

**MEMORANDUM OF UNDERSTANDING BETWEEN  
THE AIRPORT COMMISSION AND  
THE ARTS COMMISSION OF  
THE CITY AND COUNTY OF SAN FRANCISCO**

This MEMORANDUM OF UNDERSTANDING (this “MOU”), dated July 10, 2017, constitutes a mutual agreement between the SAN FRANCISCO AIRPORT COMMISSION (the “Airport Commission”) and the SAN FRANCISCO ARTS COMMISSION (the “Arts Commission”), each of which is a department of the City and County of San Francisco (the “City”), for the purposes of defining the working relationship and responsibilities of each department.

**Background**

In accordance with Section 4.115 of the City Charter, the Airport Commission has charge of the construction, management, supervision, maintenance, extension, operation, use and control of all property and assets located at the San Francisco International Airport (the “Airport”), including the exclusive authority to plan and issue revenue bonds for airport-related purposes, subject to Board of Supervisors approval.

In accordance with Section 5.103 of the City Charter, the Arts Commission is required, among other things, to approve the designs for all public structures; to approve the design and location of all works of art before they are acquired, transferred or sold by the City, or are placed upon or removed from City property; to maintain and keep an inventory of works of art owned by the City; and to maintain the works of art owned by the City.

In accordance with Section 3.19 of the Administrative Code, before proposing a bond issue or making a request for an appropriation for the construction of any of certain projects, the Airport Commission is required to add to such bond issue or appropriation, for the art enrichment of the proposed construction, two percent of the gross estimated construction cost, exclusive of the items proposed for such art enrichment. An alternative to the two percent requirement can be proposed to the Arts Commission for its review. The Arts Commission has authority to supervise and control the expenditure of all funds appropriated for art enrichment. Works of art owned by the City and funded with art enrichment funds from the Airport are referred to in this MOU as the “Airport Art Collection.”

As part of the Airport’s capital projects under the Domestic Terminal Redevelopment Plan and other large capital projects, the Airport and the Arts Commission entered into a Memorandum of Understanding (“Prior MOU”) dated May 27, 2008 with the intent to define their respective responsibilities. The Prior MOU applied to expenses for the period from July 1, 2007 to June 30, 2017. In recognition that ongoing Airport capital projects will require continued coordination and cooperation between the Airport Commission and the Arts Commission, the parties have agreed to enter into this new MOU having a ten-year term.

This MOU is made in recognition of the requirements of the Federal Aviation Administration’s (“FAA”) Final Policy and Procedures Concerning the Use of Airport Revenue (the “Revenue Diversion Policy”) and the 1981 Settlement Agreement between the City, the Airport Commission and the major airlines serving the Airport.

In recognition of the foregoing, the Airport Commission and the Arts Commission have agreed to the following provisions relative to the acquisition and maintenance of works of art for the Airport.

**I. General Administrative Procedures**

Both the Arts Commission and the Airport Commission agree to follow the procedures below:

**A. Term of this MOU**

The term of this MOU shall commence on **July 1, 2017** and shall end on **June 30, 2027**.

**B. Commitment to Maintain the Airport Art Collection**

The Airport Commission will fund costs of maintenance of the Airport Art Collection from operating funds as provided in Section V.A., including entering into a separate memorandum of understanding with the Arts Commission for direct charges for the annual maintenance costs described in Section V.A.4. The maintenance and compensation costs described in this Section are referred to in this MOU as “Maintenance Expenses”.

Maintenance Expense Funding Level: The Airport Commission commits to an annual Maintenance Expense allocation from operating funds of not less than the FY 07/08 funding level (\$150,000), adjusting, as needed, for personnel step and cost of living increases and inflation for the duration of this MOU. The Airport Commission recognizes that the FY 07/08 Maintenance Expense funding level represents a baseline funding level only, and that the funding level may need to increase or decrease to properly address the maintenance and conservation needs of the collection as documented in the annual Maintenance Plan prepared by the Arts Commission and Airport Commission staff as per Section V.B.1.

The annual Maintenance Expense funding shall include:

- the salary and fringe benefits of dedicated staff (equivalent to one FTE) who will assist in planning, coordinating, supervising and performing the maintenance for the Airport Art Collection;
- Airport operating funds budgeted annually for cleaning and repair as per Sections V.A.1 and 2; and
- funds made available to the Arts Commission through a separate work order memorandum of understanding for conservation work as specified in V.A.4, including the cost of staff time associated with coordinating and supervising this work.

**C. Maintenance Endowment**

As permitted under Section 3.19 of the Administrative Code, ten percent (10%) of the art enrichment allocation of Airport capital improvement projects may be used for maintenance where the funding source allows, and may furthermore be placed in an interest-bearing account. To that end, the Airport has established a fund referred to in this MOU as the “Airport Art Endowment Fund” from eligible art enrichment funds generated by taxable Airport revenue bonds and annually makes available the interest earned from the Airport Art Endowment Fund to the Arts Commission for the purposes of maintaining the Airport Art Collection.

**D. Art Enrichment Funds**

1. Calculation of Contributions: In accordance with Section 3.19 of the Administrative Code, funds for art enrichment will be calculated on a project by project basis, at a declining percentage of the total gross estimated (not final) construction costs (as estimated at the completion of construction documents and application for Phase III approval from the Arts Commission Civic Design Review Committee) of each eligible capital improvement project (a “Project”) based on the following tiers:

<u>Total Gross Estimated Construction Costs of Each Eligible Capital Improvement Project</u>	<u>Art Enrichment Percentage</u>
First \$100 million of costs	2.00%
Next \$100 million of costs (up to \$200 million total)	1.75%
Next \$800 million of costs (up to \$1 billion total)	1.50%
Costs in excess of \$1 billion	1.00%

Example of Calculation: as an illustration, the art enrichment contribution for a hypothetical Project with estimated gross construction costs of \$500 million would be equal to \$8,250,000, calculated as follows:

<u>Total Gross Estimated Construction Costs of Hypothetical \$500 Million Project</u>	<u>Art Enrichment Funds</u>
2.00% of first \$100 million of costs	\$2,000,000
1.75% of next \$100 million of costs	1,750,000
1.50% of next \$300 million of costs	<u>4,500,000</u>
Project Total	\$8,250,000

The Airport Commission and the Arts Commission will enter into separate memoranda of understanding from time to time setting forth the amount and expenditure of such art enrichment funds in greater detail.

2. Art Enrichment Survey Form: Prior to being scheduled for Civic Design Review at the Arts Commission, the Airport Commission shall submit a completed Art Enrichment Survey form and make contact with the Public Art Staff regarding each Project.

**II. Accounting Procedures; Sale and Inventory of Artwork**

- A. **Separate Accounting for Bond, Other Capital and Operating Funds**  
The Arts Commission will maintain separate accounting of the use of the following Airport funds:

1. Art Enrichment (Bond Funds and Other Capital Funds): Funds comprising the Art Enrichment contribution provided from bond proceeds or other Airport sources in accordance with Administrative

Code provisions and the agreed-upon percentages of the estimated construction costs of eligible Projects set forth above shall be used to acquire art for the Airport Art Collection. Bond proceeds may be used in accordance with Section 3.19 of the Administrative Code only for art acquisition costs that are properly chargeable to the capital account of the facilities for accounting purposes and not for maintenance or operating costs.

2. Maintenance (Operating Funds): Funds provided by the Airport from operating funds allocated through an annual budget request submitted by the Arts Commission to the Airport through the Airport Staff Liaison by October 1 of each fiscal year shall be used for maintenance, conservation, relocation and removal of artwork in the Airport Art Collection, including Airport Commission and Arts Commission staff time associated with coordinating, overseeing and/or performing the work.
3. Maintenance (Endowment Interest Earnings): Interest earned from the Airport Art Endowment Fund each fiscal year shall be deposited into a direct charge account for maintenance of the Airport Art Collection and made available to the Arts Commission at the beginning of the following fiscal year (i.e. interest earned in FY 17/18 shall be deposited at the beginning of FY 18/19).

**B. Jurisdiction; Use of Funds from the Sale of Artwork**

In accordance with Sections 4.115 and 5.103 of the City Charter and the FAA's Revenue Diversion Policy, all art acquisitions using Airport funds are properties of the City under the joint jurisdiction of the Airport Commission and the Arts Commission. All proceeds from any sale or auction of artwork in the Airport Art Collection shall be distributed as follows:

1. If the artwork was acquired with the proceeds of tax-exempt Airport revenue bonds and (a) such bonds are still outstanding on the sale date, (b) such bonds have been refunded and the refunding bonds are still outstanding, or (c) the Airport Commission cannot determine whether such bonds are still outstanding, then an amount equal to the lesser of the net sale proceeds or original purchase price of the artwork shall be deposited into a direct charge account and used to purchase artwork for the Airport Art Collection within the timeframe required under federal tax law per Section II.A.1 above and the separate memorandum of understanding relating to art enrichment funds. If the bonds are no longer outstanding or were taxable bonds, no deposit is necessary under this paragraph.
2. Any payment due the artist under the California Resale Royalties Act shall be paid to the artist.
3. Any remaining amount shall be credited to the Airport Art Enrichment Fund and expended to purchase artwork for the Airport Art Collection per Section II.A.1 above.

**C. Annual Inventory**

On or before June 30 of each fiscal year, the Arts Commission will provide the Airport Commission with an inventory of all art objects acquired by the Arts Commission for the Airport. This inventory shall represent a part of the Airport's fixed assets inventory list. Likewise, the Arts Commission will provide the Airport Commission with documentation related to any artwork that the Arts Commission has de-accessioned.

### **III. Coordination, Cooperation, and Communication**

The Airport Commission and the Arts Commission will continue to work together in the spirit of mutual cooperation to acquire outstanding artworks for the Airport and to ensure the coordination of efforts to maintain and conserve the collection. The Staff Liaisons and the Airport Art Steering Committee facilitate continued good communication and coordination for the art enrichment program.

#### **A. Staff Liaisons**

1. Airport Staff Liaison: The Airport Director shall appoint an Airport Staff Liaison to facilitate communication between staff of the Airport Commission and of the Arts Commission and to help facilitate the Arts Commission's work at the Airport.
2. Arts Commission Staff Liaison: The Public Art Director shall appoint the Arts Commission staff liaison and project manager for the Airport.

#### **B. Airport Art Steering Committee (AASC)**

##### **1. Composition:**

The Airport Art Steering Committee will be composed of six to eight members: half of the representatives appointed by the Airport Commission and half appointed by the Arts Commission.

##### **2. Purpose, Goals and Objectives**

- a. Purpose: The purpose of the Airport Art Steering Committee is to develop policy and make recommendations for the Art Enrichment Program at the Airport. The scope of the committee's purview includes both the existing Airport Art Collection and new art enrichment projects. Steering Committee recommendations for the purchase or commissioning of new artwork shall be approved by the Arts Commission and the Airport Commission as outlined in this agreement.
- b. Goals: To promote an art enrichment program for the airport that meets the following criteria:
  - Results in an art program/collection of the highest aesthetic standards
  - Provides enjoyment for the Airport visitor.
  - Functions within the Airport's operational requirements
  - Enhances the national and international prestige of the Airport and the City.
- c. Objectives:

- i. To develop, review and revise as necessary policy and program procedure guidelines relative to the permanent art collection at the Airport.
  - ii. To oversee the execution of the art acquisition component of the Airport Commission's applicable five-year and ten-year capital plans, and to assist in updating such plans or undertake the creation of a new art master plan as necessary:
    - To review and approve planning objectives.
    - To review drafts of art master planning documents and comment as necessary.
    - To present and support adoption of all of the above to the Airport Commission and the Arts Commission.
  - iii. To oversee the commissioning of new artworks for the Airport:
    - To review and approve recommended locations for artwork installations.
    - To review and approve project guidelines and budget.
    - Review selection panel recommendations and recommend approval to respective commissions.
    - Review and approve artist proposals.
    - To promote and support Committee recommendations to the Arts Commission and the Airport Commission.
  - iv. To provide ongoing stewardship of the Airport Art Collection, including but not limited to:
    - Ongoing evaluation of the Airport Art Collection.
    - Review and approval of recommendations regarding works to be de-accessioned and/or re-sited.
- d. AASC Meeting Agenda and Minutes: The Arts Commission will provide the Airport Commission Secretary with copies of all AASC meeting agendas and minutes.

**IV. Selection/Commissioning and De-accessioning of Artwork**

**A. Artist/Artwork Selection**

The selection of artists and/or artwork will be carried out in accordance with the Arts Commission's Policies and Guidelines for the Civic Art Collection.

**B. Artist Selection Panel Representation**

In accordance with the Arts Commission’s guidelines, the Arts Commission shall appoint all guest members of artist selection panels. Selection panels for Airport projects shall be comprised of the following voting members:

- One (1) member representing the Airport from the Airport Art Steering Committee.
- One (1) member representing the Arts Commission.
- Up to three (3) guest arts professionals.
- At the discretion of the Arts Commission, one (1) member of the project architectural team may be appointed.

**C. Review and Approval of Selected Artists, Art Proposals, Direct Art Purchases, and Locations for Artwork**

**1. Artist Selection**

Artists recommended by Selection Panels for design contracts will be submitted to the Arts Commission for approval.

**2. Artists’ Project Proposals**

Artists’ project proposals will be reviewed and approved by the AASC prior to being submitted to the Arts Commission for similar approval. No later than the completion of design development, proposals will be submitted to the Airport Commission for final approval prior to the Arts Commission commissioning fabrication of the artwork.

**3. Approval of Direct Purchase of Artwork**

All artwork proposed for acquisition through direct purchase for the Airport will be reviewed and approved by the AASC prior to being submitted to the Airport Commission and the Arts Commission for approval.

**4. Proposed Gifts**

a. Proposed gifts of artwork to the Airport Art Collection will be considered in accordance with the Arts Commissions’ Gift Policy, incorporated in its Policies and Guidelines for the Civic Art Collection. In accordance with those policies, these special conditions shall apply for gifts of art proposed for the Airport Art Collection:

- The proposed artwork should be within the focus of the Airport’s collection, which is defined as a collection of contemporary fine art (1960 to present) by artists of recognized reputation. The collection emphasizes, but is not limited to, the representation of Bay Area artists.
- Priorities for acquisition, as defined in the Assessment and Recommendations Report (1995) prepared by Katherine Holland and Karen Tsujimoto (or any updated or subsequent assessment evaluation approved by the AASC and the Arts Commission)

shall apply when considering the acceptance of gifts for Airport Art Collection.

- Special care shall be given to determining whether or not there is an appropriate site for installation of the artwork and whether or not the artwork can be maintained within the Airport environment and within available resources.
- b. The AASC will review all proposals for gifts of art to be sited at the Airport and make a recommendation to either accept or decline the gift to the Visual Arts Committee of the Arts Commission. If the Visual Arts Committee recommends acceptance of the gift, the proposal will be submitted to the Airport Commission for approval prior to the item being submitted to the full Arts Commission for acceptance by Resolution.

**5. Site Approval**

Proposed sites for new acquisitions shall be submitted to the AASC and the Arts Commission for approval, and to the Airport's Design Review Committee for review.

**6. Final Acceptance**

The Arts Commission will review and approve completed and/or installed art prior to final acceptance of the artwork into the City's Civic Art Collection.

**D. Removal, Relocation and/or De-accessioning of Artwork**

**1. Airport Remodeling or Operational Changes Requiring Relocation or Storage of Artwork.**

Airport Commission employees involved in planning or design shall initiate early contact with the Airport Staff Liaison to ensure proper coordination with the Arts Commission for the removal and relocation of artwork. Proposed remodeling that will require the removal of major artworks, impair the visibility of the artwork, or otherwise affect the relationship of the artwork to the site, will be submitted to the Arts Commission for approval. The Arts Commission will make a good faith effort to respond to a request by the Airport Commission to relocate artwork in a timely manner.

Most relocation and/or storage of artwork necessitated by Airport remodeling will be handled on an Airport/Arts Commission staff level, and executed by the Airport Museums staff as part of routine maintenance.

**2. Permanent Removal, Alteration, Destruction and/or De-accessioning of Artwork**

Permanent removal, alteration, destruction or de-accessioning of artwork in the Airport Art Collection will be reviewed and approved by the AASC, prior to submission to the Arts Commission in accordance with Section 7, Removal, Alteration, Destruction and De-accessioning

Policies and Procedures of the Arts Commission's Policies and Guidelines for the Civic Art Collection, and in accordance with the relevant sections of the City Charter, Administrative Code, and state and federal law.

**3. Approval of Sites for Relocated Artwork**

The Arts Commission shall submit proposed relocation sites for displaced artwork in the Airport Art Collection to the Airport's Design Review Committee for review and advice prior to proceeding with relocation. Relocation of major artwork, where the removal or relocation will have a significant impact on either the artwork or the new proposed site will also be submitted to the AASC for its review and recommendation.

**4. Cost of Art Removal, Relocation and Storage**

The expense of removal, transporting, relocating and/or storing artwork in the Airport Art Collection, or any other related expenses, including Arts Commission administrative costs incurred as a result of Airport remodeling that necessitates the removal of artwork in the Airport Art Collection, will be borne by the Airport and will be incorporated in the Airport's Capital Plan. The Arts Commission shall submit to the Airport a written request with copies of documentation detailing the costs to be reimbursed.

**V. Maintenance**

**A. Types of Maintenance**

There are three major types of maintenance needs for the Airport Art Collection:

**1. Repair, Replacement, or Improvement of Artwork's Installation:**

This includes repair or replacement of cases, framing, installation barriers, etc. These improvements will be made by Airport Commission staff and funded through the Airport Commission's facilities maintenance budget. The Airport Commission staff will get the approval of the Arts Commission prior to making any repairs or replacements of cases, framing or installation that changes or differs from the original.

**2. Routine Maintenance:** This includes dusting of artwork and Plexiglas cases, (including overhead artwork requiring the use of a mechanical lift to reach), cleaning glass barriers and the floor behind the barriers, changing light bulbs, and other tasks that require appropriate education, experience and/or technical skill, but do not require the services of a fine art conservator, the original artist, or the specialized service of another outside contractor. This work will be managed and performed by Airport Commission staff and funded with the Airport Commission's operating funds. The Airport Commission will ensure that all personnel performing maintenance on the Airport Art Collection are qualified for the level of work being performed.

**3. Storage:** This includes long- and short-term storage for artworks removed from display due to Airport remodeling or other reasons. The Airport

Commission will provide storage for artworks in the Airport Art Collection without charge to the Arts Commission.

**4. Major Cleaning, Repair or Conservation:** This is work requiring specialized equipment and/or expertise; professional inspection of artwork to determine when maintenance or conservation is necessary or work requiring contact with the artist. This work will be managed by the Arts Commission and will be included in an annual budget request to be submitted by the Arts Commission to the Airport Commission through the Airport Staff Liaison by October 1 of each fiscal year. Separate memoranda of understanding for the work order will be executed from time to time, as appropriate.

**B. Maintenance Responsibilities and Procedures**

**1. Maintenance Plan, Inspection and Reporting:** The Arts Commission will conduct a formal inspection of the Airport Art Collection on an annual basis. The report from this inspection will identify ongoing maintenance needs as well as maintenance and conservation projects. The Arts Commission and Airport Commission staff will develop an annual maintenance plan that will be the basis for the annual budget request submitted to the Airport Commission through the Airport Staff Liaison by October 1 of each fiscal year.

**2. Daily Maintenance:** Airport Commission staff will oversee the daily maintenance of the Airport Art Collection and will follow through with the maintenance as provided in Sections V.A.1 and 2 above. Any larger problem with the Artwork will be brought to the Arts Commission's attention as soon as it is identified, in order to be addressed as provided in Section V.A.4 above.

**3. Records:** All pertinent records, artist files, condition reports, maintenance records and conservation reports will be kept by the Arts Commission. Copies of these documents will be provided to the Airport Commission upon request.

**4. Vendor Contracts:** The Airport Commission and the Arts Commission will each contract directly and separately with vendors for repair, replacement, cleaning, maintenance or improvement of artwork as-needed.

**5. Notification:**

a. The Arts Commission will notify the Airport Staff Liaison, Airport Duty Manager and, in the case where work is scheduled as part of Airport construction, the Project Manager, in advance of scheduling any site work such as installation, removal, relocation and/or maintenance of art.

b. The Airport Staff Liaison will assist the Arts Commission as needed in notifying the necessary department(s) or personnel at the Airport of any work scheduled by the Arts Commission.

- c. The Airport Staff Liaison is responsible for notifying the Arts Commission of any damage, problems, missing plaques, etc. associated with the Airport Art Collection.

IN WITNESS WHEREOF, the Airport Commission and the Arts Commission have each caused this Memorandum of Understanding to be executed by their duly authorized representatives as of the dates set forth below.

\_\_\_\_\_  
Ivar C. Satero  
Airport Director

Date\_\_\_\_\_

\_\_\_\_\_  
Tom DeCaigny  
Director of Cultural Affairs

Date\_\_\_\_\_