic Design; 30 days from the Agency's certification of a complete application for Design Development Documents; and 10 days from receipt of final documents approved by the Department of Building Inspection and any other applicable City Agencies with jurisdiction for Final Construction Documents. The Design Review and Document Approval Procedure also contains procedures for revisions of submittals and procedures for disapproval in whole or in part and approval subject to specified conditions. Only certain of these submittals are applicable to the review of design of public open space and streets, as described in Paragraph G and Section 2.2 below.

G. Under the Design Review and Document Approval Procedure, the Mission Bay Subdivision Ordinance and Regulations and other Plan Documents, the applicable phases for design review of improvements to public open space and streets are as follows. For open space improvements, which are to be constructed by the Owner, the Owner is required to submit design at the Concept Plan phase for Major Phases and thereafter to submit additional design at the Schematic Design, Design Development Documents and Improvement Plans phases. Concept Plans, Schematic Design and Design Development Documents are governed by the Design Review and Document Approval Procedure. Improvement Plans are governed by the Mission Bay Subdivision Ordinance and Regulations. The Owner is required to submit a Streetscape Plan for all of the streets in the South Plan Area prior to or concurrently with submission of the first application for approval of Concept Plans for a Major Phase. The Streetscape Plan is a concept level plan which includes, at a minimum, a description of street trees, lighting, street furnishings, sidewalk treatment, paving, and curbing as further provided in the project description contained in Exhibit A attached hereto. The Owner may elect to include detailed design of the objects of street furniture and any other structures to be installed in the streets in the Streetscape Plan. However, if such detailed design is not included in the Streetscape Plan, then additional streetscape design may be included in the Concept Plans for a Major Phase and, if not in the Concept Plans, shall be included in the Improvement Plans to be submitted by the Owner under the Mission Bay Subdivision Ordinance and Regulations and subject to review by the Arts Commission as provided herein. The Plan Documents do not specify phases of submission or time lines for review of construction by the City of any structures on the community facility parcel shown on the attached Exhibit A.

H. Under Section 2.2(b) of the Interagency Cooperation Agreement, the City has committed to the provision of assistance to the Agency in carrying out the Mission Bay South Redevelopment Plan and the Plan Documents as set forth in the Interagency Cooperation Agreement and in any memoranda of understanding or other agreements

among the City Agencies or the City and the Agency that may be entered into in furtherance of the Interagency Cooperation Agreement. Consistent with these provisions, the Agency and the Arts Commission wish to confirm the manner in which they will cooperate in the review of design of structures and works of art over which both the Agency and the Arts Commission would have design review authority and to confirm the Arts Commission's requirement to act within the review schedules set forth in the Interagency Cooperation Agreement and Design Review and Document Approval Procedure, which apply to all City Agencies, as further provided below.

ACCORDINGLY, in consideration of the public benefits and other matters described in the foregoing recitals, the covenants contained in this MOU and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Arts Commission and Agency agree as follows:

1. Purpose of this MOU; Relationship to Interagency Cooperation Agreement; Scope of Arts Commission Design Review Authority. The purpose of this MOU is to facilitate the implementation of the Mission Bay South Redevelopment Plan and the development of the South Plan Area in accordance with the Mission Bay South Redevelopment Plan and the Plan Documents, including the Interagency Cooperation Agreement and Design Review and Document Approval Procedure. This MOU shall be subject and subordinate to the Interagency Cooperation Agreement and all of its provisions, including, without limitation, the limitation on liability of the City Agencies contained therein. The parties acknowledge and agree that the nature and scope of the Arts Commission's design review authority with respect to the South Plan Area is solely as described in recitals C, D and E above. The parties recognize that the decisions of the Arts Commission rendered in accordance with this MOU shall be binding on the Agency with respect to those matters that are within the Arts Commission's jurisdiction and over which the Arts Commission has approval authority pursuant to the Charter, as described herein. For purposes of the preceding sentence, "binding on the Agency" means that the Agency shall not approve the Improvement Plans as to matters over which the Arts Commission has jurisdiction and the Owner may not proceed with construction of a structure or installation of a work of art over which the Arts Commission has jurisdiction as provided herein unless such design is consistent with the design approved by the Arts Commission, provided that nothing herein shall limit the Agency's exercise of its design review authority consistent with the Plan Documents over such structures or works of art.

2. Cooperation in Design Review. To the extent the Arts Commission has design review authority over any structures and the design and location of art pursuant to Section 5.103 of the City's Charter, the Arts Commission and the Agency shall work collaboratively with one another and with the Owner to ensure that design issues are discussed as early in the review process as possible and to act consistently with respect to review of the design of specific structures, in accordance with the provisions of this MOU. In addition, the Agency, together with the Owner, shall consult with the Arts Commission early in the process for selection of art and artists in light of the requirements of Section 2.3 below.

2.1 Expeditious Processing of Approvals. To the extent it has design review authority, the Arts Commission shall treat the redevelopment of the South Plan Area contemplated by the Mission Bay South Redevelopment Plan and the Plan Documents as a priority project, with a need for expeditious processing of required design reviews (including the need for special meetings if necessary), in accordance with the time periods for Concept Plan approvals for Major Phases set forth in Section 2.1(a) of the Interagency Cooperation Agreement and in a timely fashion to allow the Agency to meet the time periods for subsequent approvals set forth in other applicable Plan Documents, including the Design Review and Document Approval Procedure and the Mission Bay Subdivision Ordinance and Regulations, as generally described in Recital F above. The Agency shall promptly provide to the Arts Commission relevant portions of applications for Major Phase and Project approvals to the extent the Arts Commission may have design review authority of items within the scope of this MOU, consistent with Section 5.103 of the City's Charter. In particular, with respect to Schematic Design, Design Development Documents and Improvement Plans, the Agency shall use its best efforts to immediately deliver to the Arts Commission copies of such documents as to elements within the Arts Commission's jurisdiction.

2.2 Design Review over Structures. Subject to Section 2.1 above, design review of Major Phases and Projects shall be performed pursuant to the Interagency Cooperation Agreement and the Plan Documents, including the Design Review and Document Approval Procedure attached to the South OPA and the Mission Bay Subdivision Ordinance and Regulations. The Arts Commission shall have the right to review and approve the design for structures on City property, except for structures on Port property to be constructed as public open space and streets by the Owner or otherwise used for public trust purposes in accordance with the South OPA (which Port lands are shown on Exhibit B attached to this MOU).

(a) Public Open Space. For purposes hereof, the Arts Commission's review and approval of design with respect to structures on public open space means and requires: (i) review and approval of the design of items within the scope of this MOU by the Civic Design Committee and the Arts Commission at the stage of submission by the Owner of an application for approval of Concept Plans for a Major Phase and (ii) review and approval of Schematic Design, Design Development Documents and Improvement Plans, where applicable, by the Civic Design Committee (or its successor) only, or, with the approval of the Civic Design Committee, the Executive Director or his or her designee, provided that applications for Schematic Design, Design Development Documents and Improvement Plans are consistent with the Concept Plans for a Major Phase as approved by the Arts Commission. In each instance, the Arts Commission shall approve, disapprove, or conditionally approve the design, in writing, (1) with respect to elements of Concept Plans within the Art Commission's jurisdiction, at its earliest convenience but no later than the 50-day maximum time frame for approval of a Major Phase established under Section 2.1(a) of the Interagency Cooperation Agreement as described in Recital F and (2) with respect to elements of Schematic Design, Design Development Documents and Improvement Plans within its jurisdiction, at its earliest convenience but no later than (A) thirty (30) days from the certification of a complete application for Schematic Design and (B) twenty one (21)

days from the certification of a complete application for Design Development Documents, in order to allow the Agency to meet the time deadlines set forth in the Design Review and Document Approval Procedure as generally described in Recital F, and (C) twenty-one (21) days after submittal of the Improvement Plans to the Department of Public Works, in order to allow the Department of Public Works to meet the 60-day period referred to in Section 1446 of the Mission Bay Subdivision Code and Section 66456.2 of the Government Code. If the Arts Commission disapproves the design in whole or in part, the Arts Commission shall state the reason or reasons and recommend changes or make other recommendations, in writing to the Agency and the Owner. Any such reasons for disapproval or recommended changes must be in conformity with the Mission Bay South Redevelopment Plan and the Plan Documents. Immediately upon receipt, the Agency shall provide the Owner with a copy of the Arts Commission's approval, conditional approval or disapproval with respect to a Major Phase or Project, or relevant component thereof.

(b) Public Streets. For purposes hereof, the Arts Commission's review and approval of design with respect to structures on public streets means and requires: (i) review and approval of the design of public street items within the scope of this MOU by the Civic Design Committee and the Arts Commission at the stage of submission by the Owner of an application for approval of a Streetscape Plan in connection with the first Major Phase and for any Major Phase Concept Plans that include additional streetscape detail beyond that provided in the Streetscape Plan and (ii) review and approval of items within the scope of this MOU by the Civic Design Committee (or its successor) only, or, with the approval of the Civic Design Committee, the Executive Director or his or her designee at the stage of submission by the Owner of an application for approval of Improvement Plans, provided that applications for Improvement Plans are consistent with the Streetscape Plan and any Concept Plans for a Major Phase as approved by the Arts Commission. In each instance, the Arts Commission shall approve, disapprove, or conditionally approve the design, in writing, (1) with respect to elements of the Streetscape Plan and/or Concept Plans within the Art Commission's jurisdiction, at its earliest convenience but no later than the maximum time frame established under Section 2.1(a) of the Interagency Cooperation Agreement for approval of a Major Phase as described in Recital F and (2) with respect to elements of Improvement Plans within its jurisdiction, at its earliest convenience but no later than fifty (50) days after submittal of the Improvement Plans to the Department of Public Works, in order to allow the Department of Public Works to meet the 60-day period referred to in Section 1446 of the Mission Bay Subdivision Code and Section 66456.2 of the Government Code. If the Arts Commission disapproves the design in whole or in part, the Arts Commission shall state the reason or reasons and recommend changes or make other recommendations, in writing to the Agency (and, in the case of Improvement Plans, to the Director of the Department of Public Works) and the Owner. Any such reasons for disapproval or recommended changes must be in conformity with the Mission Bay South Redevelopment Plan and the Plan Documents. Immediately upon receipt, the Agency or the Department of Public Works, as applicable, shall provide the Owner with a copy of the Arts Commission's approval, conditional approval or disapproval with respect to a Major Phase or Project, or relevant component thereof.

(c) Notwithstanding the foregoing, no Arts Commission design review approval shall be required for a Major Phase or Project if (a) the Major Phase or Project does not include structures in adjacent public space or public streets or (b) the Major Phase or Project includes structures in an adjacent public street which are the same in all material respects as the detailed design for structures included in the Streetscape Plan, Concept Plans (if applicable) and Improvement Plans for another Major Phase previously approved by the Arts Commission.

(d) Further notwithstanding the foregoing, the review of the design of any structures to be constructed by the City on Block 8 (the Community Facilities Parcel) or on Block 14 (if such property is owned by the City rather than the School District) shall not be subject to the timelines for review set forth herein. However, if Blocks 8 or 14 are shown in the application by the Owner for approval of a Major Phase, then (i) the time period applicable to Arts Commission review of such Major Phase shall not be extended due to the inclusion of such Block and (ii) the Major Phase application shall not be deemed incomplete for failure to provide submission materials including, but not limited to, Concept Plans for such Block.

(e) The parties acknowledge and agree that the time deadlines and submission requirements of the Arts Commission's Civic Design Guidelines shall apply to development by the Owner in the South Plan Area to the extent they are consistent with the Design Review and Document Approval Procedure and Mission Bay Subdivision Ordinance and Regulations.

(f) The Arts Commission's review of each phase of additional design detail must be consistent with the design that it has approved for the previous phase of design.

(g) Upon request by the Owner, the Executive Director of the Arts Commission, the Owner and the Agency may agree to any extension of time necessary to allow revisions of submittals prior to a decision by the Arts Commission. The Arts Commission shall review all such revisions as expeditiously as possible as provided above, within the time frame of extension agreed to by the Owner, the Agency and the Executive Director of the Arts Commission. In the event that the Arts Commission (i) disapproves an application in whole or in part or (ii) approves the application with specified conditions and the Owner submits a revised application, the Arts Commission shall consider a revised submission as expeditiously as possible but in no event longer than the applicable time period for an original application.

2.3 Design Review of Works of Art. Any works of art that are to be placed on City property (other than Port property) must first be submitted to and approved by the Arts Commission. For purposes hereof, the Arts Commission's review and approval of works of art means and requires review and approval of art that is within the scope of this MOU by the Visual Arts Committee (or its successor) and the Arts Commission. The parties acknowledge that the Arts Commission's process for selection of art and artists under its Public Art Program does not apply to development by the Owner in the South Plan Area only to the extent that such development (i) is governed by

the art requirement set forth in the Mission Bay South Redevelopment Plan and (ii) does not involve a proposal for a bond issue by the City (and not the Agency) or a request by a City officer, board of commission for the construction of a building, aboveground structure, new park or transportation improvement project pursuant to Section 3.19 of the Administrative Code.

3. General Provisions.

3.1 Notices. A notice or communication under this MOU by either party to the other shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

(i) In the case of a notice or communication to the Agency:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Executive Director
Reference: Mission Bay South
Telefacsimile: (415) 749-2565

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: General Counsel
Reference: Mission Bay South
Telefacsimile: (415) 749-2575

(ii) In the case of a notice or communication to the Arts

Commission:

Arts Commission
25 Van Ness Avenue, Suite 240
San Francisco, California 94102
Attn: Director of Cultural Affairs
Telefacsimile: (415) 252-2595

with a copy to:

Office of the Mayor
City and County of San Francisco
City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Mission Bay Project Manager
Reference: Mission Bay South
Telefacsimile: (415) 554-6018

and to:

Office of the City Attorney
Room 234, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682
Attn: Jesse C. Smith
Reference: Mission Bay South
Telefacsimile: (415) 554-4755

(ii) And in the case of a notice or communication sent by either the City or the Agency to the other, a copy shall be sent to the Owner Representative at:

Catellus Development Corporation
201 Mission Street, Second Floor
San Francisco, California 94105
Attn: Mission Bay Development Office
Telefacsimile: (415) 974-3724

With a copies to:

Catellus Development Corporation
201 Mission Street, Second Floor
San Francisco, California 94105
Attn: General Counsel
Telefacsimile: (415) 974-4613

And to:

Coblentz, Patch, Duffy & Bass, LLP
222 Kearny Street, 7th Floor
San Francisco, California 94108
Attn: Pamela S. Duffy
Telefacsimile: (415) 989-1663

For the convenience of the parties, copies of notice may also be given by telefacsimile.

Every notice given to a party hereto, pursuant to the terms of this MOU, must state (or must be accompanied by a cover letter that states) substantially the following:

- (a) the Section of this MOU pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (c) if approval is being requested, shall be clearly marked "Request for Approval under the Mission Bay South Arts Commission MOU"; and

(d) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

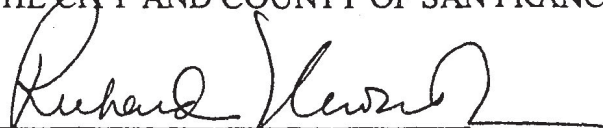
The notice requirements herein shall not apply to submissions for approvals or to subsequent Arts Commission actions (subject to the Agency's and the Department of Public Works' respective obligations to notify the Owner of such actions as provided herein).

5.2 Successors and Assigns; Third Party Beneficiary. This MOU shall inure to the benefit of and bind the respective successors and assigns of the Arts Commission and the Agency. The Owner, including any Transferee of the Owner permitted under the South OPA, is an intended third party beneficiary of this MOU. Except as provided above with respect to the Owner and its permitted Transferees, this MOU is for the exclusive benefit of the parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person.

5.3 Other General Provisions. Without limiting Section 1 of this MOU, any of the general provisions of the Interagency Cooperation Agreement not otherwise specified in this Section 5 are incorporated herein and made a part hereof by reference.

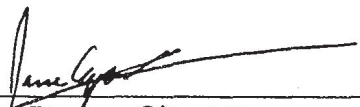
IN WITNESS WHEREOF, the Arts Commission and the Agency have duly executed and delivered this MOU as of the date first written above.

ARTS COMMISSION
OF THE CITY AND COUNTY OF SAN FRANCISCO

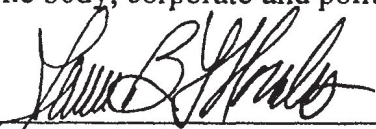
By 
Richard Newirth
Director of Cultural Affairs

APPROVED AS TO FORM:

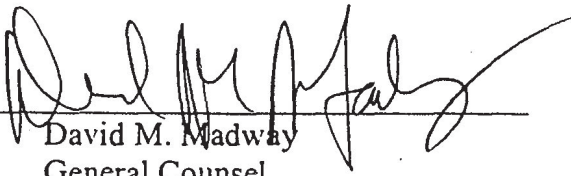
LOUISE H. RENNE
City Attorney

By 
Deputy City Attorney

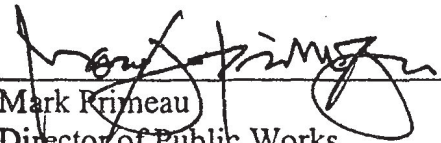
REDEVELOPMENT AGENCY OF THE CITY
AND COUNTY OF SAN FRANCISCO,
a public body, corporate and politic, of the State of California

By 
James B. Morales
Executive Director

APPROVED AS TO FORM:


David M. Madway
General Counsel

APPROVED as to approval process for Improvement Plans:



Mark Primeau
Director of Public Works

EXHIBIT A

LAND USE PLAN AND PROJECT DESCRIPTION

EXHIBIT A
MISSION BAY SOUTH
LAND USE PLAN AND PROJECT DESCRIPTION

Initially capitalized terms unless separately defined in this project description have the meanings and content set forth in the South OPA. "Local-serving" has the meaning and content set forth in the Mission Bay South Redevelopment Plan.

The South Plan Area contains a mix of primarily residential, retail and commercial/industrial uses, with associated parking and loading areas, together with supporting infrastructure, including a significant open space component. The development program of Owner and the Agency for the South Plan Area is more specifically as follows:

I. Owner's Development Program.

A. Infrastructure Program.

The Owner's obligations with respect to Infrastructure are set forth in the Infrastructure Plan. Together with the Mission Bay Subdivision Code and Regulations, the Infrastructure Plan establishes the design standards, construction standards, criteria and specifications for Infrastructure in the South Plan Area. In addition, the Infrastructure Plan and the South OPA describe the obligations of Owner and the City with respect to community facilities, including a police/fire station and school, which are both permitted on sites so designated in the Mission Bay South Redevelopment Plan. The Infrastructure Plan also contains an Infrastructure phasing methodology which establishes the timing and components of Infrastructure that will be required in connection with a Major Phase or Project.

B. Development Program Components.

In addition to and in conjunction with the Infrastructure described in the Infrastructure Plan, the Owner is permitted to construct the following Improvements in the South Plan Area on sites where such uses are permitted by the Mission Bay South Redevelopment Plan:

1. Up to approximately 1,900 market-rate Dwelling Units as defined in the Mission Bay South Redevelopment Plan; provided, however, that Owner may elect to construct additional units that the Agency would otherwise be permitted to construct pursuant to the terms and conditions of Section 3.4.3 of the South OPA.
2. Up to approximately 230,000 Leasable square feet of retail uses as defined in the Redevelopment Plan. The allowable retail space includes: 159,300

Leasable square feet of Local-serving retail, 20,700 Leasable square feet of City-serving retail, and 50,000 Leasable square feet of entertainment retail.

3. An up to 500 room hotel and associated facilities such as retail, banquet and conference rooms.
4. Up to 5,000,000 Leasable square feet of Commercial Industrial uses, as defined in the Mission Bay South Redevelopment Plan.
5. Public facilities, including open lot or enclosed storage, pump station, railroad tracks and related facilities, or other public use or structure.
6. Approximately 41 acres of open space, including eight acres within the UCSF site, plus an additional approximately two (2) acres on Port property outside of and adjacent to the South Plan Area.
7. Associated parking and loading, as provided in the Mission Bay South Design for Development document.
8. Temporary uses permitted under the Mission Bay South Redevelopment Plan and interim uses as may be approved pursuant to the Mission Bay South Redevelopment Plan.
9. Non-conforming uses, subject to the terms and conditions of the Mission Bay South Redevelopment Plan.

C. Streetscape.

The Owner shall prepare and submit to the Agency a Streetscape Plan for the South Plan Area prior to or concurrent with the first Major Phase submission. The Streetscape Plan shall be a concept level plan which includes, at a minimum, the following:

1. Street Trees. The Streetscape Plan will depict the types of street tree species proposed, general location, planting frequency and size, and relationship to the street hierarchy.
2. Lighting. The Streetscape Plan will describe lighting fixture types, general location and frequency.
3. Street Furnishings. The Streetscape Plan will describe, for street furnishings such as benches, trash receptacles, newspaper racks, bicycle racks and kiosks, their general location, frequency and types.
4. Sidewalk Treatment, Paving and Curbing. The Streetscape Plan will depict generally the sidewalk treatment, paving and curbing features.

D. Signage.

The Owner shall prepare and submit to the Agency a Signage Plan for the South Plan Area prior to or concurrent with the first Major Phase submission. The Signage Plan shall be a concept level plan which includes, at a minimum, a description of any uniform signage features proposed for the South Plan Area or, at Owner's election, as to those land use categories contained in the first Major Phase. Uniform signage features for any remaining land use categories would then be submitted as part of the first Major Phase submission that contains such categories. Uniform signage is not required, however, for the South Plan Area or any land uses therein, except for signs and images that pertain to safety, direction and orientation, which shall be located and signed consistently in major paths and intersections.

E. Channel Edge.

The Owner shall prepare and submit to the Agency a Channel Edge Plan. This Plan, covering the portions of blocks P1, P2 and P8 from the top of the South Channel bank toward the Channel to the mean low tide line, shall be a concept level plan which describes concepts for vegetation and, where necessary, bank stabilization techniques. This information will be submitted for blocks P1, P2 and P8 prior to or concurrent with the first Major Phase submission that includes one or more of these blocks. The treatment of P3 will be addressed separately as part of the Major Phase submission that includes that block.

II. Agency's Development Program

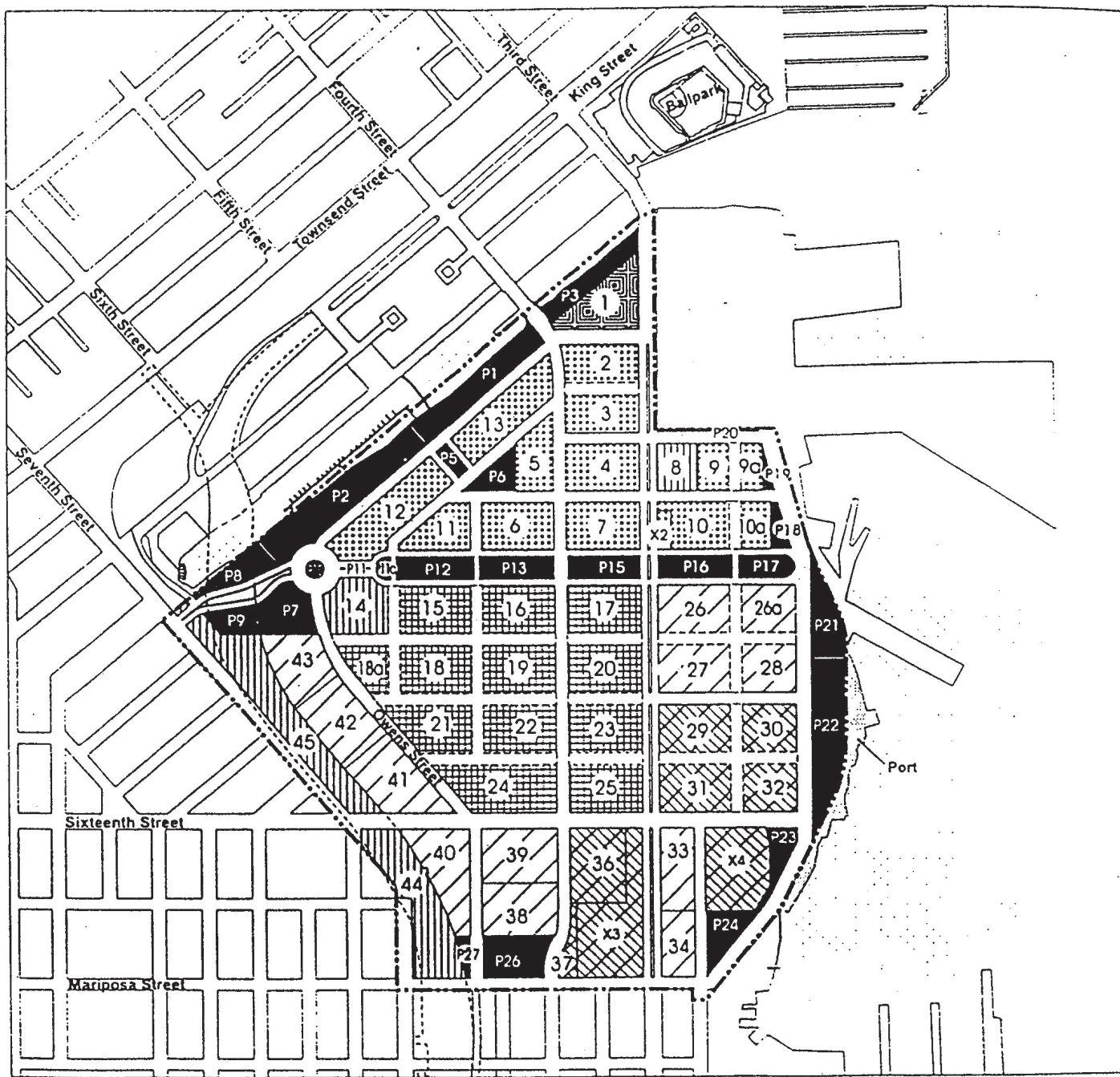
A. Infrastructure.

The Agency's obligations with respect to Infrastructure are set forth in the Infrastructure Plan and the Mission Bay Subdivision Code and Regulations. The Owner is responsible for providing Infrastructure to the Agency Affordable Housing Parcels in accordance with the South OPA, consistent with the Infrastructure Plan and Mission Bay Subdivision Regulations, including the phasing methodology.

B. Development Program Components.

1. Up to approximately 1,100 Affordable Housing Units, including a mix of rental and ownership units. This number may be increased under the terms and conditions of the Mission Bay South Housing Program.
2. Associated parking and loading, as provided in the Design for Development document.
3. Up to approximately 30,000 Leasable square feet of Local-serving retail on Affordable Housing Parcels.

4. Temporary uses permitted under the Mission Bay South Redevelopment Plan and interim uses as may be approved pursuant to the Mission Bay South Redevelopment Plan.
5. Non-conforming uses, subject to the terms and conditions of the Mission Bay South Redevelopment Plan.



- | | | | |
|--|--|--|--|
|  OPEN SPACE |  HOTEL
(Mixed use including Retail) |  UCSF |  COMMERCIAL INDUSTRIAL / RETAIL |
|  MISSION BAY RESIDENTIAL
(Mixed use including neighborhood serving Retail) |  COMMERCIAL INDUSTRIAL
(Mixed use including neighborhood serving Retail) |  PUBLIC FACILITIES
(School, Police, Fire, Rail and Area below Freeway) | |

0 300 N

MISSION BAY LAND USE PLAN - SOUTH

JOHNSON FARM PARTNERS

SAN FRANCISCO, CALIFORNIA

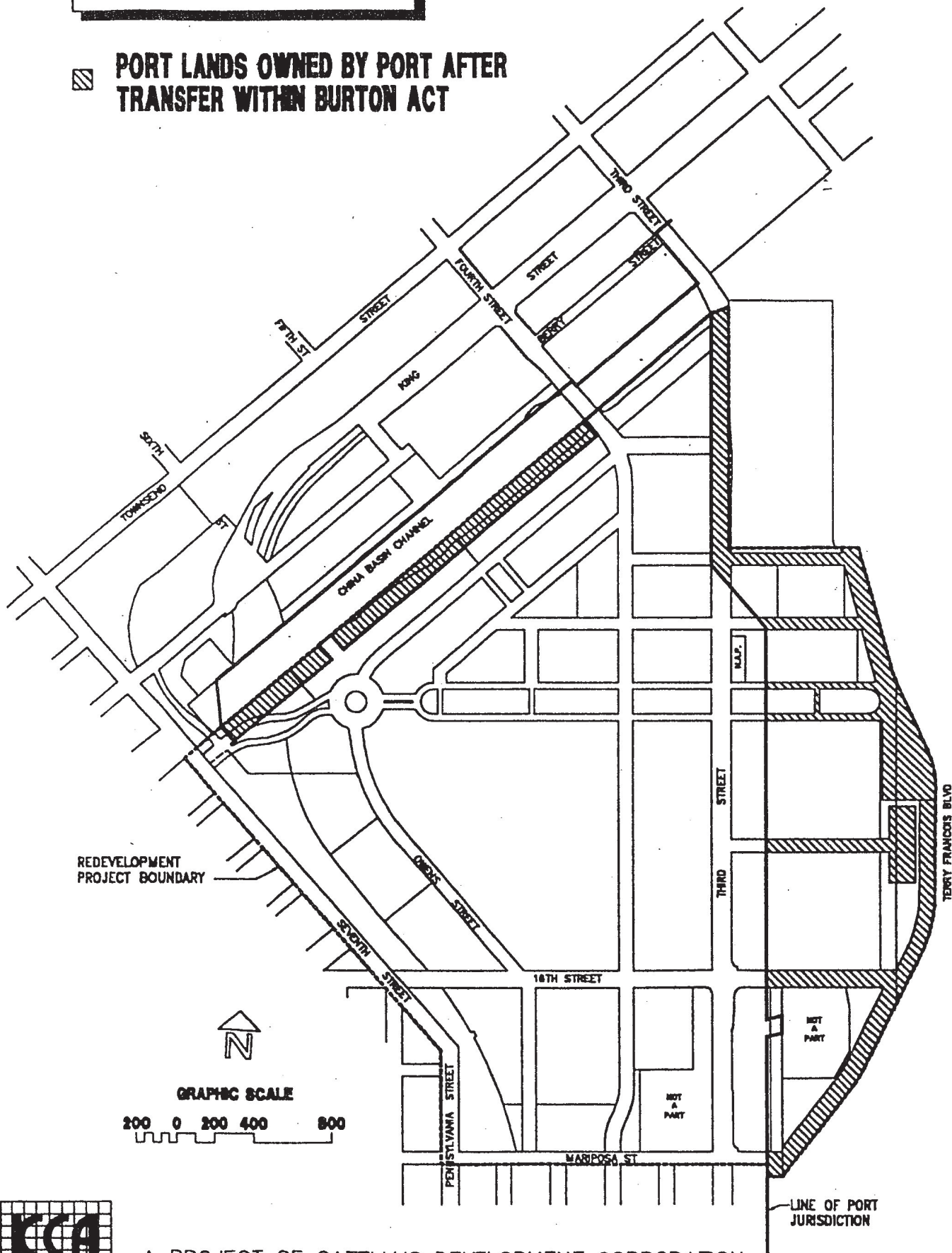
CATELLUS DEVELOPMENT CORPORATION

EXHIBIT B

MAP OF PORT PROPERTY IN THE PLAN AREA

PORT / BURTON LANDS SOUTH PROJECT AREA


**PORT LANDS OWNED BY PORT AFTER
TRANSFER WITHIN BURTON ACT**



TRANS-13 98.1300 / L



A PROJECT OF CATELLUS DEVELOPMENT CORPORATION

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE OFFICE OF COMMUNITY INVESTMENT AND INFRASTRUCTURE AND
THE SAN FRANCISCO ARTS COMMISSION**

This Memorandum of Understanding (“MOU”) dated as of _____, 2021, is by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, commonly known as the Office of Community Investment and Infrastructure (“OCII”) and the City and County of San Francisco (“City”), a municipal corporation, acting by and through its San Francisco Arts Commission (“**Arts Commission**”).

WHEREAS, City, acting through its Board of Supervisors, approved, by Ordinance No. 335-98 (Nov. 2, 1998), a Redevelopment Plan for the Mission Bay South Redevelopment Project (“Redevelopment Plan”), which has been amended from time to time and will expire on November 2, 2028; and

WHEREAS, The Redevelopment Plan establishes a program for land use and development activities in the Mission Bay South Redevelopment Project Area (“Project Area”), supersedes the Planning Code, and provides the Redevelopment of the City and County of San Francisco (“Former Agency”) with the authority to implement the Redevelopment Plan; and

WHEREAS, Section 304.9 of the Redevelopment Plan establishes, among other things, that certain commercial development within the Project Area shall comply with the “Art Requirement” defined as:

The installation and maintenance of works of art costing an amount equal to 1 percent of the hard costs of initial construction (excluding therefrom the costs of Infrastructure and tenant improvements) of a Project for retail or commercial uses exceeding 25,000 gross square feet of floor area prior to the issuance of the first certificate of occupancy or such later time as may be determined by the Agency not to exceed one year thereafter; provided, however, that where the works of art are proposed to be included within an Open Space Parcel, such installation may occur any time prior to completion of the improvements to the Open Space Parcel. Such works may include sculpture, bas-relief, murals, mosaics, decorative water features, fountains, tapestries or other artwork and shall be located in and permanently affixed to a Project, its grounds or an Open Space Parcel or the surrounding area; and

WHEREAS, The City approved, by Ordinance No. 335-98 (Nov. 2, 1998), the Mission Bay South Interagency Cooperation Agreement (“ICA”) whereby the City agreed to assist and cooperate with the Former Agency in implementing the Redevelopment Plan. Section 2.2 (b) of the ICA provides, among other things, that the City’s assistance to the Former Agency may be included in “any memoranda of understanding or other agreements among the City Agencies or the City and the Agency that may be entered into in furtherance of this Agreement;” and

WHEREAS, The Former Agency and the Arts Commission entered into the Mission Bay South Memorandum of Understanding (“1999 MOU”) dated January 4, 1999 (attached as ExhibitA) to confirm the Arts Commission authority in reviewing and approving final designs for public structures and for private structures and works of art on City property and to establish a process whereby the Former Agency and Arts Commission would work cooperatively and expeditiously in

reviewing and approving those matters within the Arts Commission's authority in the Project Area; and

WHEREAS, Section 2.3 of the 1999 MOU states that the Arts Commission's approval of any works of art on City property includes review and approval "by the Visual Arts Committee (or it[s] successor) and the Arts Commission," but that its "process for selection of art and artists under its Public Art Program" does not apply to private development in the Project Area; and

WHEREAS, State law dissolved the Former Agency on February 1, 2012, Cal. Health and Safety Code §§ 34161 *et seq.* ("Redevelopment Dissolution Law"), and provided, among other things, that successor agencies assumed certain rights and obligations of the former redevelopment agencies. In particular, state law requires successor agencies to fulfill enforceable obligations that the former redevelopment agencies had entered into prior to June 28, 2011 ("Enforceable Obligations"). The Board of Supervisors, in its capacity as governing body of the successor agency for the Former Agency, approved Ordinance No. 215-12 (Oct. 4, 2012) to implement Redevelopment Dissolution Law and established the Successor Agency Commission to which it delegated authority to exercise land use, development and design approval for "surviving redevelopment projects" and authority to implement the Former Agency's Enforceable Obligations; and

WHEREAS, OCII, the Successor Agency to the Former Agency, is a legal entity separate from the City, has assumed the remaining rights and obligations of the Former Agency, and has "succeed[ed] to the organizational status of the former redevelopment agency" with the authority "to complete any work related to an approved enforceable obligation," Cal. Health & Safety Code § 34173 (g); and

WHEREAS, The Redevelopment Dissolution Law provides, among other things, that successor agencies may enter into contracts for the purpose of "winding down the redevelopment agency." Cal. Health & Safety Code § 34177.3 (b) and "agreements necessary for the administration or operation of the successor agency." Cal. Health & Safety Code § 34171 (d) (1) (F); and

WHEREAS, OCII has a continuing Enforceable Obligation to implement the Redevelopment Plan's Art Requirement and has collected in-lieu fees from those private developers who elected not to provide a work of public art on the site of their development ("In-Lieu Art Fees"). As of March 2021, the In-Lieu Art Fees available are \$1.1 million; and

WHEREAS, OCII seeks the services of the Art Commission for the administration and coordination of commissioning an artist or artist team to design, engineer, fabricate, transport, and install an artwork on Park P2 along Mission Creek ("Park P2") and other City property, located in the Project Area, use the In-Lieu Fees for payment of Arts Commission's costs associated with these services, and comply with the Arts Commission final design review authority as provided for in the 1999 MOU; and

WHEREAS, OCII will fund the MOU with the In-Lieu Art Fees that it receives from private developers and will reimburse SFAC for actual billed hours, subject to approval of expenditures on the Recognized Obligation Payment Schedules ("ROPS") that OCII submits to the Oversight Board and the California Department of Finance ("DOF") and subject to the fiscal year budgets approved by the Commission and San Francisco Board of Supervisors.

Accordingly, OCII and the Arts Commission desire to set forth their mutual understandings and agreements with respect to the Project as follows:

1. **PURPOSE OF THIS MOU; RELATIONSHIP TO 1999 MOU.** The purpose of this MOU is to assist OCII in implementing the Art Requirement by using the In-Lieu Art Fees to pay for the services and expertise of the Arts Commission in selecting art and artists under the Arts Commission's Public Art Program for works of art that will be placed in Park P2 and other City property located in the Project Area. The 1999 MOU establishes that the Arts Commission has final design review authority over works of art that are to be placed on City property (other than Port property).
2. **POLICIES AND GUIDELINES FOR THE CIVIC ART COLLECTION.** The Policies and Guidelines for the Civic Art Collection of the City and County of San Francisco (attached as Exhibit B) shall govern the Arts Commission's use of the In-Lieu Art Fees; provided, however, that particular guidelines are consistent with the Redevelopment Plan, the 1999 MOU, and this MOU; and provided further that OCII shall have one representative on the Artist Qualification Panel and two representatives on the Artist Review Panel and that the Arts Commission shall conduct workshops for the Successor Agency Commission and the Mission Bay Citizens Advisory Committee presenting the artist finalists prior to the final artist selection.
3. **PUBLIC ART PROJECT PLAN.** The Public Art Project Plan shall be consistent with this MOU and shall identify the art opportunities, project scope, budget, selection process, level of community involvement and timeline for the project. The Art Commission has prepared a Public Art Project Plan for the artwork in Park P2, and shall prepare a Public Art Project Plan for any additional artwork to be installed by the Art Commission in Mission Bay, should developers pay additional in-lieu fees. Both OCII and the Art Commission will approve each Public Art Project Plan prior to proceeding.
4. **IN-LIEU FEES.** The In-Lieu fees will be treated as Art Enrichment Funds as described in Section 4.1 and OCII shall be deemed to be a Client Agency as defined in the Policies and Guidelines for the Civic Art Collection of the City and County of San Francisco, provided the In-Lieu Fess will only be used consistent with this MOU.
5. **INVOICING.**
 - a. On a quarterly basis, the Art's Commission will package all labor and non-labor charges with supporting documentation into the quarterly journal entry for OCII to review and approve. OCII shall pay these charges through an intergovernmental revenue transfer. Upon completion of the artwork, OCII shall transfer a maintenance and conservation fee equal to 10% of the funds administered by the Public Art Project Plan to the Art's Commission for maintenance and conservation of the artwork.. In no instance will OCII be obligated to provide any funds other than the In-Lieu Fees in its possession. Arts Commission will provide OCII monthly budget reports on the use of the In-Lieu Fees provided. Arts Commission will retain any funds remaining on

Project for maintenance of artwork and other artworks in OCII's jurisdiction, as approved by OCII.

- b. Total Amounts available are subject to OCII receiving sufficient expenditure authority in its annual budget approved by the Board of Supervisors and in its expenditure authorizations approved by the Oversight Board and the DOF. OCII will notify the Arts Commission immediately of any deficiencies in these budget authorizations.

6. OWNERSHIP OF ARTWORK; ACCEPTANCE INTO CIVIC ART COLLECTION; MAINTENANCE.

- a. Upon completion of the project and final payment to the artist, ownership of the artwork shall transfer to the City under the jurisdiction of the Arts Commission, the artwork will be accessioned into the Civic Art Collection, and the Arts Commission shall assume responsibility for the artwork consistent with its obligations under the City Charter and the Policies and Guidelines for the Civic Art Collection of the City and County of San Francisco, as incorporated into this MOU.
- b. Arts Commission will maintain files containing artwork records, artist files, condition reports, maintenance reports, conservation records, and other similar records. Arts Commission staff may provide copies of the files to OCII staff for duplicate storage purposes, in the Arts Commission staff's discretion.
- c. The Arts Commission shall maintain the artwork to the best of its abilities within available resources consistent with its obligations under the City Charter and the Policies and Guidelines for the Civic Art Collection of the City and County of San Francisco. However, although the Commission strives to maintain the Civic Art Collection in good repair and condition, the Commission is not required by this Agreement to maintain the Artwork to any particular standard.
- d. Arts Commission will provide the OCII Executive Director with an Artwork Maintenance Plan upon completion of the Project. The Arts Commission will be responsible for the implementation of the Artwork Maintenance Plan.
- e. OCII Executive Director shall, to the extent funds are available, work in good faith with the Commission by informing the Commission of needed maintenance or repairs, and to assist in the standard maintenance of the artwork as described in the Artwork Maintenance Plan provided. Standard maintenance—such as minimally invasive, routine and regularly scheduled activity—may involve the removal of superficial dirt or debris build-up on the surface of the artwork, or the cleaning of non-art support material such as a pedestal or plaque.
- f. Arts Commission shall be responsible for specialized maintenance and conservation of the artwork that may include activities that minimize chemical and physical deterioration and damage, and that prevent loss of informational content. Specialized maintenance may include graffiti removal, significant repair, and other activities intended to prolong the existence of cultural property, and should be undertaken or overseen by a professional conservator.

7. ROLE OF OCII. OCII Executive Director shall have the following rights and responsibilities in implementing this MOU:

- a. Review and approve reimbursement requests.
- b. Provide feedback to Arts Commission staff in the preparation and issuance of RFPs or RFQs seeking qualifications from artists under the Public Art Guidelines;
- c. Have representation on the Artist Qualification Panel (1 panelist) and Artist Review Panel (2 panelists)
- d. Assist with identifying members of the Mission Bay community to serve on the selection panel.
- e. Provide the Arts Commission with all relevant site plans, locations of utilities, site restrictions, site history and other materials and information necessary to produce the RFQ.
- f. Assist with outreach to the local community; ensure that the community surrounding the Project Site participates in the process for selecting artist(s) and artwork(s).
- g. Notify Arts Commission of any issues, problems, conflicts or concerns regarding the design of a proposed artwork.
- h. Assist with securing permits for work to be completed.
- i. In the event that Artwork(s) procured and installed for the Project should need to be removed, relocated, and/or stored for any reason, or if OCII anticipates changes at the site that may result in the destruction or alteration the artwork, or otherwise impact the appearance or visibility of the artwork, OCII shall notify the Arts Commission of its intent at least 90 days prior to such work, and submit the request for changes to the Arts Commission.
- j. Notify Arts Commission of the transfer of Mission Creek Park to the City Agency that will responsible for its management upon OCII's dissolution.
- k. Work cooperatively with the Arts Commission to authorize the installation of the art work, upon its completion, on City property that is subject to the ground lease by and between the City and County of San Francisco, the Port Commission, and OCII, as successor to the Redevelopment Agency of the City and County of San Francisco (Nov. 16, 2001).

8. SCHEDULE

The goal of the parties is to accomplish the above work according to the schedule shown in the attached **Exhibit C**. However, the parties understand that this schedule may need to be revised based on unforeseen factors which may impact the time needed to accomplish the above.

9. CONTACTS

The initial designated representative for OCII for this MOU is Marc Slutzkin, Project Manager, Mission Bay North & South, Tel: (415) 749-2516, Email: Marc.Slutzkin@sfgov.org. The designated representative for the Arts Commission is Jackie von Treskow, Public Art Project Manager, Tel: (415) 252-2225, Email: jackie.vontreskow@sfgov.org.

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Signed:

Ralph Remington
Director of Cultural Affairs
San Francisco Arts Commission

Sally Oerth
Interim Executive Director
Office of Community Investment and
Infrastructure

APPROVED AS TO FORM:

By: _____
James B. Morales
Agency General Counsel

EXHIBIT A PARK P2 ARTWORK LOCATION

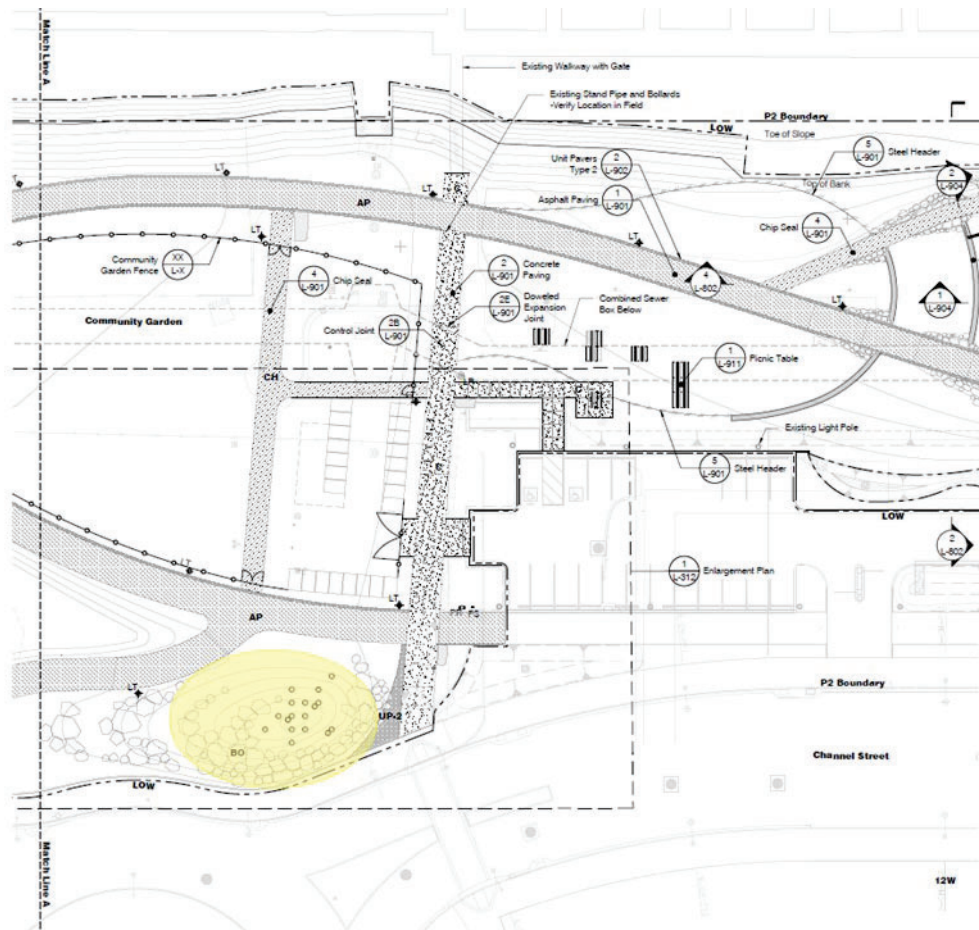
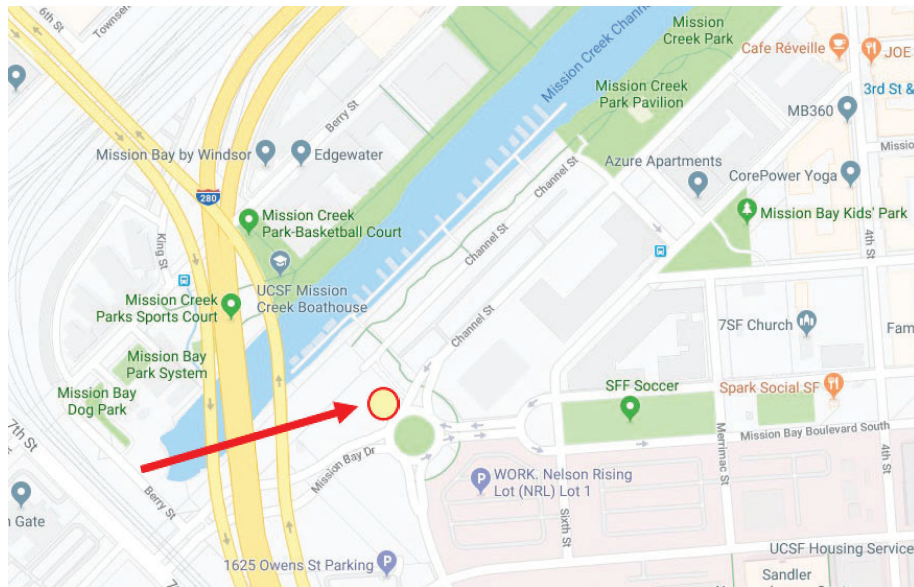


EXHIBIT B
SAN FRANCISCO ARTS COMMISSION PUBLIC ART GUIDELINES

**POLICIES and GUIDELINES for the CIVIC ART COLLECTION of the CITY and
COUNTY of SAN FRANCISCO UNDER THE JURISDICTION OF THE SAN
FRANCISCO ARTS COMMISSION Updated 12/9/2020**

APPROVED RESOLUTION # 0104-21-002

Introduction:

In accordance with the City Charter Section 5.103, the San Francisco Arts Commission is charged to “encourage artistic awareness, participation and expression...promote the employment of artists and those skilled in the crafts...and enlist the aid of all City and County governmental units in the task of ensuring the fullest expression of artistic potential by and among the residents of San Francisco.”

Racial Equity Statement: The San Francisco Arts Commission is committed to creating a city where all artists and cultural workers have the freedom, resources and platform to share their stories, art and culture and where race does not predetermine one’s success in life. We also acknowledge that we occupy traditional and unceded Ohlone land. Fueled by these beliefs, we commit to addressing the systemic inequities within our agency, the City and County of San Francisco and the broader arts and culture sector. This work requires that we focus on race as we confront the inequities of the past, reveal inequities of the present and develop effective strategies to move all of us towards an equitable future.

Purpose: This document establishes policies and procedures for the acquisition, placement, and stewardship of works of art in the Civic Art Collection (Collection) of the City and County of San Francisco (CCSF). All artworks owned by CCSF (not under the jurisdiction of the City Fine Arts Museums) are under the jurisdiction of the San Francisco Arts Commission (SFAC), whether acquired through the Art Enrichment Ordinance, Gifts or Bequests or by any other method and are governed by the following policies. In the formulation and adherence to these policies, the Arts Commission is guided by the principals of the Americans for the Arts’ (a national arts advocacy organization) recommendations outlined in the following reports and incorporated here by reference: *Best Practices for Public Art Projects* and *Cultural Equity in Public Art*.

Mission:

The mission of the Civic Art Collection is to promote a rich, diverse and stimulating cultural environment in order to enrich the lives of the city’s residents, visitors and employees, and to enhance the city’s image both nationally and internationally. The San Francisco Arts Commission is committed to acquiring and preserving works of art in the Collection that have recognized artistic merit and cultural or historical significance. In accordance with our agency’s mission and values, we seek to acquire and preserve a civic art collection that presents diverse racial, social and cultural perspectives. Acquisition by the City and County of San Francisco implies a commitment to the preservation, protection and display of the artwork for the public benefit.

Goals of the Civic Art Collection:

1. Artwork acquired for the collection should reflect outstanding artistic merit. Artistic merit may be judged by such measures as: originality of concept and artistic vision; the degree to which the work engages the viewer emotionally, intellectually,

spiritually and the quality of craftsmanship or mastery of skills and techniques. Artistic merit may also be accredited to artwork that reflects a significant or direct relationship between artist and distinct racial or cultural communities.

- a. Objects accepted into the collection must be of known authorship and be accepted based on their value as works of art.
- b. Objects whose primary identity is that of an historical, architectural, or religious artifact should not be included in the collection.
2. Artwork accepted into the collection should be able to be permanently exhibited in an appropriate site, and be able to be maintained by the Commission for public display according to the guidelines herein.
3. The City's collection should be diverse in its representation of artists and artistic styles. To that end, the Commission strives to acquire artwork that is reflective of the Commission's racial and gender equity values and goals. The artwork should reflect the regions many cultures and the Commission should be mindful of avoiding Eurocentric bias in the acquisition of artwork for the Collection.
4. The City's collection should emphasize Bay Area artists, styles and movements, but should also seek to include the work of artists nationally and internationally so that local culture may be seen within a global context.
5. Artwork acquired and accepted into the collection should be appropriate in scale, media and imagery within the context of its intended display location, and be relevant within the racial, cultural, historical, social/political and environmental context of its location within the community.

1. DEFINITIONS:

- **Accession:** The formal process used to accept an artwork into the Civic Art Collection and record an item as a Collection Object.
- **Administrative Code:** Administrative Code of the City and County of San Francisco. May be modified by a majority vote of the Board of Supervisors.
- **Arts Commission:** Charter mandated department governed by 15 members appointed by the mayor, in addition to one ex-officio member. The make-up, function, powers, and duties of the Arts Commission are defined in the City Charter Section 5.103 and further defined in Sections 2A.150 and 2A.150.1 of the Administrative Code.
- **Artist:** Individual artist, team of individual artists, or artist team leader of individuals from other disciplines whose body of work and professional activities demonstrate serious ongoing commitment to the fine arts.
- **Artist Fees:** Artist fees refer to that portion of the project budget reserved for payment to the artist for his/her creative services for design, fabrication, and project management services. Fees do not include other labor, materials, travel, and per diem allowances for out-of-town artists.
- **Art Enrichment:** For the purposes of this document, Art Enrichment refers to works of art purchased or commissioned with funds generated by the Art Enrichment Ordinance, Section 3.19 of the Administrative Code, ordinance defines "Art Enrichment" as the acquisition, installation of original works of art, or temporary

installation of the same, on public property for aesthetic and cultural enhancement of civic spaces and engagement of the public with the creative work of artists.

- **Art Enrichment Ordinance:** Refers to Section 3.19 of the San Francisco City Administrative Code. The ordinance mandates that 2% of total gross estimated construction cost of a wide range of civic construction shall be allocated for acquisition of artwork, with specified exemptions (see Appendix A).
- **Art Enrichment Allocation Report:** A form submitted by a City department with a capital improvement project (CIP) prior to being scheduled for Civic Design Review that provides basic project information, the total construction budget, and the art enrichment allocation based on that budget.
- **Art Project Budget:** That portion of the Public Art Project budget reserved for the direct design and implementation of the artwork, exclusive of Arts Commission administrative fee and conservation allocation.
- **Artwork or Work of Art:** For the purpose of these guidelines, Artwork, or Work of Art, is defined as a work in any media that is the result of the unique creative expression of an artist.
- **Capital Improvement Project (CIP):** The construction or alteration of a building, above ground structure, new park, or transportation improvement project as defined in the Art Enrichment Ordinance.
- **CIP Manager:** The Client Agency or PW staff person charged with managing the Capital Improvement Project.
- **City:** City and County of San Francisco, a municipal corporation.
- **City Charter:** The City Charter of the City and County of San Francisco. Provisions of the City Charter may be changed only by a vote of 2/3rds of the voters.
- **Civic Art Collection (Collection):** The Civic Art Collection is comprised of artworks that have been accessioned by the Arts Commission on behalf of the City and County, or are otherwise under the jurisdiction of the Commission.
- **Civic Art Collection and Public Art Program (CAC/PAP) Director:** Reports to the Director of Cultural Affairs and oversees and directs the implementation of the Commission's Civic Art Collection and Public Art Programs.
- **Civic Design Review Committee (CDRC):** The Civic Design Review Committee is a subcommittee of the Arts Commission. The CDRC implements the Charter mandate for the Arts Commission to review the design of any structure placed on public property. Civic Design Review approval is awarded in three phases: Phase 1 for Schematic Design, Phase 2 for Design Development, and Phase 3 for Construction Documents.
- **Client Agency:** The City department conducting the capital improvement project that generates art enrichment funds and the recipient of the artwork purchased or

commissioned by the Arts Commission with these funds for a particular capital improvement project.

- **Conservation:** See “Preservation.” For the purposes of this document, the terms “conservation” and “preservation” are used interchangeably.
- **Contract Monitoring Division:** City department that monitors City contracts to insure equitable participation of Local Business Enterprises (LBE).
- **Deaccession:** The formal process of removing accessioned objects permanently from the Civic Art Collection.
- **Director of Cultural Affairs (DCA):** The Director of Cultural Affairs is the Chief Executive Officer of the San Francisco Arts Commission.
- **Public Works (PW):** City department charged with overseeing City capital improvement projects, including architectural and engineering design and construction management.
- **Implementation Budget:** All costs associated with project implementation exclusive of design costs, such as artist and consultant fees, engineering/architectural services, taxes and permit fees. The implementation budget includes fabrication, transportation, installation, insurance, bonding, related labor and materials costs.
- **Maintenance:** As defined in Sec. 429.1 Definitions of the Planning Code; “Maintenance” shall mean a minimally invasive, routine and regularly scheduled activity that may involve the removal of superficial dirt or debris build-up on the surface of the artwork or the cleaning and repair of non-art support material such as a pedestal or plaque. For the purposes of this document, this definition shall apply generally whenever “maintenance” of artwork is referenced.
- **Monuments:** Structures, sculpture or other objects erected to commemorate a person or an event.
- **Plaque:** For the purpose of this document “plaque” refers to identification signage affixed on or near an artwork that identifies the title, artist, media, etc.
- **Preservation:** As per Section 429.1 of the Planning Code, “Preservation shall mean the protection of cultural property through activities that minimize chemical and physical deterioration and damage, and that prevent loss of informational content. The primary goal of preservation is to prolong the existence of cultural property, and should be undertaken or overseen by a professional conservator.” For the purposes of this document, the terms preservation and conservation are used interchangeably, and the definition above shall apply generally whenever “conservation” or “preservation” is used.
- **Proposal Honorarium:** Payment made to each public art project finalist for developing a public art proposal.

- **Proposal:** The Artist's design proposal for a project that typically includes drawings and/or models illustrating the project and how it will fit into the site, project description and budget, typically requested from a limited number of finalists as a means of providing the basis for final artist selection.
- **Public Art Fund:** Despite the name, this fund has no direct connection with the Public Art Program. Established in Section 10.100-30 of the Administrative Code, the Public Art Fund is "established as a category six fund to receive all revenue from programs, events, and sale or use of works of art which are under the supervision and control of the Arts Commission."
- **Public Art Program:** The Arts Commission program that administers the purchase and/or commissioning of artworks for public display acquired as a result of the Art Enrichment Ordinance, Public Art Trust or from any other funds designated for that purpose.
- **Public Art Project:** An original work of art commissioned or purchased for installation on public property for aesthetic and cultural enhancement of civic spaces and engagement of the public with the creative work of artists.
- **Public Art Project Manager (PAPM):** Arts Commission staff members who are assigned to manage specific public art projects for the Commission's Public Art Program.
- **Public Art Trust (PAT) or Arts Commission Public Artwork Trust Fund:** Established by Ordinance No. 62-12, the San Francisco Administrative Code was amended by adding Section 10.200-29 to Section 429 of the Planning Code (see Appendix B). The ordinance allows developers subject to the 1% Public Art Fee of the Planning Code to deposit a portion of the 1% fee into the Public Art Trust to be administered by the Arts Commission for the purposes of creation, installation, exhibition, conservation, preservation and restoration of temporary and permanent public art and capital improvements to nonprofit art facilities within a half mile of the project boundary.
- **Public Art Trust and Special Initiatives Program Director:** Reports to the Director of Cultural Affairs and manages the Public Art Trust Program, special projects and staffs the Civic Design Review Committee.
- **Review Panel:** An ad hoc panel whose charge is to review potential candidates and/or art proposals and make a recommendation to the Arts Commission for the selection of an artist(s) and/or art proposal(s). Arts professionals serving on the panel are approved by the Commission.
- **Senior Registrar:** Under the direction of the CAC/PAP Director is responsible for the care, maintenance, and management of the Civic Art Collection and the maintenance of records and other documents related to the Collection.
- **Visual Arts Committee (VAC):** The sub-committee of the Arts Commission that reviews and approves all programs, activities, acquisitions, design proposals and

public art projects related to the visual arts within the jurisdictional purview of the Arts Commission.

- **Work of Art:** “Work of Art” – see “Artwork”.

2. CHARTER RESPONSIBILITIES OF THE SAN FRANCISCO ARTS COMMISSION: City Charter Section 5.103 and Administrative Code Section 2A.150 assign the following powers, responsibilities and duties to the Arts Commission relative to the Civic Art Collection:

2.1 Arts Commission Approval of Design of Public Structures:

- 2.1.1 Arts Commission shall approve the designs for all public structures, private structures that extend over or upon any public property and yards, courts, setbacks or usable open spaces which are an integral part of any such structures (City Charter).

2.2 Arts Commission Approval of Design and Location for Works of Art:

- 2.2.1 Approve the design and location of all works of art before they are acquired, transferred to or sold by the City and County, or are placed upon or removed from City and County property, or are altered in any way; maintain and keep an inventory of works of art owned by the City and County; and maintain the works of art owned by the City and County (City Charter).

- 2.2.2 No work of art shall be contracted for, placed or erected on property of the City and County or become the property of the City and County by purchase, gift or otherwise, except for any museum or art gallery, unless such work of art, or a design or model of the same as required by the Arts Commission, together with the proposed location of such work of art, shall first have been submitted to and approved by the Commission. The term “work of art”...shall comprise paintings, murals, decorations, stained glass, statues, bas relief or other sculptures; monuments, fountains, arches or other structures of a permanent or temporary character intended for ornament or commemoration. No existing work of art in the possession of the City and County shall be removed, relocated or altered in any way without the approval of the Commission, except as otherwise provided herein (Administrative Code).

2.3 Arts Commission Supervision and Control of Expenditures:

- 2.3.1 The Arts Commission shall supervise and control the expenditures of all appropriations made by the Board of Supervisors for the advancement of the visual, performing or literary arts (City Charter).
- 2.3.2 The Arts Commission shall supervise and control the expenditure of all appropriations made by the Board of Supervisors for music and the advancement of art or music (Administrative Code).

- 2.4 Arts Commission Supervision of Policy Connected with the Arts:** The Commission shall exercise all reasonable policy connected with the arts as may hereafter be assigned to it by ordinance or executive action (Administrative Code).

2.5 No Abridgment of Rights of Museums, Academy of Sciences or Library Commissions:

- 2.5.1 Nothing in this (Charter) section shall be construed to limit or abridge the powers or exclusive jurisdiction of the charitable trust departments or the California Academy of Sciences or the Library Commission over their activities; the land and buildings set aside for their use; or over the other assets entrusted to their care (City Charter).
- 2.5.2 Nothing (in the Administrative Code) shall be construed to limit or abridge the legal powers of the governing boards of the War Memorial, the Fine Arts Museums or the Asian Art Museum (Administrative Code).

3. ACQUISITION OF ARTWORK THROUGH ART ENRICHMENT, PUBLIC ART TRUST, OR OTHER SOURCES OF FUNDING DEDICATED TO THE PURPOSE OF ACQUIRING ARTWORK FOR THE PURPOSE OF PUBLIC DISPLAY.

3.1 Enabling Legislation:

- 3.1.1 Section 3.19 of the Administrative Code (Art Enrichment Ordinance)
- 3.1.2 Section 10.100-29 of Section 429 of the Planning Code (Arts Commission Public Artwork Trust Fund)
- 3.1.3 City Charter; Section 5.103; Article VIII Sec. 2A 150 of Administrative Code
- 3.1.4 Chapter 21.04(a)(b)(4) of the Administrative Code (Departments Purchasing Authority)

3.2 Roles and Responsibilities:

- 3.2.1 Arts Commission: By City Charter Section 5.103 the Arts Commission must approve the design and location all works of art before they are acquired, transferred or sold by the City and County. The Visual Arts Committee, a subcommittee of the full Commission, recommends actions, which are then submitted to the full Arts Commission for approval by Resolution.
- 3.2.2 Visual Arts Committee (VAC): The responsibility of the Visual Arts Committee is to review and make recommendations to the full Arts Commission relative to the purchase and/or commissioning of artworks. Duties include, but are not limited to the following:
- Establish and approve Public Art Program mission, curatorial and programmatic goals, policies and guidelines.
 - For each new public art project, approve the project parameters, including artist selection process and selection criteria, project budget and a list of prospective Review panelist members.
 - Appoint a member of the VAC to serve as a member on the Review Panel appointed by the Committee.

- Review and approve Review Panel recommendations and submit to the full Arts Commission for a Resolution.
- Approve proposals (design and budget) for works of public art at each stage of development: conceptual proposal, design development and construction documents.
- Approve completed works of art as installed, and recommend Arts Commission acceptance of the work into the Civic Art Collection.
- If at any point the Committee does not give its approval for any of the above, the Committee shall take action as defined under Section 4.9, Recourse.

3.3.3 Civic Design Review (CDR) Committee: Relative to the Public Art Program, the responsibilities of the Civic Design Review Committee and supporting staff include, but are not limited to the following:

- Ensure that Civic Design Review applicants have submitted a completed Art Enrichment Allocation Form and Civic Art Collection Report prior to Phase One Review and initiated discussion with the Public Art staff regarding opportunities for artist involvement (see Appendix C).
- Non-compliance on the part of the client agency with the art enrichment requirement may result in refusal by the Civic Design Committee to schedule future required reviews.
- At the request of the Visual Arts Committee, the Civic Design Review Committee may review proposals for artwork that may have architectural or urban design implications and make recommendations and comments to the Visual Arts Committee as needed.
- When proposed public art projects have overlapping jurisdiction or interests, a joint meeting of the Visual Arts and Civic Design Review Committees may be scheduled at the request of either committee or the full Arts Commission.

3.3.4 Director of Cultural Affairs (DCA): The Director of Cultural Affairs, as the senior executive for the Arts Commission, has broad authority for directing the operations of the agency. In regard to the Public Art Program, the Director has the responsibility of working with Public Art Program staff to develop a vision for the curatorial and programmatic goals of the PAP, and for ensuring that these are in concert with the broader mission and goals of the Arts Commission.

3.3.4.1 In accordance with Commission Resolution #0507-12-143 the Director may take the following actions without further approval from the Commission:

- May approve contracts, purchase orders, or direct payment vouchers not exceeding \$100,000 for services provided by a wide range of vendors, including but not limited to: artists, contractors, consultants, printers, graphic designers, photographers, signage fabricators and photo labs, whose services do not require design approval from the Commission.

- May approve contract modifications and additional project expenses not exceeding \$100,000 that are within the project budget, unless design approval is required by the Commission.
- May approve the start-up of new art enrichment projects including determination of overall project parameters.
- May approve short-listed candidates recommended by Review Panels.
- May authorize entering into design contracts not to exceed \$100,000.

3.3.4.2 In accordance with Commission Resolution # 0507-12-142, the Director may take the following actions without further approval from the Commission:

- May approve contracts, purchase orders or direct payment vouchers up to \$500,000 with conservators, art technicians, or other qualified contractors for the purpose of performing conservation, maintenance and repair on works of art in the City's art collection.
- May approve contracts, purchase orders, or direct payment vouchers up to \$500,000 with art service providers for transportation, storage, installation, de-installation of artwork, construction of cases, vitrines and framing, and other similar work related to the care and maintenance of the City's collection that does not require design approval from the Commission.

3.3.5 Civic Art Collection and Public Art Program (CAC/PAP) Director: The CAC/PAP Director shall work with the Director of Cultural Affairs to develop a vision for the curatorial and programmatic goals of the CAC/PAP and ensure that these are in concert with the broader mission and goals of the Arts Commission. The CAC/PAP Program Director duties include oversight of all aspects of implementation of the CAC/PAP programs.

3.3.6 Senior Public Art Program Manager (SPAPM) and Public Art Project Managers (PAPM) Under supervision of the CAC/PAP Director, the SPAPM oversees the work of the PAPMs and is responsible for the overall management of Public Art Program projects from inception to completion, including: working with the client department, community and Commission to develop project plans; implement and administer artist selection processes; implement contract negotiation and monitor compliance; coordinate public art project with CIP design team, general contractor, artist and artist's subcontractors; develop and monitor budgets and otherwise provide all phases of project management,

3.3.7 Senior Registrar: Under the supervision of the CAC/PAP Director, the Senior Registrar manages the Civic Art Collection and is responsible for overseeing the stewardship for the artworks in the Civic Art Collection. For artworks being considered for acquisition, the Senior Registrar provides materials and maintenance assessments during the development of artwork proposals that may enter the Civic Art Collection. The Senior Registrar submits a motion requesting Resolution to the Visual Arts Committee for formal acceptance of a completed work of art into the Civic Art Collection. The Senior Registrar assigns an accession number to artworks accepted into the Collection, catalogues the artwork within the program's collection management database, and maintains project records and

important documents as part of the CAC archives.

3.3.8 Client Agency: The Client Agency, or the Client Agency in conjunction with the Department of Public Works, have the following responsibilities to the Public Art Project:

3.3.8.1 Client Agency shall Allocate 2% of the total gross estimated construction cost for eligible capital improvement projects per Section 3.19 of the Administrative Code. The Client agency shall provide the Arts Commission with an estimated Art Enrichment Allocation prior to being scheduled for Phase 1 approval from Civic Design. The Client Agency shall submit the Art Enrichment Survey Form, signed by the CAC/PAP Director, as part of its application for Phase I approval. The final art enrichment allocation will be determined by the estimated construction cost at the completion of Construction Documents; verification of final art enrichment allocation must be received prior to the Client Agency being calendared for Civic Design Phase 3 Approval.

3.3.8.2 Arts Commission Approval of Allocation: The Arts Commission must approve the art enrichment allocation from a particular capital appropriation, or any alternative use of the art enrichment funds as specified in Section 4.1.4. If the Client Agency determines that 2% of the construction cost is inappropriate for Art Enrichment, it may, in accordance with paragraph (a) Art Enrichment Ordinance, submit its recommendation regarding the art enrichment budget and the basis for its determination to the Art Commission for review. If the parties cannot resolve the matter, the Arts Commission shall submit the matter to the Mayor for resolution within 60 days of the recommendation being made. Failure of the Commission to submit the matter to the mayor within 60 days shall be deemed as the Commission's acceptance of the recommendation of the client agency.

3.3.8.3 The Client Agency shall meet with the CAC/PAP Director to discuss the Art Enrichment Program prior to being calendared for Phase 1 approval from the Civic Design Review Committee.

3.3.8.4 The Client Agency shall complete and submit the Art Enrichment Survey Form and submit to Civic Design Committee Coordinator prior to being scheduled for Phase 1 review at Civic Design.

3.3.8.5 The Client Agency shall provide the following information to the PAPM regarding eligible capital construction projects:

- Verify to the Arts Commission that 2% of the total construction cost has been allocated for the Art Enrichment Program.
- Facility location and function.
- Provide the amount of the construction appropriation, supported by a line item budget.
- Assign an Agency representative to be the Art Commission's liaison on the project.
- Provide the name and contact information for each firm and consultant on the Design team, including, but not limited to the architect and structural engineer of record.
- Provide the commission with a project timeline and a construction timeline.
- Identify the funding source, i.e. bond funds, state grants, etc.
- Identify any existing artwork on the project site.

3.3.8.6 Include the allocation for the Art Enrichment Program in the gross estimated construction budget as required by the ordinance.

3.3.8.7 Where there is existing artwork on the site the Client Agency shall 1) Include the cost of any required protection, removal, storage and re-installation or relocation of existing artwork on the project site in the construction budget; 2) Apply to the Arts Commission for approval of any plans to relocate, alter or destroy an existing artwork (see section 7.5, Alteration, Modification or Destruction of Artwork.)

3.3.8.8 The Arts Commission and the artist shall be credited in all media releases, announcements or any public document concerning the artwork and included and acknowledged at the facility dedication.

3.3.9 Capital Improvement Project (CIP) Manager: The CIP Manager shall:

Ensure the participation and cooperation of the architectural design team, project management team, and General Contractor in coordinating the inclusion and integration of the public art projects within the greater CIP. Services related to coordination of the public art project within the greater CIP shall be considered basic services and not charged separately to the Public Art project budget. Such basic coordination services shall include, but not be limited to the following:

- Schedule and attend coordination meetings with the Arts Commission staff and artists, architectural team and/or General Contractor. The CIP Manager will ensure that a designated representative of the Client Agency and/or Project Management team will attend all meetings with the architectural design team and/or the General Contractor relative to the art enrichment project.
- Transfer Funds: The Arts Commission shall provide the Client Agency and/or PW with an estimated annual art enrichment budget for the CIP. The Client/PW shall endeavor to make an annual transfer of funds to the Arts Commission to implement the art enrichment project(s), less any adjustments attributable to expenses to be paid by the Client/PW principally for the sake of aiding the efforts of the SFAC and artist, for instance design of additional structural support for the artwork, use of project cost estimator, etc. Such adjustments will be based on accepted proposals for service by the particular parties approved by both the SFAC and the Client/PW.
- Remaining Art Enrichment Funds: Remaining Art Enrichment funds will be retained by the Arts Commission for conservation of artwork at the project site or other sites under the Client's jurisdiction. In the event that the funds are general obligation bond funds, or other funds that expire, the Client agency will endeavor to find a different source of funds to allow for the continued conservation of artwork in the Civic Art Collection.
- Provide the PAPM with all available relevant site plans, locations of utilities, site restrictions, site history and other materials and information necessary to produce the Public Art Project plan, the Request for Qualifications (RFQ) and provide artists with information as necessary to develop their proposals. It is acknowledged that such materials may be when offered, in-progress and not definitive delineation of the current and/or eventual status (of the materials.) As the status evolves, the SFAC will be provided with appropriate iteration thereof.

- Facilitate review and approval of the Public Art Project Plan with the Client agency and design team. Once approved, the Project Plan provides the framework for which the public art project is executed. Assist with community input in development of plan and outreach of RFQ, identify Client Representative(s) to serve on review panels and assist with identifying community representative(s) to serve on review panels. Client Representative should be authorized to make decisions on artist selection on behalf of the Client agency.
- Provide the PAPM with complete and accurate design and construction schedule information as it becomes available to allow the artwork design to be planned for and integrated into project documents. Ensure that the General Contractor include site work relative to the art project and artwork installation in the master construction schedule.
- Ensure that any work relative to the Public Art Project that is to be performed by the General Contractor is integrated into the contract bid documents and that the PAPM is provided with a copy of a draft of the bid documents pertaining to the artwork for review, comment and approval prior to their being issued.
- Ensure SFAC and SFAC's contractors have access to the construction site to perform their work. Arts Commission shall ensure that staff and Commission contractors undertake any required safety training and adhere to site safety protocols.
- Notify the SFAC of any issues, problems, conflicts or concerns that might necessitate a change in the design of a proposed artwork.
- Incorporate the artwork into the general building permit, to the extent that the artist has produced sufficient drawings and calculations necessary to obtain a permit. If the development of the artwork has not progressed sufficiently to be included as part of the building permit package managed by PW (and/or Client Agency), the SFAC shall be responsible for obtaining a separate permit so as not to delay the overall project schedule.
- Manage communications between the SFAC PAPM and Design Team, Client Agency, and General Contractor during design and construction, including but not limited to SFAC approval of General Contractor-provided samples and mock-ups, response to RFI's, and access to construction site by project artist and/or subcontractors for installation of artwork. Ensure that the SFAC staff be copied on all correspondence, emails and/or meeting notes. CIP Manager shall not communicate directly with SFAC project artist(s) or SFAC subcontractors.
- Where the SFAC is requesting additional services specific to the artwork, such as additional structural engineering design, or architectural design that reasonably might be considered above and beyond basic services, the CIP Manager shall assist the SFAC in negotiating an additional services proposal from the Design Team, the cost of which may be charged to the Art Enrichment allocation. Such additional service proposals shall be presented to the Arts Commission as soon as they are identified, but no later than 50% Design Development.

4. PUBLIC ART PROGRAM GUIDELINES:

4.1 Art Enrichment, Public Art Trust, or Public Art Funding from any other source

4.1.1 Funding Allocation:

4.1.1.1 Art Enrichment (“AE”): In accordance with Section 3.19 of the Administrative Code, allocations will represent 2% of the gross estimated construction cost, excluding the cost of the proposed artwork. Exemptions to this requirement are itemized in Section 3.19 of the Administrative Code.

4.1.1.2 Public Art Trust: Commercial Development in specified districts are subject to 1% Public Art Fee. Developers of Non Residential Developments are required to spend \$500,000 or \$750,000 of that fee on the property depending on whether the development has more or less than 3,000 sq. ft. of open space. After this minimum requirement is met, the Developer may elect to use any remaining balance of the Public Art Fee either (a) on the development site; (b) to contribute the entire remaining balance to the Public Art Trust; or (c) divide the remainder between on-site use and contribution to PAT.

4.1.1.3 Funds provided from other sources: Charter Section 5.100 provides that the governing boards of the arts and culture departments may accept and shall comply with the terms and conditions of loans, gifts, devises, bequests or agreements donating works of art or other assets to their department without action of the Board of Supervisors so long as acceptance of the same entails no expense for the City and County beyond ordinary care and maintenance. As a general principal, PAP funding from other sources, public or private, shall be administered under the policies and procedures incorporated in these guidelines.

4.1.2 Commission control of funds: Both AE Ordinance and PAT, and authority granted under the City Charter stipulate that the Arts Commission shall supervise and control the expenditure of all AE and PAT, or ther dedicated funds for art.

4.1.3 Administrative Fee: Both AE Ordinance and PAT stipulate that the Arts Commission may allocate up to 20 percent of the funds for all necessary and reasonable administrative costs incurred in connection therewith unless such administrative fee is limited or prohibited by the funding source. Administrative costs include:

- Public Art staff salaries and benefits.
- PAP office overhead (Percentage of Administrative staff salaries and benefits, office space rental costs, equipment, office supplies, telephone, periodicals, photocopies) and non-project related local field (parking, public transit, local travel) and other general administrative costs. The percentage of agency overhead charged to the PAP is calculated annually based on number of FTE staff charged to the program.

4.1.4 Maintenance and Conservation Funds:

4.1.4.1 Art Enrichment Funds: As per Section 3.19 of the Administrative Code: When permitted by the funding source, the Arts Commission may set aside and expend up to ten percent of the total art enrichment allocation for each project for maintenance and conservation of artworks in the Civic Art Collection. In the case where the project has limited public access, or generates funds insufficient to acquire new artwork, or cannot otherwise be used

judiciously for that purpose, the Arts Commission may use the entire project Art Enrichment allocation for maintenance and conservation as per these guidelines (Section 4.1.5 “Aggregation of Funds/Use of Funds at a location other than the CIP Site”). Funds set aside pursuant to this Section may be invested in an interest-bearing account when the total of such funds set aside exceeds \$10,000.

4.1.4.2 Public Art Trust Funds: As per Section 429.5 of the Planning Code: Funds contributed to the Public Art Trust may be used for the conservation, preservation, and restoration, but not maintenance of temporary and permanent public works of art in the public realm within the geographic restrictions of this section.

4.1.5 Aggregation of Funds/Use of Funds at a location other than the CIP Site:

4.1.5.1 Regarding Art Enrichment Funds: As per Section 3.19: When mutually agreed upon by the Arts Commission, the City department from whose capital project the art enrichment allocation was obtained, and any other City department with jurisdiction over a proposed alternative site, and where permitted by the funding source, the Arts Commission shall have the authority to aggregate art enrichment funds for use on an alternative City property.

4.1.5.2 Regarding Public Art Trust Funds: Funds contributed to the Public Art Trust may be used at any site within the geographic restrictions of Planning Code Section 429.

4.1.6 Allowable Expenditures:

4.1.6.1 Use of Bond Funds: Art Enrichment funds derived from bond fund sources have certain restrictions:

- Use for Capital Purposes: Bond funds must be used for the construction of “real property” and as such, Artwork funded with bond funds must be permanently sited and have a useful life of at least three to five years, but ideally for the life of the building where the artwork is located.
- Fixtures, Furnishings and Equipment (FF&E) are not eligible for bond funding. For the art enrichment program, this may mean that portable artworks not permanently affixed to the site may not be eligible for use of bond funds.
- Use of Bond Funds for Conservation: Bond funds may be used for activities that substantially prolong the life of the City’s asset. While routine maintenance is not a bond-eligible expense, bond funds may be used to conserve permanently sited artworks within the Civic Art Collection.
- Expiration of Bond Funds: Bond funds must be expended on a City-owned asset during the project period, which is typically within three years of the funds becoming available for the project. Any unspent bond funds revert to the Client agency managing the bond program so that the program may be closed out.
- Additional Limitations: The specific language of the bond measure may include additional specific limitations. Possible limitations should be verified with the Client Agency on a project by project basis.

4.1.6.2 Art Project Budget: In general, any expense which is directly related to the artist selection and artwork design, fabrication and installation of the artwork, including but not limited to the following:

- Artist's fee for professional design, execution and installation of the art work(s) as described in the artist's budget, including any and all labor, materials, bonding, permits, or any other costs directly related to the implementation of the art project.
- Frames, mattes, pedestals, and devices necessary for the security, preservation and display of the artwork.
- Competition and Review panel expenses, including postage, photocopies and printing, panel refreshments and honoraria for Review panel jurors and artist finalists for public art commissions.
- Public presentation expenses.
- Project-related local field, long distance travel and messenger expenses.
- Project-related photography.
- Identification plaque installed per Commission specifications.
- Fire retardant and/or graffiti resistant treatments or other sealers or coatings as required.
- Insurance as required by the City.
- Plumbing, electrical and mechanical devices or equipment which are an integral part of the artwork.
- Consultant fees for other costs relative to the art project, such as architectural fees, engineering, cost estimates, lighting design, and other services as identified and as approved by the Arts Commission.
- Design and/or materials modifications to the capital improvement project necessitated by the art project. In the case where these changes/modifications increase the base cost of the capital improvement project, the art project will be credited with the base cost, and only the premium incurred by the art project will be charged to the art budget; i.e., if the original building material in an area was estimated to be \$20 a sq. ft., and the art project calls for an upgrade of material to \$30 a sq. ft., only the difference of \$10 a sq. ft. may be charged to the art project.
- Sales Tax (when applicable), and fees for required licenses and permits.
- Audio and video recordings or any other educational or informational materials necessary to help make the artwork programmatically accessible to the disabled and other members of the public.
- Any other expenses as deemed appropriate by the Arts Commission for the design, fabrication, transportation, installation and public accessibility of the artwork.

4.1.7 Exclusions: In general, art funds may not be expended for the following:

- Art objects that are mass produced and of standard design. However, limited editions signed by the artist of original prints, cast sculpture, photographs, etc., may be included.
- Decorative, ornamental, functional elements, or architectural features of the building` not designed by the artist (unless for the security of the work or to ensure public safety).
- Artworks designed by the architect.
- Expenses related to the ongoing operation of the artwork such as electrical, water or mechanical service required to activate the work and utility costs.

4.1.8 Project Donations: Project donations of labor, materials or funding must be approved by the Commission. An increase in project scope enabled by donations shall be evaluated for impact on staff resources. All donations which increase the artist's project budget must be matched by a proportional overhead amount to cover the increased administrative expenses.

4.2 Public Art Project Plan:

4.2.1 Arts Commission Approval of Public Art Project Plan: In general practice, the commencement of each new public art project, the Project Manager in consultation with the Program Director shall develop a Public Art Project Plan. The plan should identify the art opportunities, project scope, budget, selection process, level of community involvement and timeline. Approval of the Public Art Project Plan by the Client Agency and Arts Commission authorizes staff to proceed with implementing the plan.

4.2.2 Director of Cultural Affairs Approval of Art Plan: As per Arts Commission Resolution #0507-12-143, the Director of Cultural Affairs may approve *start up of new art enrichment projects, including determination of overall project parameters* where the budget does not exceed \$100,000 and where design approval is not required.

4.3 Eligibility:

4.3.1 Eligible Artwork: For the purposes of these guidelines, all forms of original creations (or limited editions) of visual art are eligible for acquisition through the Public Art Program.

4.3.2 Eligible Artists: all professional, practicing artists living in the United States are eligible to apply for City public art commissions.

4.3.3 Geographic Eligibility: As per City Attorney's direction, there are no restrictions on geographic eligibility. However, depending upon the specific needs of the agency or project, the Arts Commission may decide to limit or deny travel and per diem costs within the project budget on a project by project basis. Certain projects may also require the artist to attend meetings in San Francisco on short notice or frequently.

4.3.4 Ineligible Applicants:

- Arts Commissioners and Arts Commission staff members or members of their immediate family are not eligible for City public art commissions as long as they respectively serve on, or are employed by, the Arts Commission.
- Elected or Appointed City officials or members of their family are not eligible for consideration for public art commissions.
- City staff are not eligible for consideration for public art commissions.
- Members of the Project Architect's firm, or members of their immediate family, are not eligible for consideration as project artists.
- Artists who, at the time of application, already have two active contracts with the Commission are ineligible if the dates of the contracts are within 3 years of one another.

4.4 **Criteria:**

4.4.1 Selection Criteria for Artists and Artwork: Artists and artwork will be selected in accordance with the Mission and Goals of the Civic Art Collection and in accordance with the criteria below. Artworks in all media may be considered. Criteria to be used when considering when scoring an artist's application for a commission and/or acquisition of artwork by either purchase or commission shall include, but not be limited to the following considerations. Per City contracting requirements, artist applicants who are registered as a Local Business Enterprise will be given a rating bonus of 10% relative to other applicants.

- **Artistic Merit:** Artistic Merit may be judged by such measures as originality of concept and artistic vision; the degree to which the work engages the viewer emotionally, intellectually, spiritually; the quality of craftsmanship or mastery of skills and techniques. Artistic merit may also be credited to artwork that reflects a significant or direct relationship between the artist and distinct racial or cultural communities.
- **Relevant Skills & Experience:** Review Panels and the Commission shall consider the assessed ability of an artist to successfully implement a proposed project, such as the ability to work constructively with other project stakeholders, meet deadlines, willingness to resolve issues as they arise, and generally manage the demands of the project. Cultural competency and/or significant connection between the artist and the project constituency, or experience that may particularly qualify an artist to meet project goals may also be considered.
- **Meet Project Goals:** The proposed artwork (or the assessed ability of an artist to design a proposal) meets the specific goals of the project as defined in the Project Outline and/or RFQ or RFP as approved by the Commission.
- **The Artwork is Appropriate to the Site:** The artwork or proposed artwork is appropriate for its intended display location in terms of scale, media, design or imagery and is judged to be relevant within the context of the surrounding

community, and is compatible with the mission and operations of the client department.

- Feasibility, maintainability: Proposed objects shall be evaluated relative to their feasibility and evidence of the artist's ability to successfully complete the work as proposed. Factors to be considered include, but are not limited to: project budget, timeline, and the artist's experience. Due consideration shall be given to the structural and surface soundness, and to inherent resistance to theft, vandalism and weathering, and to the cost and amount of ongoing maintenance and/or repair anticipated.
- Contributes to the Quality of the Civic Art Collection: The artwork is judged to support and improve the city's collection in terms of artistic quality and diversity of artists represented. The Arts Commission is committed to acquiring art works that reflect diversity in style, scale, media, and artistic sources as well as diverse cultural communities and perspectives. The Arts Commission also encourages exploratory types of work as well as established art forms.
- Public Safety and Accessibility: Artwork shall be evaluated to ensure that it does not present a hazard to public safety and complies Americans with Disability Act (ADA) and with all other applicable building codes.
- Duplication: Artists will be asked to warrant, as a condition of their agreement with the City, that the artwork commissioned or purchased is unique and an edition of one, and shall not be duplicated unless it is part of a limited edition or otherwise stated to the contrary in the artist's contract with the Commission.

4.4.3 Site Criteria: The Commission shall consider the following when selecting and approving a site for the installation of artwork:

- Visibility and prominence of the artwork site
- Public accessibility of the artwork
- Public Safety
- Interior and exterior traffic patterns
- Relationship of proposed artwork to existing or future architectural features, natural features and urban design
- Function of the facility
- Facility users and surrounding community and interaction of users and community members with proposed artwork
- Future development plans for area
- Overall program goal or concept

- Landscape design
- Relationship of proposed artwork to existing art works within the site vicinity
- Environmental impact
- Social context of artwork (intended use of the work, if any)

4.5 Artist Recruitment:

4.5.1 Request for Qualifications (RFQ) or Request For Proposals (RFP): The RFQ or RFP shall be based on the approved project plan and contain the following information:

- Project description and goals
- Project parameters and scope-of-work
- Application deadline and project
- Timeline
- Application procedure and submittal requirements
- Selection procedure
- Criteria for selection of artist and/or artwork
- Budget

4.5.2 The Recruitment Plan: The PAPM shall develop a recruitment plan to ensure the commission will be advertised to a broad and diverse group of artists.

4.6 Artist Review Panels:

4.6.1 Review Panels; City Requirements: As per city contracting requirements, more than 50% of every contractor review panel must be made up of panelists from outside of the contracting department. The contract manager may not be on the review panel. For the purposes of the Public Art Program, this applies to both the pre-qualification panel and the final review panel meetings. Review panels are public meetings and must be posted and conducted accordingly.

4.6.2 Artist Qualification Panel and Composition: The purpose of the Artist Qualification Panel is to review all project applicants to develop a short list (usually between 15 - 30 applicants) deemed most qualified for the project opportunity. This qualified list is submitted for further review to the Artist Review Panel. The Artist Qualification Panel shall consist of a Public Art Program staff member (cannot be the project PAM) and two panelists from outside the department. The outside reviewers may also serve on the Artist Review Panel.

4.6.3 Artist Review Panel Composition: Review Panel composition may vary based upon the project's budget size. The reviewers who served on the Qualification panel (other than PAP staff) may serve on the Review Panel for continuity. The following represent typical composition of review panels; but representation may be varied if warranted by the circumstances of a particular project.

- For Project Budgets under \$;129,000:
 - One (1) representative of the client agency
 - One (1) representative of the Visual Arts Committee
 - Up to two (2) arts professionals

- One (1) community or stakeholder representative

- For Project Budgets over \$129,000:
 - One (1) Representative of the Client Agency.
 - One (1) Representative of the of the Visual Arts Committee
 - Three (3) arts professionals of recognized professional stature. When possible, one should be a representative of the community or constituency affected by the project.
 - One (1) or more community members or other project stakeholders
 - Representative of the Design Team, (such as the project architect); optional at the discretion of the CAC/PAP Director.

4.6.4 Arts Commission Approval of Arts Professional Panelists: A slate of arts professionals eligible to serve on the Public Art Program Review Panels are approved by the Arts Commission. The PAPM will make a good faith effort to assemble Review Panels that have a balance of gender and racial representation. In general, panelists will be drawn from the Bay Area, but occasionally, the PAPM may want to employ an out-of-town panelist for either reasons of expertise, or to provide an outside perspective.

4.6.5 Conflict of Interest: Persons who are family members, or who have or had a financial relationship with a candidate within the previous 12 months, and/or who would benefit financially from the selection of a particular artist or artwork are ineligible to score the work of those candidates and must recuse themselves from participation in the consideration of that candidate. Perspective panelists will fill out a conflict of interest form prior to be approved for service on a Review Panel, and must declare any such conflict of interest. Some associations, while not meeting the level of disqualifying conflict of interest, should nonetheless be stated for the record. If a panelists does have a conflict of interest with a particular candidate or candidates, the PM will follow steps outlined in paragraph 4.6.10, Panel Contingency.

4.6.6 Role and Duties of a Review Panel: In accordance with the approved Project Plan, the Review Panel will be asked to review and evaluate the following: 1) candidates applying for a public art commission 2) proposals for public art commissions submitted by finalist candidates or 3) make recommended selections of existing artworks for purchase. The role and duties of the Review Panel are as follows:

- Review applicants, proposals, are other artworks being considered and score them according to the established criteria with the goal of recommending a specified number of proposals or artworks to the Commission for purchase or implementation.
- Panelists are expected to undertake review and scoring fairly and judiciously.
- Panelists are expected to bring their expertise to the process, such as knowledge of art and artists, architecture, culture of the community or constituents, or other special knowledge relevant to the project, and share it with other panelists to better inform their work. Panelists are expected to engage in this discussion with due consideration and courtesy to other panelists.
- The panel will undertake its work in accordance with Arts Commission policies and procedures; all panel recommendations must be approved by the Arts Commission.

There may be other city departments that must approve recommendations as well

- If the Review Panel selects finalists for further review, the same panel will reconvene for this review.

4.6.7 Role of Panel Advisors: Panel advisors are non-voting stakeholders who bring their expertise to the project and participate in panel discussions. Advisors may include SFAC staff, architect, or other City staff. Advisor participation must be approved in advance by SFAC.

4.6.8 Identification and Recruitment of Panelists: PAPMs will identify and recruit review panelists. Individuals interested in serving as review panelists may be asked to submit a resume and references. Community representatives will be identified in consultation with the Client Agency and community organizations in the vicinity of the project.

4.6.9 Panelist Compensation: Arts Commissioners, other City agency commissioners, City employees and project team consultants who serve as panel members will do so without compensation. Compensation will be paid to arts professional panel members at the rate of \$400 a day, or \$200 a half-day. Arts professionals will also be reimbursed for the cost of travel and parking. Community members who serve on the panel may also be compensated for service.

4.6.10 Panel Contingency: In the case where a panelist cancels participation at such a late date that the panel cannot be rescheduled and a replacement panelist cannot be identified, or if a panelist must leave the meeting before scoring all candidates is complete, or if a panelist has a conflict of interest relative to a particular candidate, the Public Art Program shall have the following recourse:

- If the panelist is an Arts Commissioner, then the Commissioner will be replaced for that panel by a member of senior public art program staff or executive staff.
- If the panelist is an arts professional, member of the CIP design team, or representative of the community, the panel may proceed as scheduled. That panel member may be replaced by a member of the senior public art program staff or executive staff.
- If the client representative cannot attend and cannot provide an alternate, the CAC/PAP Director, in consultation with the Director of Cultural Affairs or Arts Commissioner representative on the panel, will determine whether or not the panel meeting will need to be canceled and rescheduled.
- In the case where a panelist has a conflict of interest relative to a selected finalist, or cannot attend the final review, the panelist must be replaced prior to the final meeting of the Review Panel. Arts Commissioners must recuse themselves from voting on the candidate at Commission meetings.

4.7 Scoring

- Panelist's score sheets are public documents and in accordance with City administrative code, each panelist's name must be on his/her score sheet, and score sheets must be collected and retained by staff after the completion of each panel review.
- Scoring criteria shall be as outlined in Section 4.4.1, Selection Criteria for Artists and Artwork.

- Scoring shall result in a numerical score for each applicant. Results of numerical score shall determine whether or not the applicant proceeds to the next level.
- Applicants who are registered as a Local Business Enterprise will receive a rating bonus as per Section 14B of the Administrative Code.

4.9 Recourse: The issuance of an RFQ and convening of a review panel does not constitute an agreement by the Commission that any contract will actually be entered into by the City. At any stage, the selection of an artist or project proposal may be interrupted by a majority vote of the appropriate body. If this occurs, the following options are available.

4.9.1 The Review or Qualification Panel may:

- Determine that the candidate pool has an insufficient number of qualified candidates and decline to select an artist or finalists.
- Determine that none of the finalist's proposals meet the project criteria and decline to make a selection.
- Panel may recommend that finalists be asked for further clarification or redesign of their proposals.
- Panelists may recommend that another group of finalists be selected.
- Panel recommendations shall be submitted to the Visual Arts Committee for approval.

4.9.2 Visual Arts Committee may:

- Determine that the candidate pool has an insufficient number of qualified candidates and decline to select an artist or finalists.
- Determine that none of the finalist's proposals meet the project criteria and decline to approve finalists
- Ask panel for clarification
- Request that finalists be asked for further clarification or redesign of their proposals and request panel reconvene.
- Reject panel's recommendations
- Develop new program
- Convene new panel
- Abandon project entirely and/or rescind previous approvals

4.9.3 Arts Commission may:

- Request clarification from VAC
- Reject VAC's recommendations
- Request new panel from VAC
- Request new program from VAC
- Abandon project entirely, and/or rescind previous approval

4.10 Public Participation in the Artist Selection Process: Public Participation shall include:

- Staff shall attend one or more community meetings to give a presentation about the Public Art Program, and to gather input from the community about artwork themes and attributes, at the beginning of the project planning phase as part of a regularly scheduled client-community meeting relating to the general construction project.
- Community shall be apprised that Review Panel meetings are open to the public and that interested persons are welcome to attend. A community representative shall serve on the Review Panel per the Public Art Project Plan.

- Proposals shall be publicly displayed on the SFAC website and may be displayed at or near the project site depending upon the nature of the project.
- Members of the public interested in commenting on any publicly displayed proposals are invited to provide written comments to be shared with the Review Panel and/or to attend the final Review Panel and/or Visual Arts Committee meeting where the proposals will be reviewed.

4.11 Proposal Development, Review and Approval

4.11.1 Proposal Memorandum of Understanding: Finalists for commissions must enter into an informal agreement (“Proposal Memorandum of Understanding” or MOU) with the Commission to develop a site specific proposal for the public art project opportunity. The Proposal Memorandum of Understanding details the proposal requirements, submittals, timeline and proposal fee amount.

4.11.2 Staff Review of Artwork Proposals: In order to ensure that artists propose feasible and durable artwork of the highest aesthetic quality, staff shall review the development of artwork proposals prior to any public display or submission to the Review Panel. Staff shall share any concerns about the proposal with the artist. Any staff concerns related to the quality and feasibility of the proposals not addressed by the artist in the final proposal shall be included in the staff report to the panel and/or the VAC.

4.12.3: Public Display of Proposals: Proposals shall be posted on the Arts Commission website for 2 weeks to allow for public comment. Proposal boards may also be placed on public view at an accessible public location in the neighborhood, as defined in the Project Plan or otherwise determined in coordination with the Client. Public comment shall be summarized and provided to the Review Panel for their consideration. Public comment is not a vote and should not be intended as an accurate representation of the community’s preference.

4.12.4 The proposal chosen by the Review Panel shall be submitted to the VAC for approval; VAC recommendations shall be submitted to the full Commission for approval by Resolution. In addition to the Arts Commissions, other reviews and approvals by appointed or elected bodies or individuals may be necessary.

4.13 Contractual Agreements and Purchase Orders:

- Commission approval of contractual agreement and purchase orders: For commissions, the Arts Commission shall contract with artists using the City contract developed by the Arts Commission and City Attorney specifically for this purpose. For purchases of existing artwork, the Arts Commission shall enter into a purchase agreement with the artist or gallery and enter into a copyright agreement with the artist.
- The Commission shall approve the contract or purchase order amount for all artwork commissions or purchases, or modifications of the same, except where that authority has been delegated to the Director of Cultural Affairs under Resolution No. 0507-12-143.
- Compliance with State Law regarding Artwork classified as a Public Work: For artwork that is classified as a public work under California State law, the

Commission shall contract separately with licensed contractors for installation of artwork and otherwise comply with all prevailing wage, bonding, and other requirements pertaining to the construction of a public work.

4.13.1 City Purchasing Department contract threshold requirements for Professional Services under Chapter 21 of Administrative Code:

- Contracts under \$10,000 may use direct selection with no RFQ/RFP
- Contracts between \$10,000-\$129,000 may use an informal bid process with solicitation of bids from at least three vendors.
- Contracts over \$129,000 require publication of an RFQ/RFP

4.13.2 City Purchasing Department Contract Thresholds for Chapter 6 Professional Services and Construction Contracts: Chapter 6 contracts are required for contracts that involve work that is classified as a Public Work under state law and city administrative code.

- Professional Services and Construction Contracts under \$110,000 require informal bid
- Professional Services and Construction Contracts over \$110,000 require RFQ/RFP

4.13.3 Bi-annual Pre-qualified Pool: The Purchasing Department allows departments to establish bi-annual pre-qualified pools for vendor selection, which allows the department to limit the competition for contracts to firms within the pre-qualified pool. The Public Art Program may establish a pre-qualified pool of artists to be considered for projects with budgets up to any contract ceiling limits approved by the Commission. The RFQ for the pre-qualified pool must be issued every two years. The Arts Commission shall determine the contract values eligible for each pre-qualified pool established.

4.13.4 Sole Source: Arts Commission must receive Sole Source approval by the Purchaser in order to enter into an agreement with any vendor that has not been selected through the required competitive selection process. The Sole Source approval process is detailed in Administrative Code, Chapter 21.5. Examples of Sole Source contracts previously awarded include contracts with an artist to repair his/her artwork, or perform a modification or extension of his/her artwork.

4.14 Artist's Fee Policy: It is the policy of the San Francisco Arts Commission to pay professional fees for all creative work requested from artists. The Commission's charge of public accountability requires a consistent policy for awarding equitable artist fees for public art projects. Because the particular circumstances for each project vary, the Commission must consider a number of factors in determining whether or not an artist's proposed fee is appropriate.

4.14.1 Factors Affecting the Amount of an Artist's Fee: Projects may be designed and executed by the Artist him/herself, or the Artist may be the designer and the project is fabricated by others. In either case, the Commission may consider the following factors in determining the artist fees awarded for each project:

- The scope of work and length of artist involvement
- The project budget
- The artist's experience and professional standing
- The fee scale for similar scopes of work on comparable projects
- Documented market value for similar examples of the Artist's work

- 4.14.2 Guidelines for Fees for Projects Not Fabricated by the Artist: In general, when a project is designed, but not actually fabricated by the artist him/herself the artist's fee should represent 10 to 20% of the Artist's contact budget and includes all phases of work, design through installation, and is compensation for both design and project management. Artist's project management responsibilities include, but are not limited to contracting with and overseeing artist's subcontractors, such as the artist's structural engineer and other consultants, and fabricators.

Artist's fee shall be based on the estimated amount of the Artist's contract, not the project budget, which may include work performed on behalf of the project under separate agreements with the City by the CIP architects, General Contractor, or other contractors under a separate agreement with the Arts Commission.

- 4.14.3 Soft Costs vs. Hard Costs: As a general guideline soft costs of the Public Art project should not exceed 25% of the project budget. Soft costs are defined as all artist and consultant fees and expenses (such as overhead, studio operation, and other labor) not directly tied to actual purchase of materials, fabrication, transportation or installation the artwork). Design fees of the CIP architects, and consultants, even if not included in the Artist's contract, are included in this formula.

4.14.4 Proposal Honorarium: Proposal honoraria are non-contractual payments made to artists for proposals made for specific sites as part of the selection process. While payment of honoraria does not transfer title of the proposal to the Commission without an agreement in writing, the Commission reserves the right of first refusal to purchase the proposal at fair market value. Below is the recommended fee range, though amounts may vary depending on the complexity of the proposal and/or project. Fees are based on the expected artist's contract amount. The proposal honorarium amounts do not include travel expenses that may be incurred by artists to participate in the orientation or final review panel.

:

Artwork Budget	Honorarium
Up to \$75,000	1.5% or not less than \$1,000.
\$75,000 - \$200,000	1.5% (\$1,125-\$3,000)
\$200,001 - \$500,000	1%-1.5% (\$2,000-\$7,500)
\$500,001 - \$800,000	.5%-1% (\$2,500-\$8,000)
\$800,001 plus	.5% (4,000 and up)

4.15 Non-reimbursable Artist Costs:

- **Artist's Agents:** The Arts Commission will deal directly with the artist; some aspects of a project may be delegated by the artist to his/her agent or representative if the artist so authorizes. All relationships and financial arrangements between artists and their agents, representatives and galleries must be undertaken by the parties alone. The Arts Commission assumes no responsibility for payment of fees and commissions, nor will it adjudicate differences between the parties. The payment of commissions or fees is the sole responsibility of the artist and must be deducted from the artist's fee. Under no circumstance will the Arts Commission increase the Artist's fee or the project budget to accommodate for the payment of gallery or agent fees.

- Legal Counsel: The cost of legal counsel to review and/or negotiate contacts with the Arts Commission, or for any other purpose may not be a budget line item charged to the Arts Commission.
- Insurance Not Required by the Arts Commission: The cost of premiums for any insurance not specifically required by the Commission may not be a line item expense charged to the Arts Commission.

4.16 Project Completion:

At the completion of each project, the following procedures shall be followed to facilitate the transfer of project responsibility from the Public Art Program to the Civic Art Collection.

Commission Resolution Approving Artwork as Installed: When an artwork has been created as part of a contractual agreement, the Commission shall approve the artwork as installed by Resolution upon the completion of the project. Such Resolution acknowledges that the artwork has been fabricated and installed in accordance with the contract documents and design approved by the Commission.

- Collection's Survey Forms: As a condition of final payment to the artist, the artist must complete a Collection's Survey Form, which documents fabrication methods, artistic intent, and maintenance requirements.
- Acceptance of the Artwork into the Civic Art Collection: Upon project completion the Senior Registrar shall prepare a Resolution for Commission approval accepting the artwork into the Civic Art Collection.
- Transfer of Files: Upon completion of the project, the PAPM will turn over the project files to the Senior Registrar.

EXHIBIT C
PARK P2 PROJECT
PROPOSED PUBLIC ART PROJECT TIMELINE

June 1, 2021	OCII Commission approval of project MOU with SFAC
June 16	Visual Arts Committee (VAC) approval of Park P2 Project Public Art Project Plan
June 21	Request for Qualifications (RFQ) posted
August 6	RFQ deadline
Week of August 9	Artist Qualification Panel <i>Screening of RFQ applicants</i>
Week of August 16	First Artist Review Panel <i>Identify three (3) finalists to develop site-specific conceptual proposals</i>
August 18	VAC approval of recommended artist finalists
Week of August 23	Artist orientation with project team and key stakeholders
September 13	Full Commission approval of finalists
October 8	Artist conceptual design proposals due
October 11 - 25	Artist conceptual proposals on display for public comment
October 14	SFAC PAPM presentation of artist conceptual proposals to Mission Bay Community Advisory Committee (CAC) for review and feedback
October 19	SFAC PAPM presentation of artist conceptual proposals to OCII Commission for review and feedback
Week of November 1	Final Artist Review Panel <i>Artist finalists present their proposals to the panel. Panel selects one artist finalist/proposal for recommendation to the Arts Commission.</i>
November 17	VAC approval of recommended artist/proposal
December 6	Full Commission approval of recommended artist/proposal
December 2021	Artist under contract
Summer/Fall 2023	Artwork installation at Park P2



MISSION CREEK PARK EXTENSION PUBLIC ART PROJECT PLAN

For presentation to OCII Commission June 1, 2021



BACKGROUND

Located near Oracle Ballpark, Mission Creek Park is an open, green space located on the north and south side of Mission Creek within the Mission Bay South Redevelopment Area. The Office of Community Investment and Infrastructure (OCII) is responsible for the implementation of the Mission Bay South Redevelopment Plan including the use of Art Fees to create art in Public Open Spaces. In Winter 2021/2022, FOCIL-MB LLC, with its development consultant the Mission Bay Development Group (MBDG), will begin construction on an extension of Mission Creek Park South to create an additional 3.24 acres of recreational open space west of the Mission Creek Park Pavilion.

The Mission Creek Park Extension (P2 and P8) will incorporate many of the design elements already found at Mission Creek Park, including dedicated bicycling and walking paths, informal areas for sitting and gathering, and native planting. The design for P2 also calls for preserving the character and feel of an existing public park, Huffaker Park, which currently houses a community garden that will be expanded and improved as part of the P2 design. Located under the I-280 freeway, P8 will feature extensive native plantings around a dedicated bicycle and pedestrian path. Completion of construction on the park extension is anticipated for Spring 2023.

ART OPPORTUNITY

- Focal sculpture, or series of smaller sculptures, located at the entrance of Mission Creek Park where Channel Street meets Mission Bay Drive.
- Artwork may consist of durable, natural materials that are appropriate for exterior use, including metal, stone, glass, and/or wood.
- Artwork may be illuminated at night.

PROJECT GOALS

- Artwork should be inspired by and responsive to the site, including its natural and physical landscape, history, and use.
- Artwork should have a visual impact from a distance, yet be integrated into the landscape and appropriate to the scale of the site.

ART ENRICHMENT AND PROJECT BUDGET

Total Art Enrichment Amount: \$1,125,000

Artwork Budget: \$535,000, inclusive of all artist's fees, as well as associated expenses for artwork design, fabrication, insurance, and transportation.

Site Work and Installation Allocation: \$150,000

ARTIST RECRUITMENT APPROACH AND ELIGIBILITY

Arts Commission staff will post an RFQ, which is open to professional practicing artists who reside in the United States. In addition to the RFQ applicants, artists in other Arts Commission prequalified pools may also be considered. Recruitment will focus on artists with a meaningful connection to the City and County of San Francisco, which may include if the artist currently resides, has resided in San Francisco, or has another significant connection to San Francisco. Artists will be asked to address their connection as part of the application process, and the review panel will be instructed to consider this connection as part of their scoring criteria.

ARTIST SELECTION PROCESS

After the application deadline the Arts Commission staff will screen applications to establish the pool of artists meeting the minimum eligibility requirements, which are professional practicing artists who reside in the United States. The eligible applications will be presented to an artist qualification panel consisting of one SFAC staff member, one representative of OCII, and one arts professional who will review and score the applications to identify the short list of qualified artists to be considered for the project opportunity. The scoring criteria will include the artist's meaningful connection to San Francisco.

The list of qualified artists will be presented to the Mission Creek Park Extension Project Artist Review Panel consisting of two representatives of OCII, one representative of Mission Creek Park Extension design team, one Arts Commissioner, one community member, and two arts professionals. The panel will identify three finalists who will be invited to develop conceptual site specific proposals after attending an orientation session with the project team and key stakeholders. These finalists will be paid an honorarium of \$3,000 plus travel reimbursement for development of a proposal.

The Mission Creek Park Extension Project Artist Review Panel will reconvene to consider the finalists' proposals in an interview format and will select one artist for recommendation to the Arts Commission.

COMMUNITY INVOLVEMENT

- SFAC staff will present an overview of the public art project to the Mission Creek Park Citizens Advisory Committee on May 13, 2021.

- A community representative will serve on the Mission Creek Park Extension Project Artist Review Panel and will participate in the Artist Orientation.
- The finalists' proposals will be on display for public comment on the SFAC website for two weeks prior to the final artist review panel meeting.
- The finalists' proposals will be presented by Arts Commission staff to the Mission Bay Citizen's Advisory Committee and OCII Commission for comment prior to the final artist review panel meeting.
- All review panels, Visual Arts Committee (VAC) and Commission meetings are open to the public, with an opportunity provided for public comment.

TIMELINE (Subject to change)

Project Plan Approval (OCII Commission)	June 1, 2021
Project Plan Approval (VAC)	June 16, 2021
RFQ Issued	June 21
RFQ Deadline	August 6
Qualification Panel	Week of August 9
First Project Artist Review Panel	Week of August 16
Artist Finalist Orientation	Week of August 23
Finalist Proposals Due	October 8
Final Project Artist Review Panel	Week of November 1
VAC Approval	November 17
Arts Commission Approval	December 6
Artist Under Contract	December 2021

FURTHER INFORMATION

Contact Jackie von Treskow, Public Art Project Manager at (415)252-2522 or by email at jackie.vontreskow@sfgov.org.