

RESOLUTION NO. 2016-14

AUTHORIZING A MEMORANDUM OF UNDERSTANDING AND  
SUBRECIPIENT AGREEMENT WITH L.A.N.D. STUDIO, INC. FOR THE  
IMPLEMENTATION OF THE INTER|URBAN RED LINE PUBLIC ART  
IMPROVEMENT PROJECT

WHEREAS, the City of Cleveland ("City"), was awarded federal funds from the Northeast Ohio Areawide Coordinating Agency ("NOACA") for implementing the INTER|URBAN Red Line Public Art Improvement Project (the "Project") proximate to the Red Line heavy-rail line; and

WHEREAS, the City of Cleveland hired L.A.N.D. studio, INC. ("L.A.N.D. studio") to serve as an agent for the City of Cleveland to establish funding and implement the Project; and

WHEREAS, GCRTA is a designated recipient of Federal Transit Administration ("FTA") grant funds and will pass through the NOACA funding to L.A.N.D. studio as a subrecipient of federal funds; and

WHEREAS, installation of public art along the Red Line rail right-of-way will enhance the riding experience for customers by providing a cleaner, more beautiful view of the area while riding the train, which could increase ridership; and

WHEREAS, this Project will create a more welcoming and beautiful perception of the City of Cleveland and the GCRTA heavy-rail system; and

WHEREAS, the grant funds awarded by NOACA to the City of Cleveland total Three Hundred Fifty-Seven Thousand Two Hundred Fifty-Three Dollars (\$357,253.00) and do not require a local match by GCRTA; and

WHEREAS, the Memorandum of Understanding and Subrecipient Agreement are necessary to allow the funds to be expended in a manner that is compliant with all federal requirements.

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Greater Cleveland Regional Transit Authority, Cuyahoga County, Ohio:

Section 1. That the General Manager/Secretary-Treasurer of the Greater Cleveland Regional Transit Authority be and is hereby authorized to enter into a Memorandum of Understanding ("MOU") and Subrecipient Agreement with L.A.N.D. studio for the purpose of implementing the INTER|URBAN Project Red Line Public Art Improvement Project.

Section 2. No funds will be required from GCRTA.

Section 3. The program described in the MOU and Subrecipient Agreement meet all federal requirements and are consistent with GCRTA's Arts-in-Transit Policy.





Greater Cleveland Regional Transit Authority  
**STAFF SUMMARY AND COMMENTS**

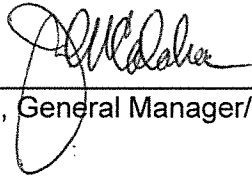
<b>TITLE/DESCRIPTION:</b> <b>CONTRACT:</b> MEMORANDUM OF UNDERSTANDING AND SUBRECIPIENT AGREEMENT WITH L.A.N.D. STUDIO FOR THE INTER URBAN RED LINE PUBLIC ART IMPROVEMENT PROJECT  <b>VENDOR:</b> L.A.N.D. STUDIO, INC.  <b>AMOUNT:</b> \$357,253.00	<b>Resolution No.:</b> 2016-14
	<b>Date:</b> February 11, 2015
	<b>Initiator:</b> Programming and Planning
<b>ACTION REQUEST:</b> <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

- 1.0 **PURPOSE/SCOPE:** This action will allow GCRTA to enter into a Memorandum of Understanding (“MOU”) and Subrecipient Agreement with L.A.N.D. studio, INC. (L.A.N.D. studio) for the purpose of implementing, by July 16, 2016, the INTER|URBAN Project (the “Project”) proximate to the Red Line heavy-rail right-of-way.
  
- 2.0 **DESCRIPTION/JUSTIFICATION:** GCRTA and the City of Cleveland desire to improve the appearance of the heavy rail right-of-way to enhance the transit riding experience and provide a positive perception of Cleveland. The City of Cleveland was awarded federal grant funds from the Northeast Ohio Areawide Coordinating Agency (“NOACA”) for this Project, and the City hired L.A.N.D. studio to implement all aspects of the Project.  
  

GCRTA is a designated federal grant recipient. To expedite the implementation of the Project, the City of Cleveland requested that GCRTA receive the federal grant funds for this Project on its behalf. L.A.N.D. studio has been working with the City of Cleveland to organize, fund, and implement the Project. The MOU and Subrecipient Agreement, between GCRTA and L.A.N.D. studio, are necessary to provide L.A.N.D. studio the authority to manage the Project funds. The Agreements also define the Project implementation program and federal requirements. The Project must be completed by July 16, 2016. The \$357,253.00 funding amount represents 100% federal funds. GCRTA is not required to provide any matching or other funds for the Project.
  
- 3.0 **PROCUREMENT BACKGROUND:** N/A
  
- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** N/A
  
- 5.0 **POLICY IMPACT:** Entering into these agreements facilitates GCRTA’s interest in providing a cleaner, safer, better customer experience for those riding the heavy-rail line. It is believed this Project could increase public transit ridership. It is consistent with GCRTA’s strategic plan, mission, vision, and values. The implementation plan is also consistent with GCRTA’s Arts-in-Transit Policy.
  
- 6.0 **ECONOMIC IMPACT:** No funds are required from GCRTA. The funding from NOACA will be passed through from GCRTA to L.A.N.D. studio.

- 7.0 ALTERNATIVES: Rejection of the MOU and the Subrecipient Agreement will jeopardize the implementation of the Project, making it almost impossible to meet the July 16, 2016 completion schedule.
- 8.0 RECOMMENDATION: It is recommended that the MOU and Subrecipient Agreement be authorized and the resolution passed.
- 9.0 ATTACHMENTS: Attachment A – Draft MOU, along with all attachments, including the draft Subrecipient Agreement.

Recommended and certified as appropriate to the availability of funds, legal form and conformance with the Procurement requirements.



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CEO, General Manager/Secretary-Treasurer

# DRAFT

## MEMORANDUM OF UNDERSTANDING

### BY AND BETWEEN

THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY

### AND

L.A.N.D. STUDIO, INC.

This Memorandum of Understanding ("MOU") is made on February \_\_\_\_\_, 2016 between the Greater Cleveland Regional Transit Authority ("GCRTA"), a political subdivision of the State of Ohio, with a business address of 1240 W. 6<sup>th</sup> St., Cleveland, OH 44113, and L.A.N.D studio, Inc. ("L.A.N.D studio"), a non-profit organization, with a business address of 1939 W. 25<sup>th</sup> Street, Cleveland, OH 44113, collectively known as "the Parties."

WHEREAS, the purpose of this MOU is to formalize the relationship between the Parties for the purpose of coordination and execution of the Inter|Urban Project (the "Project"); and

WHEREAS, L.A.N.D studio has managed the fundraising and implementation efforts of this Project for which no funding has been provided by the GCRTA; and

WHEREAS, GCRTA will act as pass-through agent for the funding of the project as well as the Owner of the artwork placed on GCRTA property; and

WHEREAS, the City of Cleveland received funding from the Northeast Ohio Areawide Coordinating Agency ("NOACA") which was delegated to and will be administered by GCRTA for this Project; and

WHEREAS, L.A.N.D studio obtain permission from the Ohio Department of Transportation ("ODOT") and the City of Cleveland, as necessary, to install artwork on their respective properties; and

WHEREAS, the Parties will cooperatively solicit Artists for the Project using the competitive requirements of GCRTA's Arts in Transit Policy (Attachment A); and

WHEREAS, L.A.N.D studio has agreed to contract directly with and manage Artist(s) selected to provide services for the Project; and

WHEREAS, GCRTA will act as the Owner for the Project and for all art work commissioned for this Project; and

WHEREAS, GCRTA will pass through funds received from the Federal Transit Administration ("FTA") in the amount of \$357,253.00 which shall be paid only to Artist(s) selected for the Project.

WHEREAS, L.A.N.D studio will be responsible for establishing and maintaining an account to pay the Artists as well as implementing a maintenance plan for artwork installed as part of this Project; and

WHEREAS, the Project is to be fully completed by July 16, 2016.

NOW, THEREFORE, in consideration of the mutual promises, covenants and obligations contained herein, the GCRTA and L.A.N.D studio agree as follows:

Section 1. That, on or before \_\_\_\_\_ (date), GCRTA will execute a grant agreement with FTA for \$357,253.00, and GCRTA will, in turn, pay L.A.N.D studio for art work by Artist(s) selected to provide art for the Project, as invoiced in accordance with the schedule outlined in Section 9 of this document .

Section 2. That, by virtue of this MOU, L.A.N.D studio is a subrecipient of federal funds and, as such, it shall be subject to all federal laws, rules, regulations and executive orders governing federal grantees as they may be amended from time to time during the course of this contract. All terms mandated by the Federal Transit Administration ("FTA") shall be deemed to control this agreement in the event of a conflict with other provisions contained herein. L.A.N.D studio shall not perform any act, fail to perform any act, or refuse to comply with any GCRTA request related to the subject matter of this agreement that would cause GCRTA to be in violation of FTA terms and conditions, federal law and/or federal regulations.

Section 3. L.A.N.D studio has agreed to be bound by the Subrecipient Agreement attached hereto as Exhibit \_\_\_\_\_ and expressly incorporated herein.

Section 4. L.A.N.D studio agrees to the following Indemnification and Insurance provisions:

a. Indemnification. To the fullest extent permitted by law and to the extent of L.A.N.D studio's negligence, L.A.N.D studio shall, at its sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless GCRTA, its agents, representatives, and employees, from and against all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses, including but not limited to attorney's fees and worker's compensation benefits, for L.A.N.D studio's proportionate share and the proportionate share of any entity employed or contracted by it, arising out of or resulting from the performance of this contract, providing that any such claim, action, judgment, cost, penalty, liability, damage, loss or expense is caused in whole or in part by the negligence or professional errors or omission of L.A.N.D studio or any person or entity directly or indirectly employed by it. Such obligation shall not be construed to negate, abridge, or otherwise diminish any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

In the event of negligence or intentional acts or omissions by more than one entity, responsibility for such negligence or intentional acts or omissions will be allocated in accordance with the proportionate share of such entity(ies)' negligence or intentional acts or omissions. Nothing herein shall be construed as making L.A.N.D studio liable for any claims, actions, judgments, costs, penalties, liabilities, damages or losses and expenses caused by the sole negligence and/or misconduct of GCRTA.

To the extent that any portion of this provision is found to be in violation of any applicable law, said portion(s) of this provision are stricken but all remaining portions of this provision shall remain in full force and effect.

L.A.N.D studio specifically acknowledges that any and all third party claims for intellectual property infringement, including but not limited to copyright, patent, and trademark, in any way related to this MOU, including but not limited to the name of the Project, Nter|Urban, and any artwork procured as a result of this MOU shall be solely borne by L.A.N.D studio. As such, L.A.N.D studio shall defend, indemnify, and hold harmless GCRTA against any and all claims arising therefrom.

b. Insurance. Prior to commencement of any work and until completion of its work under the contract, Land Studio shall maintain the following insurance coverage, at its cost, from insurers acceptable to GCRTA and shall comply with all provisions of this article.

The insurance coverage required is:

- a. Commercial General Liability Insurance in the amount of \$3 million dollars combined single limit each occurrence for bodily injury and/or property damage with a \$4 million per project annual aggregate. Said policy shall also include:
  - The Inter|Urban Project, inclusive of all individually named Artists selected for the Project
  - Premises / Operations coverage

- Personal Injury coverage
  - Liability for independent contractors
  - Products / Completed Operations liability insurance: This insurance must be maintained for a period of not less than 5 years from the completion of the work.
  - Contractual liability coverage insuring the "hold harmless" provision set forth herein.
  - Liability for explosion, collapse and underground property damage
  - Said policy shall be written on an "occurrence" basis.
  - GCRTA will accept any combination of primary CGL and Excess or Umbrella policies to meet the minimum coverage requirements above.
  - Railroad endorsement, CG 24 17 – Contractual Liability – Railroads or the Cincinnati Insurance form GA 4144 10 01, with a copy of the endorsement attached to the Certificate of Insurance.
- b. Automobile Liability Insurance in the amount of \$2 million combined single limit each accident for bodily injury and/or property damage. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with the work.
- c. Statutory Workers' Compensation coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this contract and under the control of Land Studio. Employers' Liability coverage in the amount of \$1 million per accident / \$1 million per employee for disease will also be included, either under the Workers' Compensation policy or under the Commercial General Liability policy (Stop Gap) referenced under a. above. In Ohio: a copy of a certificate of premium payment from the Industrial Commission and Bureau of Workers' Compensation, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.
- d. Installation Floater in an amount sufficient to cover all materials to be installed or transported on any component of the Project that requires boring into the Airport Tunnel.
- e. General Requirements: Neither Land Studio nor any subConsultant shall commence work herein until it has obtained the required insurance and has received written approval of such insurance from GCRTA. Land Studio shall furnish evidence of such insurance for itself and each of its subcontractors at all tiers in the form of a certificate prior to commencement of any work. (Acord or similar form). The certificate shall provide the following:
- In the event the insurance should be materially changed or cancelled, such material change or cancellation shall not be effective until 30 days after the contracting parties have received written notice of such change or cancellation from the insurance company. Such notice shall be mailed by certified mail, return receipt requested to GCRTA's Director of Programming & Planning.
  - Name GCRTA, as Additional Insured for coverages required under a. and b. above, for claims arising out of operations in conjunction with the contract.
  - Contain a waiver of subrogation in favor of GCRTA.
  - Specific reference to the subject MOU.
  - Specific reference to all deductibles & Self-Insured Retentions (SIR).



- Shall be primary and non-contributing to any insurance possessed or procured by GCRTA and any insurance or self-insurance program maintained by any of the foregoing.
- Include a copy of the policy endorsements providing thirty (30) days' notice of material change/cancellation to GCRTA, adding GCRTA as an additional insured, and waiving subrogation in favor of GCRTA.
- An insurance company having less than an A- X rating by The A. M. Best Company will not be considered acceptable. All certificates are subject to acceptance by GCRTA. GCRTA shall be entitled to receive a full copy of the insurance policy(ies) upon request and reserves the right to review financial statements and approve any deductibles or self-insured retention (SIR). Any deductible or SIR is for the account of Land Studio.

- f. Approval of the insurance by GCRTA shall not relieve or decrease the liability of the Land Studio. It is to be understood that GCRTA does not represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect Land Studio's interests or liabilities. Should the required primary insurance limits of Land Studio be exhausted or not available to pay a claim, Land Studio shall be liable for payment of claims the insurance was intended to cover, up to the limits required above.
- g. In the event Land Studio neglects, refuses or fails to provide the insurance required herein, or if such insurance is canceled for any reason, GCRTA shall have the right but not the duty to procure the same. If this occurs, the cost of the insurance procured on behalf of L.A.N.D. studio by GCRTA will be borne by L.A.N.D. studio.

Section 5. L.A.N.D studio agrees to use the sample contract in Attachment \_\_\_\_\_, or a form substantially similar and approved by GCRTA, in any and all contracts with Artist(s) entered into for purposes of the Project described herein, and L.A.N.D studio further agrees to submit a copy of each contract and insurance certificate(s) to GCRTA for review prior to any Right of Entry being granted to Artist and also prior to any payment being made to Artist.

Section 6. Upon demonstration of a signed contract, including all necessary insurance coverages, GCRTA shall provide a Right of Entry to Artist in the form substantially similar to the one attached hereto as Attachment \_\_\_\_\_.

Section 7. That all contracts between L.A.N.D studio and Artist(s) selected for this Project must include an acknowledgment and waiver, in a form substantially similar to the one attached to Attachment \_\_\_\_\_, of any and all rights conferred by the VARA Visual Artists' Rights Act (VARA), 17 USC §106A.

Section 8. That all Notices to be given pursuant to this MOU shall be sufficient if given in writing, delivered in person or by registered or certified mail, postage prepaid, and, in either case addressed to the respective party at its postal address or at such other address or addresses each may hereafter designate in writing. Notices by mail shall be deemed effective and complete at the time of posting and mailing in accordance herewith. Notice shall be delivered or mailed to the parties at the addresses shown on the execution page.

If to **L.A.N.D studio:**  
L.A.N.D studio, Inc.  
Attn:

If to **GCRTA:**  
Greater Cleveland Regional Transit Authority  
Attn: Maribeth Feke  
Director of Programming & Planning  
1240 West 6th street  
Cleveland, Ohio 44113-1331

Section 9. No monies will be paid by GCRTA to L.A.N.D studio for services L.A.N.D studio performs pursuant to this MOU. GCRTA will make payments to L.A.N.D studio for work performed by Artist(s) selected to perform services arising from this MOU. Such payments shall be made in accordance with the following delivery schedule:

- a) Up to 30 percent (30%) can be requested upon execution of contract between L.A.N.D studio and Artist as well as a concept for the artwork approved by GCRTA;
- b) Up to 60 percent (60%) can be requested upon completion and acceptance of completed art concept(s) by Artists;
- c) Final 10% (10%), or whatever amount is remaining, can be requested upon installation and acceptance by GCRTA.

**IN WITNESS WHEREOF**, the GCRTA and L.A.N.D studio have caused this MOU to be executed effective on the date written above.

**L.A.N.D studio, Inc.**

**GREATER CLEVELAND REGIONAL  
TRANSIT AUTHORITY**

By: \_\_\_\_\_

By: \_\_\_\_\_

Ann Zoller  
Executive Director

Joseph A. Calabrese, CEO  
General Manager/Secretary-Treas.

Date: \_\_\_\_\_

Date: \_\_\_\_\_

The legal form and correctness of  
the within instrument are hereby  
approved.

\_\_\_\_\_  
General Counsel, Deputy General  
Manager for Legal Affairs

**CHAPTER 1088**  
**Arts in Transit Program Policy**

1088.01	Purpose and scope.	1088.05	Budget.
1088.02	Objectives.	1088.06	Maintenance.
1088.03	Policies; art projects.	1088.07	Safety.
1088.04	Implementation; Arts in Transit Committee.	1088.07	Eligibility requirements/ conflicts of interest.

**CROSS REFERENCES**

Approval of projects for acquisition, construction, and improvement of facilities and equipment, and payment of operating expenses; terms and conditions; regulations - see 49 U.S.C.A. 1604(d)

Bus passenger shelter program policy - see SERV. 1016.05; Ch. 1062

**1088.01 PURPOSE AND SCOPE.**

The purpose of this policy is to guide the activities of a public art program within the Authority. This policy incorporates all forms of art media as they impact rail, bus and paratransit services and facilities.

(Res. 1991-172. Passed 8-20-91.)

**1088.02 OBJECTIVES.**

The objectives of the Arts in Transit Program are to:

- (a) Increase transit usage by making the transit system a more attractive and pleasing place to be.
- (b) Make a positive contribution to the quality of life in the neighborhoods served by transit facilities and in the community as a whole.
- (c) Increase the public's pride in and regard for the public transportation system. (Res. 1991-172. Passed 8-20-91.)

**1088.03 POLICIES; ART PROJECTS.**

(a) Visual, functional, performing and landscape art will be incorporated into all Authority facilities as is possible. This includes, but is not limited to, rail stations, operating facilities and passenger vehicles.

(b) All art projects will be undertaken with the cooperation of the local arts community and the neighborhood surrounding any fixed facility being considered.

(c) Art projects will be considered part of the construction budget for all new facilities. Art projects which are part of a newly constructed facility will be designated so as to equal at least one percent of the total costs of construction for the facility unless funding from a source beyond the Authority's resources is located. Budgets for projects at existing facilities will be determined on an individual basis.

(d) Any art project which is designed as a permanent part of a fixed facility will include a maintenance program with projected costs. The complexity and cost of maintaining public art will be a key consideration for the approval of any art project.

(e) Any art project or artistic treatment undertaken pursuant to this policy will become the sole property of the Authority.

(Res. 1991-172. Passed 8-20-91; Res. 2002-184. Passed 11-18-02.)

#### **1088.04 IMPLEMENTATION; ARTS IN TRANSIT COMMITTEE.**

(a) Establishment of Arts in Transit Program. The General Manager/Secretary-Treasurer is hereby directed to develop the appropriate mechanism to administer an Arts in Transit Program within the Authority. This includes a system for cataloging, documenting and registering all pieces of art according to acceptable museum standards, establishing appropriate contracting procedures and providing staff support for the Arts in Transit Committee.

(b) Arts in Transit Committee.

- (1) The General Manager/Secretary-Treasurer is hereby directed to organize an Arts in Transit Committee consisting of a cross-section of Greater Cleveland area residents with interest and expertise in the arts and humanities. The Board of Trustees is encouraged to make recommendations for Committee members. Selection of members will be made by the General Manager/Secretary-Treasurer for approval by the Board of Trustees. The role of the Committee will be as follows:
  - A. In cooperation with Authority staff, develop guidelines for the Arts in Transit Program, including criteria for artist selection and standards of quality for any art project.

- B. Overseeing the art selection process, including the selection of artists, review of art proposals and selection of final art projects. All Committee selected art projects will be subject to review and approval by the General Manager/Secretary-Treasurer.
  - C. Developing community panels to aid in the selection of any project designed around an Authority facility.
  - D. Compiling an annual art plan, including any exhibits, visual, functional and performing art projects.
  - E. Recommending supplemental sources of funds for art projects consistent with the objectives and provisions of this policy.
  - F. Resolving disputes with artists.
  - G. Providing recommendations for the removal of any art project.
- (2) Committee members will be asked to donate their time and will be paid for travel and out-of-pocket expenses consistent with established Authority policies and procedures.  
(Res. 1991-172. Passed 8-20-91; Res. 2002-184. Passed 11-18-02.)

#### **1088.05 BUDGET.**

Staffing, administration and material costs of the Arts in Transit Program will be determined through the established Authority budgeting process. Staff is hereby directed to evaluate all planned construction projects for potential inclusion of an art element, either as a part of the finished construction project or as a construction mitigation activity. (Res. 1991-172. Passed 8-20-1991.)

#### **1088.06 MAINTENANCE.**

All public art installations shall be easily maintained at low cost to the Authority. Staff is directed to ensure that any piece of art established as a permanent part of any Authority facility is accompanied by a detailed maintenance program with long term cost projections.

(Res. 1991-172. Passed 8-20-91; Res. 2002-184. Passed 11-18-02.)

#### **1088.07 SAFETY.**

The public art installations shall meet all safety standards as established by the Authority.

(Res. 2002-184. Passed 11-18-02.)

#### **1088.08 ELIGIBILITY REQUIREMENTS/CONFLICTS OF INTEREST.**

(a) All public art projects undertaken by the Authority will be in conformance with all eligibility requirements and policies set forth to ensure that fair practices among art entries, reviews and selection processes occur.

(b) Such public art processes shall be utilized throughout all Authority public art projects and programs.

(c) Eligibility requirements shall include participants assisting the Authority to meet its public art goals throughout project development, proposal review and selection processes.

(d) Participants are defined as Arts in Transit members, public art consultants, final design consultants, sub-consultants from associated project design and public art firms, Authority employee-public art committee members or volunteers, paid artists or any person paid or unpaid, participating in the project development, or persons having prior knowledge of specific project and selection criteria, before advertising call to artist.

(e) Any participant taking part in an Authority public art project, including program development, project process, focus group sessions, proposal review, or jury selection are ineligible to submit entries on Authority public art projects.

(f) All paid and non-paid artists participating in focus groups or final design sessions for identifying public art opportunities, types of mediums and developing project criteria are ineligible for submitting entries for art projects supported by their assistance during project development.

(g) Arts in Transit members and sub-committee members are ineligible to submit entries for public artwork on projects supported by their assistance during project development.

(h) Current Arts in Transit committee members desiring to submit artwork for any Authority public art project, must resign from the Arts in Transit Committee for the duration of the project process. Arts in Transit members can resubmit an application for Committee membership reconsideration six months after project completion.

(i) All participants will be responsible for signing a confidentiality and disclosure agreement to insure all project criteria, reviews and selection processes are kept in strict confidence throughout the duration of the project development, review, negotiation and selection.

(Res. 2002-184. Passed 11-18-02.)

CHAPTER 1090  
Long Range Plan

EDITOR'S NOTE: This chapter, previously a Codification of Resolution 1993-81, passed April 20, 1993, which adopted Transit 2010, the Authority's Long Range Plan, was re-enacted in its entirety by Resolution 1998-23, passed February 17, 1998, which adopted a revised Long Range Plan.

Resolution 2004-162, passed December 21, 2004, adopted the Transit 2025 update.

- |         |  |         |                 |
|---------|--|---------|-----------------|
| 1090.01 | Adoption; purpose.   | 1090.03 | Amendments.     |
| 1090.02 | Incorporation into the transportation plan of the Northeast Ohio Areawide Coordinating Agency. | 1090.04 | Implementation. |

CROSS REFERENCES

Affirmative Action and Disadvantaged Business Enterprise/Women's Business Enterprise Program - PERS. Ch. 620

Development of service proposals and annual service management plans - see SERV. 1022.03

ADA Complementary Paratransit Plan - see SERV. Ch. 1085

**1090.01 ADOPTION; PURPOSE.**

There is hereby adopted the Transit 2025 update of the Greater Cleveland Regional Transit Authority's Long Range Plan, which shall serve as a conceptual guide for long and short-term public transit plans and improvements in Cuyahoga County.

(Res. 1998-23. Passed 2-17-98; Res. 2004-162. Passed 12-21-04.)

**1090.02 INCORPORATION INTO THE TRANSPORTATION PLAN OF THE NORTHEAST OHIO AREAWIDE COORDINATING AGENCY.**

The appropriate project elements of the Long Range Plan shall be incorporated into the transit element of the region's long-range transportation plan maintained by the Northeast Ohio Areawide Coordinating Agency, the region's metropolitan planning organization.

(Res. 1998-23. Passed 2-17-98; Res. 2004-162. Passed 12-21-04.)



# DRAFT

## Federal Funds Subrecipient Agreement

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between the Greater Cleveland Regional Transit Authority (hereinafter "GCRTA"), located at 1240 West 6<sup>th</sup> Street, Cleveland, Ohio 44113 and L.A.N.D. studio, Inc. ("L.A.N.D. studio") located at \_\_\_\_\_, collectively referred to as "the Parties."

WHEREAS, the GCRTA, a political subdivision of the State of Ohio, is a designated recipient of federal funds issued by the federal government and, in particular, the Federal Transit Administration (hereafter "FTA"); and

WHEREAS, L.A.N.D. studio wrote the application for funding from the Northeast Ohio Areawide Coordinating Agency ("NOACA"), received funding from NOACA, and created the art implementation program for this Project; and

WHEREAS, the GCRTA will act as the recipient of federal funds for and on behalf of L.A.N.D. studio, permitting the pass through of federal funds for the purpose of reimbursing L.A.N.D. studio \$357,253.00 for the Interurban Red Line Public Art Improvement Project (the "Project") which includes installation of public art improvements proximate to the Red Line heavy-rail right-of-way; and

WHEREAS, as a recipient of FTA funds, the GCRTA is bound by federal law, regulations and the terms of a Master Grant Agreement with the FTA; and

WHEREAS, federal law, regulations and the Master Grant Agreement require the GCRTA to include appropriate clauses in each subrecipient agreement stating a subrecipient's responsibilities under federal law and ensure the compliance of each subrecipient at any tier with federal laws, regulations, and executive orders.

WHEREAS, this agreement and the completion of the Project will be completed within 9 months of the executed signature date.

NOW, THEREFORE, in consideration of their mutual promises and the receipt of federal monies, the GCRTA and L.A.N.D. studio agree as follows:

**1. Federal Law & Regulations.** L.A.N.D. studio acknowledges that, by and through this Agreement and for all purposes related to the Project, it is a subrecipient of federal funds and shall be subject to all federal laws, rules, regulations, and executive orders governing federal grantees, as they may be amended from time to time, including but not limited to the FTA Master Grant Agreement (MA12), a copy of which is attached hereto as Exhibit 1. L.A.N.D. studio shall be responsible for local match requirements, if applicable. All FTA-mandated terms shall be deemed to control this agreement even if not specifically enumerated herein. L.A.N.D. studio shall not perform any act, fail to perform any act, or refuse to comply with any GCRTA request related to the subject matter of this agreement that would cause GCRTA to be in violation of FTA terms and conditions, federal law or federal regulations. For purposes of the Project, L.A.N.D. studio agrees to be bound by, and to require all of its subcontractors or subrecipients at any level to be in compliance with, all mandatory federal requirements imposed upon recipients of federal funds as they may be amended, including but not limited to:

- (a) Restrictions on lobbying - (49 CFR Part 20). This agreement is subject to the provisions of Section 319, Public Law 101-121 (31 U.S.C.) 1352.

- (b) Buy America - For contracts over one hundred thousand dollars (\$100,000.00), L.A.N.D. studio must comply with "Buy America Requirements." 49 CFR Part 661.
- (c) Prohibited Interests - No officer, member, or employee of L.A.N.D. studio and no members of its governing body, during his or her tenure, shall have any interest, direct or indirect, in this Agreement, any contract negotiated subsequently, or the proceeds thereof. Furthermore, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.
- (d) Covenant Against Contingent Fees and Gratuities - L.A.N.D. studio warrants that no person or selling agencies has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission for the purpose of securing business. For breach or violation of this warranty, GCRTA shall have the right to annul this Contract without liability or at its discretion, to deduct from the Contract price, or otherwise recover the full amount or such commission, percentage, brokerage, or contingent fees. L.A.N.D. studio further warrants that it, its agent, and/or its subConsultant(s), have not and will not accept a gratuity in relation to this agreement.
- (e) Social Security Act - The Artist shall be and remain an independent Artist with respect to all Services performed hereunder and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now hereafter imposed under any State or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by the Artist for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are not or hereafter may be issued or promulgated under said respective laws by all duly authorized State or federal law officials, and said Artist agrees to indemnify and save harmless GCRTA from any such contributions or taxes or liability therefore.
- (f) Non-Discrimination - L.A.N.D. studio agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability in accordance with the following Federal Statutes and regulations, and any other implementing regulations issued pursuant to the: Civil Rights Act as amended, Titles VI (42 U.S.C. 2000d) and VII (42 U.S.C. 2000e); Age Discrimination Act of 1975, as amended (42 U.S.C. 6102); Age Discrimination in Employment Act of 1967 as amended, (29 U.S.C. 623); Americans with Disabilities Act of 1990, as amended, (42 U.S.C. 12132 and 42 U.S.C. Sec. 12112) and implementing regulations (29 C.F.R. Part 1630), Federal transit law (49 U.S.C. 5332); Executive Order 11248, as amended by Executive Order 11375 (42 U.S.C.

2000e note) and implementing regulations (41 C.F.R. Parts 60 et seq.). L.A.N.D. studio also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration.

- (g) Program Fraud and False or Fraudulent Statements or Related Acts- L.A.N.D. studio agrees that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Sec 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions and those of its subConsultant(s) pertaining to this Contract. L.A.N.D. studio further agrees to include this clause without modification, in any subcontract issued hereunder
- (h) Recycled Products/Energy Conservation- L.A.N.D. studio agrees to comply with the requirements of Section 6002 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the subject matter of this Contract. L.A.N.D. studio further agrees to comply with applicable mandatory energy efficiency standards and policies of applicable state energy conservation plans issued in accordance with 42 USC Sections 6321 et seq.
- (i) Clean Air Act and Clean Water Act - Where the price of this procurement exceeds one hundred thousand dollars (\$100,000.00); L.A.N.D. studio agrees to comply with the requirements of the *Clean Water Act* and the *Clean Air Act*, 33 U.S.C. 1251 et seq. and 42 U.S.C. 7401 seq., respectively. L.A.N.D. studio agrees to report and require each subcontractor at any tier to report any violation of these requirements resulting from any implementation activity of a subcontractor or itself to FTA and the appropriate U.S. EPA Regional Office.
- (j) Notification of Proceedings - L.A.N.D. studio will give GCRTA prompt notice, in writing, of the institution of any suit or proceeding arising from this MOU and permit the GCRTA to defend same and will give all needed information, assistance, and authority to enable GCRTA to do so. L.A.N.D. studio will similarly give GCRTA immediate notice of any suit or action filed or prompt notice of any claims made against any Artist performing work arising out of the performance of this contract.
- (k) Safety Belt Use - Pursuant to Federal Executive Order No. 13043, L.A.N.D. studio is encouraged to adopt and promote on-the-job seat belt use for its employees and other personnel operating vehicles involved in the project.
- (l) Reporting of Fraudulent/Improper Acts - If L.A.N.D. studio suspects or has knowledge of unethical, improper and/or fraudulent acts by GCRTA personnel, including but not limited to conflicts of interest, bribery, fraud, waste, abuse, extortion, and kickbacks involving the GCRTA, L.A.N.D. studio shall contact the GCRTA's Executive Director of Internal Audit on the GCRTA's Fraud Hotline (216-781-4080).
- (m) Required Provisions Deemed Inserted - Each and every clause required by Federal

or State statute or regulation to be inserted into this Contract is deemed to be inserted herein and this Contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or it not correctly inserted, then upon the application of either party the Agreement shall forthwith be amended to make such insertion or correction.

**2. No Obligation by the Federal Government.** The Parties agree that, notwithstanding any concurrence by the federal government to this Agreement and/or this Project, absent the express written consent of the federal government, the federal government is not a party to this Agreement and shall not be subject to any obligations or liabilities to the GCRTA, L.A.N.D. studio, or any other party pertaining to any matter resulting from this Agreement. L.A.N.D. studio further agrees to include this clause, without modification, in any subcontract issued hereunder.

**3. Indemnification.**

- A. With respect to work performed by L.A.N.D. studio, its contractors or agents, in furtherance of the Project, it shall indemnify, keep and save harmless the GCRTA and its respective officers, agents and employees against all suits or claims that may be based upon any death or injury to persons or property that may occur, or that may be alleged to have occurred in the course of the performance of the Project work by L.A.N.D. studio, its contractors or agents, or as a result of the performance of the Project work by L.A.N.D. studio, its contractors or agents, and whether or not the persons injured or whose property was damaged were third parties; employees of L.A.N.D. studio or employees of any authorized contractor; and L.A.N.D. studio shall at its own expense defend GCRTA in all litigation, pay all attorneys' fees, damages of any type, and all costs and other expenses arising out of the litigation or claim or incurred in connection therewith; and shall, at its own expense, satisfy and cause to be discharged such judgments as may be obtained against the GCRTA, or any of its officers, agents or employees. The foregoing obligations of this duty to indemnify are separate from and not dependent upon the coverage, or lack thereof, provided by any policy of insurance required by this agreement.
- B. L.A.N.D. studio shall indemnify, keep and save harmless the GCRTA and its respective officers, agents and employees against any fines, penalties, all findings for recovery ordered or issued by any state or federal entity, and damages of any type due to the failure of L.A.N.D. studio, or its contractors or agents to comply with any federal or state law, rule, regulation, and/or procedure in the course of the performance of the Project. This indemnification obligation shall include obligations incurred that result from any consent decree or settlement agreement.
- C. Notwithstanding the foregoing, L.A.N.D. studio shall have no obligation to indemnify the GCRTA or any of its officers, agents or employees for any liability, loss, damage or fines, penalties or findings for recovery to the extent arising from or based on any negligent act or omission or any non-compliance with any federal, state or local law, rule, regulation or procedure by the GCRTA or any of its officers, agents or employees. Such limitation on L.A.N.D. studio's indemnity obligation shall apply even if L.A.N.D. studio's acts, failures to act or non-compliance with any federal, state or local law, rule, regulation or procedure contributed, in part, to the liability, loss, damage or fines, penalties or findings for recovery, though not to the

extent of liability arising from or based on the acts or omissions of L.A.N.D. studio its officers, agents, or employees.

**4. Insurance.** Prior to commencement of any work and until completion of its work under the contract, Land Studio shall maintain the following insurance coverage, at its cost, from insurers acceptable to GCRTA and shall comply with all provisions of this article.

The insurance coverage required is:

- a. Commercial General Liability Insurance in the amount of \$3 million dollars combined single limit each occurrence for bodily injury and/or property damage with a \$4 million per project annual aggregate. Said policy shall also include:
  - The InterUrban Project, inclusive of all individually named Artists selected for the Project
  - Premises / Operations coverage
  - Personal Injury coverage
  - Liability for independent contractors
  - Products / Completed Operations liability insurance: This insurance must be maintained for a period of not less than 5 years from the completion of the work.
  - Contractual liability coverage insuring the "hold harmless" provision set forth herein.
  - Liability for explosion, collapse and underground property damage
  - Said policy shall be written on an "occurrence" basis.
  - GCRTA will accept any combination of primary CGL and Excess or Umbrella policies to meet the minimum coverage requirements above.
  - Railroad endorsement, CG 24 17 – Contractual Liability – Railroads or the Cincinnati Insurance form GA 4144 10 01, with a copy of the endorsement attached to the Certificate of Insurance.
- b. Automobile Liability Insurance in the amount of \$2 million combined single limit each accident for bodily injury and/or property damage. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with the work.
- c. Statutory Workers' Compensation coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this contract and under the control of Land Studio. Employers' Liability coverage in the amount of \$1 million per accident / \$1 million per employee for disease will also be included, either under the Workers' Compensation policy or under the Commercial General Liability policy (Stop Gap) referenced under a. above. In Ohio: a copy of a certificate of premium payment from the Industrial Commission and Bureau of Workers' Compensation, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.
- d. Installation Floater in an amount sufficient to cover all materials to be installed or transported on any component of the Project that requires boring into the Airport Tunnel.
- e. General Requirements: Neither Land Studio nor any subConsultant shall commence work herein until it has obtained the required insurance and has received written approval of such insurance from GCRTA. Land Studio shall furnish evidence of such insurance for itself and each of its subcontractors at all tiers in the form of a certificate prior to commencement of any work. (Acord or similar form). The certificate shall

provide the following:

- In the event the insurance should be materially changed or cancelled, such material change or cancellation shall not be effective until 30 days after the contracting parties have received written notice of such change or cancellation from the insurance company. Such notice shall be mailed by certified mail, return receipt requested to GCRTA's Director of Programming & Planning.
  - Name GCRTA, as Additional Insured for coverages required under a. and b. above, for claims arising out of operations in conjunction with the contract.
  - Contain a waiver of subrogation in favor of GCRTA.
  - Specific reference to the subject MOU.
  - Specific reference to all deductibles & Self-Insured Retentions (SIR).
  - Shall be primary and non-contributing to any insurance possessed or procured by GCRTA and any insurance or self-insurance program maintained by any of the foregoing.
  - Include a copy of the policy endorsements providing thirty (30) days' notice of material change/cancellation to GCRTA, adding GCRTA as an additional insured, and waiving subrogation in favor of GCRTA.
  - An insurance company having less than an A- X rating by The A. M. Best Company will not be considered acceptable. All certificates are subject to acceptance by GCRTA. GCRTA shall be entitled to receive a full copy of the insurance policy(ies) upon request and reserves the right to review financial statements and approve any deductibles or self-insured retention (SIR). Any deductible or SIR is for the account of Land Studio.
- f. Approval of the insurance by GCRTA shall not relieve or decrease the liability of the Land Studio. It is to be understood that GCRTA does not represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect Land Studio's interests or liabilities. Should the required primary insurance limits of Land Studio be exhausted or not available to pay a claim, Land Studio shall be liable for payment of claims the insurance was intended to cover, up to the limits required above.
- g. In the event Land Studio neglects, refuses or fails to provide the insurance required herein, or if such insurance is canceled for any reason, GCRTA shall have the right but not the duty to procure the same. If this occurs, the cost of the insurance procured on behalf of L.A.N.D. studio by GCRTA will be borne by L.A.N.D. studio.

**5. Audit and Inspection.** Audits and Inspection - L.A.N.D. studio shall maintain books, records, documents, and other evidence directly pertinent to the performance of the Work under this Contract in accordance with generally accepted accounting principles and practices consistently applied and Federal Acquisition Regulations, Parts and 31, as applicable. GCRTA and its authorized representatives shall have the right to audit, to examine and to make copies of or extracts from all financial and related records (in whatever form they may be kept, whether written, electronic, or other) relating to or pertaining to this Agreement kept by or under the control of L.A.N.D. studio, including, but not limited to those kept by the L.A.N.D. studio, its employees, agents, assigns, successors and subcontractors. Such records shall include, but not be limited to, accounting records, written policies and procedures; subcontract files; all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips;

bank statements; journals; original estimates; estimating work sheets; contract amendments and change order files; back charge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. L.A.N.D. studio shall, at all times during the term of this Agreement and for a period of three years after the completion of this Agreement, maintain such records, together with such supporting or underlying documents and materials. L.A.N.D. studio shall at any time requested by GCRTA, whether during or after completion of this Agreement, and at L.A.N.D. studio's own expense make such records available for inspection and audit (including copies and extracts of records as required) by GCRTA. Such records shall be made available to GCRTA during normal business hours at L.A.N.D. studio's office or place of business and [subject to a three day written notice/without prior notice]. In the event that no such location is available, then the financial records, together with the supporting or underlying documents and records, shall be made available for audit at a time and location that is convenient for GCRTA. L.A.N.D. studio shall ensure GCRTA has these rights with L.A.N.D. studio's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the L.A.N.D. studio and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the L.A.N.D. studio's obligations to GCRTA. If the audit discovers substantive findings related to fraud, misrepresentation, or non-performance, GCRTA may recoup the costs of the audit work from the L.A.N.D. studio. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the L.A.N.D. studio's invoices and/or records shall be made within a reasonable amount of time (not to exceed 90 days) from presentation of GCRTA's findings to L.A.N.D. studio.

**6. No Agent or Contractor Relationship.** It is the intention of the Parties that the GCRTA's obligations under this agreement shall be to act as a pass-through of federal funds. Neither L.A.N.D. studio nor the GCRTA shall have any authority, express or implied, to bind the other party.

**7. Environmental Responsibilities.** In the administration and furtherance of the Project, if applicable, L.A.N.D. studio shall be responsible for planning, coordinating and conducting any required public involvement events, for preparing all required documents, reports and other supporting materials needed for addressing any applicable Environment Impact Statement, Environmental Assessment or Categorical exclusion for the Project pursuant to the National Environmental Act and the National Historic Preservation Act; and for securing all necessary permits and approvals from all federal, state and local regulatory agencies. L.A.N.D. studio shall be responsible for assuring compliance with all commitments made as part of the Project's environmental clearance and/or permits.

**8. Procurement.** All goods and services for the Project shall be procured on a competitive basis and in compliance with Federal guidelines, including FTA Circular 4220.1F.

**9. Contract Administration.** L.A.N.D. studio shall review and/or approve all invoices prior to payment and before requesting reimbursement from GCRTA for work performed on the Project. L.A.N.D. studio shall use its best efforts to ensure that invoices are accurate in all material respects in both amount and in relation to the progress made on the Project. All invoices submitted to GCRTA shall include a clear statement of work performed in support of reimbursement, including milestones or percentage of work complete.

#### **10. Miscellaneous.**

- A. Entire Agreement. This Agreement, including the Master Grant Agreement and the documents expressly referred to in the Master Grant Agreement or required by the Master Grant Agreement in connection with the award of federal funds, together all documents evidencing so-called "pre-award authority" and letter of no prejudice relating to the Project, collectively constitute the entire agreement between the parties relating to the Project and supersede all prior understandings and agreements, whether written or oral, that may relate to the Project.
- B. Severability. Should any provision of this Agreement be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision shall be deemed modified to the extent necessary (consistent with the intent of the parties) to eliminate the illegal, invalid or unenforceable effect or to delete such provision if modification is not feasible, and the remaining terms shall continue in full force and effect.
- C. Governing Law. This Agreement shall be governed by federal law to the extent applicable to contracts for the award of federal funds and otherwise by the laws of the State of Ohio, courts of Cuyahoga County, applicable to contracts made and to be performed wholly within the State of Ohio.

IN WITNESS WHEREOF, the parties, intending to be legally bound, have executed and delivered this Agreement as of the day and year first set forth above.

**L.A.N.D. studio, Inc.**

**GCRTA**

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: Joseph A. Calabrese, CEO  
 Title: General Manager/Secretary-Treasurer

Title: \_\_\_\_\_

Approved as to Legal Form and  
 Correctness

\_\_\_\_\_  
 Sheryl King Benford, General Counsel  
 Deputy General Manager for Legal Affairs



**EXHIBIT 1**

FTA MASTER GRANT AGREEMENT (FORM MA12)

A copy of the Master Grant Agreement is attached hereto and incorporated herein by reference.

# DRAFT

## PUBLIC ART CONTRACT BETWEEN

\_\_\_\_\_ AND  
\_\_\_\_\_

THIS AGREEMENT, entered into as of this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between \_\_\_\_\_ (hereinafter called \_\_\_\_\_) and \_\_\_\_\_, (hereinafter called the "Artist").

WHEREAS, the \_\_\_\_\_ desires to contract with the Artist to render certain services as hereinafter described in Attachment A:

WHEREAS, the Artist is willing to provide such product and services on the basis of compensation set forth in Attachment B:

WHEREAS, the Artist has read the provisions of the Visual Artists' Rights Act ("VARA") and has signed the Waiver, set forth in Attachment C.

NOW, THEREFORE, the parties hereto, subject to the general and terms and conditions attached hereto and which are incorporated herein as if fully set forth, do mutually agree as follows:

1. Contract with Artist. The \_\_\_\_\_ hereby agrees to engage the Artist and the Artist agrees to provide the product and services hereinafter set forth in conformity with all applicable Federal, State, and Local laws to which the \_\_\_\_\_ and the Artist and their respective employees are subject.
2. Scope of Services.
  - a) The Artist shall do, perform, and carry out in a satisfactory, proper, and timely manner the rendering of product and services (hereinafter called the "Services") set forth in the attached Scope of Services (Attachment A) with payment to be made in conformity to the Compensation Schedule (Attachment B), both of which are attached hereto and incorporated herein by this reference.
  - b) The Artist shall report not less than monthly, if requested, the progress of the Services. The Artist shall, at the request of \_\_\_\_\_ or the Greater Cleveland Regional Transit Authority ("GCRTA"), be available to report to the GCRTA's staff, Board of Trustees, or any committee thereof, progress reports, recommendations and any other information prepared, developed, obtained or related to the Services or the subject matter thereof.
  - c) It is specifically understood and agreed that time is of the essence and goes to the heart of this contract and each and every element thereof; a breach of the time of performance is a breach of this Contract.
  - d) The Artist shall perform its Services under the direction of \_\_\_\_\_, to whom it shall address all materials and submittals.
3. Data to be Furnished to Artist. \_\_\_\_\_ shall provide the Artist with such access to its records, files, facilities, and personnel as may be reasonably necessary for the performance of the Services.

4. Personnel.

- a) The Artist shall utilize personnel suitable and appropriate to the subject matter of the Contract and the specific portion of the Services involved. Personnel so employed shall be considered employees of the Artist; under no circumstances shall any such personnel be considered employees of \_\_\_\_\_ or the GCRTA, or as having any contractual relationship therewith.
- b) None of the Services hereunder shall be subcontracted without the prior written consent of \_\_\_\_\_. In each instance, \_\_\_\_\_ must approve any subcontractor and its contract with the Artist; absent such approval, \_\_\_\_\_ shall not compensate Artist for Services performed by a subcontractor.
- c) Artist represents and warrants that neither it nor its personnel to be employed hereunder are under obligation to any other individual, firm, or other entity, which would conflict with or impair their ability to fully perform their services and other obligations hereunder. Artist further represents and warrants that, if it or any of its personnel to be employed hereunder possess trade secrets or other confidential information of any other individual, firm or other entity under obligation of non-disclosure, they shall perform their services and other obligations hereunder in full compliance with the terms of such obligation.

5. Time of Performance. The term of this contract shall be identified as \_\_\_\_\_ months.

6. Compensation and Method of Payment.

- a) \_\_\_\_\_ agrees to pay the Artist an amount not to exceed \$\_\_\_\_\_ (\_\_\_\_\_ and 00/100) (Fixed Fee), as full compensation for performance of the contract, on the basis set forth in Attachment B hereto.
- b) Final payment shall be made only upon satisfactory completion of each and every obligation of the Artist hereunder and the submittal of all necessary and appropriate documentation required hereunder.
- c) Payments will generally be made within thirty (30) days following approval of the invoice. Such approval or payment shall not constitute acceptance or approval of the product and/or services invoiced. Late payments shall accrue no interest.
- d) Payment will only be made for artwork and services accepted. For artwork and services accepted which acceptance is later revoked prior to payment, the payment will be withheld until defects in the nonconforming artwork or services are cured and accepted. In the case of serial deliveries and serial invoicing, \_\_\_\_\_ reserves the right to deduct overpayments from current invoice amounts.
- e) The Artist agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than ten (10) calendar days from receipt of each payment the Artist receives from \_\_\_\_\_. The Artist agrees further to release retainage payments (if applicable) to each subcontractor within ten (10) calendar days after the subcontractor's work is satisfactorily completed and final payment have been made to the Artist.

7. Limitation of Costs. The parties agree that the services hereunder, as presently contemplated, will not cost \_\_\_\_\_ more than the amount specified in Paragraph 6(a) above. The Artist shall notify \_\_\_\_\_ in writing whenever the total billings reach eighty-five percent (85%)

of the total estimated costs, as well as when the total cost for the performance of this contract, exclusive of any fee, will be either greater or substantially less than had been previously estimated. As part of the notification, the Artist shall provide \_\_\_\_\_ with a revised estimate of the total cost of performing this contract.

8. Indemnification.

(a) To the fullest extent permitted by law and to the extent of Artist's negligence, the Artist shall, at its sole cost and expense, indemnify, defend, satisfy all judgments, and hold harmless both \_\_\_\_\_ and the GCRTA ("Indemnified Parties"), and its agents, representatives, and employees, from and against all claims, actions, judgments, costs, penalties, liabilities, damages, losses and expenses, including but not limited to attorney's fees and worker's compensation benefits, for Artist's proportionate share and the proportionate share of any entity employed or contracted by Artist, arising out of or resulting from the performance of this contract, providing that any such claim, action, judgment, cost, penalty, liability, damage, loss or expense is caused in whole or in part by the negligence or professional errors or omission of the Artist or any person or entity directly or indirectly employed by it. Such obligation shall not be construed to negate, abridge, or otherwise diminish any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph.

In the event of negligence or intentional acts or omissions by more than one entity, responsibility for such negligence or intentional acts or omissions will be allocated in accordance with the proportionate share of such entity(ies)' negligence or intentional acts or omissions. Nothing herein shall be construed as making Artist liable for any claims, actions, judgments, costs, penalties, liabilities, damages or losses and expenses caused by the sole negligence and/or misconduct of \_\_\_\_\_ and/or GCRTA.

To the extent that any portion of this provision is found to be in violation of any applicable law, said portion(s) of this provision are stricken but all remaining portions of this provision shall remain in full force and effect.

(b) Obligations of the Artist stated in this Article shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity, which would otherwise exist as to any or all of the Indemnified Parties.

(c) No provision of this Article shall give rise to any duties on the part of the Indemnified Parties. The Artist further agrees to indemnify, hold harmless, reimburse and defend Indemnified Parties from:

- 1) payments made under Workers' Compensation Acts by Indemnified Parties or employer's liability claims against Indemnified Parties based on injuries, sickness, disease, death or disability claimed by Indemnified Parties' employees, or
- 2) workers' compensation or employer's liability claims made by employees of Artist or employees of any Subcontractor or any employee directly or indirectly employed by any of them and based on injuries, sickness, disease, death or disability.
- 3) As between Artist and Indemnified Parties, Artist waives its immunities under Ohio Revised Code Chapter 4123.

(d) With respect to any and all claims against the Indemnified Parties by any employee of the Artist, Subcontractors, their agents, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligations shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Artist, Subcontractors or other person under applicable workers' compensation, benefit or disability laws, it being clearly agreed and understood by the parties

hereto that the Artist expressly waives any immunity the Artist or might have had under such laws.

9. Insurance. Prior to commencement of any work and until completion of its work under the contract, Land Studio shall maintain the following insurance coverage, at its cost, from insurers acceptable to GCRTA and shall comply with all provisions of this article.

The insurance coverage required is:

- a. Commercial General Liability Insurance in the amount of \$3 million dollars combined single limit each occurrence for bodily injury and/or property damage with a \$4 million per project annual aggregate. Said policy shall also include:
  - The Inter|Urban Project, inclusive of all individually named Artists selected for the Project
  - Premises / Operations coverage
  - Personal Injury coverage
  - Liability for independent contractors
  - Products / Completed Operations liability insurance: This insurance must be maintained for a period of not less than 5 years from the completion of the work.
  - Contractual liability coverage insuring the "hold harmless" provision set forth herein.
  - Liability for explosion, collapse and underground property damage
  - Said policy shall be written on an "occurrence" basis.
  - GCRTA will accept any combination of primary CGL and Excess or Umbrella policies to meet the minimum coverage requirements above.
  - Railroad endorsement, CG 24 17 – Contractual Liability – Railroads or the Cincinnati Insurance form GA 4144 10 01, with a copy of the endorsement attached to the Certificate of Insurance.
- b. Automobile Liability Insurance in the amount of \$2 million combined single limit each accident for bodily injury and/or property damage. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with the work.
- c. Statutory Workers' Compensation coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this contract and under the control of Land Studio. Employers' Liability coverage in the amount of \$1 million per accident / \$1 million per employee for disease will also be included, either under the Workers' Compensation policy or under the Commercial General Liability policy (Stop Gap) referenced under a. above. In Ohio: a copy of a certificate of premium payment from the Industrial Commission and Bureau of Workers' Compensation, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.
- d. Installation Floater in an amount sufficient to cover all materials to be installed or transported on any component of the Project that requires boring into the Airport Tunnel.
- e. General Requirements: Neither Land Studio nor any subConsultant shall commence work herein until it has obtained the required insurance and has received written approval of such insurance from GCRTA. Land Studio shall furnish evidence of such insurance for itself and each of its subcontractors at all tiers in the form of a certificate prior to commencement of any work. (Acord or similar form). The certificate shall provide the following:
  - In the event the insurance should be materially changed or cancelled, such material change or cancellation shall not be effective until 30 days after the contracting

parties have received written notice of such change or cancellation from the insurance company. Such notice shall be mailed by certified mail, return receipt requested to GCRTA's Director of Programming & Planning.

- Name GCRTA, as Additional Insured for coverages required under a. and b. above, for claims arising out of operations in conjunction with the contract.
  - Contain a waiver of subrogation in favor of GCRTA.
  - Specific reference to the subject MOU.
  - Specific reference to all deductibles & Self-Insured Retentions (SIR).
- Shall be primary and non-contributing to any insurance possessed or procured by GCRTA and any insurance or self-insurance program maintained by any of the foregoing.
  - Include a copy of the policy endorsements providing thirty (30) days' notice of material change/cancellation to GCRTA, adding GCRTA as an additional insured, and waiving subrogation in favor of GCRTA.
  - An insurance company having less than an A- X rating by The A. M. Best Company will not be considered acceptable. All certificates are subject to acceptance by GCRTA. GCRTA shall be entitled to receive a full copy of the insurance policy(ies) upon request and reserves the right to review financial statements and approve any deductibles or self-insured retention (SIR). Any deductible or SIR is for the account of Land Studio.
- f. Approval of the insurance by GCRTA shall not relieve or decrease the liability of the Land Studio. It is to be understood that GCRTA does not represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect Land Studio's interests or liabilities. Should the required primary insurance limits of Land Studio be exhausted or not available to pay a claim, Land Studio shall be liable for payment of claims the insurance was intended to cover, up to the limits required above.
- g. In the event Land Studio neglects, refuses or fails to provide the insurance required herein, or if such insurance is canceled for any reason, GCRTA shall have the right but not the duty to procure the same. If this occurs, the cost of the insurance procured on behalf of L.A.N.D. studio by GCRTA will be borne by L.A.N.D. studio.
10. Notice to Proceed. \_\_\_\_\_ shall furnish the Artist with written direction to commence performance hereunder entitled "Notice to Proceed" within ten (10) days after receipt of the required evidence of insurance and such other documentation as the Artist may be required to provide prior to commencement of performance. The GCRTA shall not be responsible for any services performed or costs incurred prior to issuance of such Notice to Proceed.
11. Contract Changes. The Contract shall not be amended or modified except by written agreement of the parties.
12. Termination.
- a) Should the Artist through negligent action or inaction fail to perform its Services hereunder in accordance with accepted professional standards or in any manner imperil the \_\_\_\_\_ and/or GCRTA's right and ability to successfully pursue the subject matter of this Contract through negligent action or actions, or breach any duty hereunder, and fail to remedy such failure or breach in a timely manner as directed by \_\_\_\_\_, \_\_\_\_\_ may terminate this Contract and hold the Artist responsible for any and all costs and liabilities arising as a direct or proximate result of such failure.

- b) The performance of the services hereunder may be terminated in whole or, from the time, in part by \_\_\_\_\_ whenever it determines it is in the best interest of the \_\_\_\_\_ to do so. Such termination shall be written notice to the Artist specifying the extent and the effective date of the termination.
- c) Any damages assessed to the Artist as a result of termination pursuant to Paragraph 11(a) above, or any claim by the Artist for costs resulting from a termination pursuant to Paragraph 11(b) above will be computed and allowed in accordance with federal regulations in effect at the time of termination.
13. Confidentiality. The Artist shall hold as confidential all information and data transmitted to it by, through or on behalf of the GCRTA, and shall not disclose such information or data in whole or in part to any third party except as may be specifically directed or approved by the GCRTA's General Manager or his designee.
14. Prohibited Interests. No officer, member, or employee of \_\_\_\_\_ or GCRTA and no members of either respective governing body, during his or her tenure, shall have any interest, direct or indirect, in this Agreement, any contract negotiated subsequently, or the proceeds thereof. Furthermore, no member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to any benefit arising therefrom.
15. Covenant Against Contingent Fees and Gratuities. The Artist warrants that no person or selling agencies has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission or bonafide established commercial or selling agencies maintained by the Artist for the purpose of securing business. For breach or violation of this warranty, \_\_\_\_\_ shall have the right to annul this Contract without liability or at its discretion, to deduct from the Contract price, or otherwise recover the full amount or such commission, percentage, brokerage, or contingent fees. Artist further warrants that it, its agent, and/or its subArtist, have not and will not accept a gratuity in relation to this agreement.
16. Restrictions on Lobbying. This contract is subject to the provisions of Section 319, Public Law 101-121 (31 U.S.C.) 1352.
17. Debarment & Suspension. For any transaction of \$25,000 and above, Artist must disclose to \_\_\_\_\_ and the GCRTA any debarment and/or suspension.
18. Assignment. The Artist shall not assign, transfer, convey, sublet, or otherwise dispose of the contract or its right, title, or interest in or to the same or any part thereof without prior written consent of both \_\_\_\_\_ and the GCRTA.
19. Social Security Act. The Artist shall be and remain an independent Artist with respect to all Services performed hereunder and agrees to and does hereby accept full and exclusive liability for the payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now hereafter imposed under any State or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by the Artist for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are not or hereafter may be issued or promulgated under said respective laws by all duly authorized State or federal law officials, and said Artist agrees to indemnify and save harmless the \_\_\_\_\_ and GCRTA from any such contributions or taxes or liability therefore.

20. Federal Assistance. The Services under this contract may be supported in part by Federal assistance under grants made by the Department of Federal Transit Administration, pursuant to the Urban Mass Transportation Act of 1984 and amendments (49 U.S.C. et seq.) and Surface Transportation Assistance Acts of 1982 and 1987, as amended. When so funded, this Contract shall be subject to all rules and regulations promulgated pursuant thereto.

Artist, \_\_\_\_\_, and the GCRTA agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, absent the express written consent of the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to \_\_\_\_\_, GCRTA, the Artist or any other party pertaining to any matter resulting from the underlying Contract; Artist further agrees to include this clause, without modification, in any subcontract issued hereunder.

21. Non-Discrimination. Artist agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age or disability in accordance with the following Federal Statutes and regulations, and any other implementing regulations issued pursuant to the: Civil Rights Act as amended, Titles VI (42 U.S.C. 2000d) and VII (42 U.S.C. 2000e); Age Discrimination Act of 1975, as amended (42 U.S.C. 6102); Age Discrimination in Employment Act of 1967 as amended, (29 U.S.C. 623); Americans with Disabilities Act of 1990, as amended, (42 U.S.C. 12132 and 42 U.S.C. Sec. 12112) and implementing regulations (29 C.F.R. Part 1630), Federal transit law (49 U.S.C. 5332); Executive Order 11248, as amended by Executive Order 11375 (42 U.S.C. 2000e note) and implementing regulations (41 C.F.R. Parts 60 et seq.). Artist also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by the Federal Transit Administration.
22. Wage and Hour. All Artists and subArtists must compute wages based on a standard workweek of 40 hours. Work in excess of 40 hours must be paid at a rate not less than one and one-half times the basic rate of pay. Compliance with 40 USC Sec. 3702, 29 CFR Part 5, and 40 USC Sec 3701(B)(3)(A)(iii) is required of all Artists and subArtists.
23. Program Fraud and False or Fraudulent Statements or Related Acts. Artist agrees that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. Sec 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 apply to its actions and those of its subArtist(s) pertaining to this Contract; Artist further agrees to include this clause without modification, in any subcontract issued hereunder.
24. Audits and Inspection. The Artist shall maintain books, records, documents, and other evidence directly pertinent to the performance of the Work under this Contract in accordance with generally accepted accounting principles and practices consistently applied and Federal Acquisition Regulations, Parts and 31. The Artist shall also maintain the financial information and data used by it in the preparation or support of the cost submissions required for this Contract, or any change order or claim, and a copy of the cost summary submitted to the \_\_\_\_\_, GCRTA, the U.S. government, and the State government or their authorized representative shall have access, at all times during normal business hours, to such books, records, documents, and other evidence for the purpose of inspection, audit, and copying. The Artist will provide facilities or such access and inspection. The rights granted under this provision shall remain in full force and effect for three (3) years after termination of this Contract for whatever reasons, and shall extend to any subArtists performing work valued in excess of ten thousand & 00/100 dollars (\$10,000.00).



25. Approval of Contract. This contract is subject to the written approval of \_\_\_\_\_ and shall not be binding until so approved.
26. Integrated Agreement. This Contract, including the attachments referenced herein, constitutes the entire agreement of the parties. No prior agreements or understandings, or oral modifications or representations are enforceable hereunder unless reduced to written form, signed by both parties, and incorporated herein by amendment prior to performance of the affected Services.
27. Governing Law. This Contract shall be governed by and interpreted pursuant to the laws of the United States and of the State of Ohio, as appropriate, notwithstanding any provisions of such laws relating to jurisdiction. Should any part or parts of this Contract be held unenforceable by any court of competent jurisdiction, such determination shall not affect the remainder thereof and the balance of this Contract shall remain in full force and effect.
28. Warranties. Intentionally Omitted.
29. Recycled Products/Energy Conservation. Artist agrees to comply with the requirements of Section 6002 of the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the subject matter of this Contract. Artist further agrees to comply with applicable mandatory energy efficiency standards and policies of applicable state energy conservation plans issued in accordance with 42 USC Sections 6321 et seq.
30. Hazardous Materials. Where the goods or services procured involve the use or storage of hazardous materials on the GCRTA's premises in Cleveland, Artist agrees to meet the requirements of Cleveland Codified Ordinance Section 394. Artist shall: Label the containers of hazardous or toxic substances that it delivers in accordance with the requirements of Federal and State 4.06(A); Provide labels and placards for use by \_\_\_\_\_ and/or the GCRTA when deliveries are made in bulk and are to be stored by \_\_\_\_\_ and/or the GCRTA stationary containers pursuant to C.O.C. Section 394.06(B); Provide the hazard warnings applicable to the delivered goods that are required C.O.C., Section 394.06(d); Provide all material safety data sheets required C.O.C., Section 394.09.
31. Environmental Indemnity. Artist agrees for itself, its officers, employees and agents that it will hold harmless, indemnify and defend both \_\_\_\_\_ and the GCRTA, their respective Board, Officers, and employees from and against all claims, demands, findings, judgments, orders, or actions arising out of or in any way connected with the services provided under this contract, including without limitation, all activities associated with the loading, transport, unloading and disposal of any and all substances under the purview of any law, rule, order or ordinance, promulgated for the protection of the environment such as and without limiting the foregoing, CERCLA, SARA, RCRA, TSCA, SDNA, Clean Air Act, Clean Water Act, Right to Know Laws, and the state equivalents of each of the foregoing. Artist further agrees that the defense guaranteed hereby shall be provided by a lawyer or firm or firms selected by the GCRTA.
32. Notification of Proceedings. \_\_\_\_\_ will give the Artist prompt notice in writing of the institution of any suit or proceeding and permit the Artist to defend same and will give all needed information, assistance, and authority to enable the Artist to do so. The Artist will similarly give \_\_\_\_\_ immediate notice of any suit or action filed or prompt notice of any claims made against the Artist arising out of the performance of this contract. The Artist shall furnish immediately to \_\_\_\_\_ copies of all pertinent papers received by the Artist.

- 33. Safety Belt Use. Pursuant to Federal Executive Order No. 13043, Artist is encouraged to adopt and promote on-the-job seat belt use for its employees and other personnel operating vehicles involved in the project.
- 34. Compliance with Laws and Regulations. All materials and supplies furnished pursuant to the specifications shall be in compliance with the laws and regulations of the State of Ohio. Artist shall, if requested by \_\_\_\_\_, supply certification and evidence of such compliance. The contract shall be construed pursuant to the laws of the State of Ohio.
- 35. Reporting of Fraudulent/Improper Acts. If Artist suspects or has knowledge of unethical, improper and/or fraudulent acts by GCRTA personnel, including but not limited to conflicts of interest, bribery, fraud, waste, abuse, extortion, and kickbacks involving the GCRTA, the Artist shall contact the GCRTA's Executive Director of Internal Audit on the GCRTA's Fraud Hotline (216-781-4080).
- 36. Required Provisions Deemed Inserted. Each and every clause required by Federal or State statute or regulation to be inserted into this Contract is deemed to be inserted herein and this Contract shall be read and enforced as though it were included herein. If through mistake or otherwise any such provision is not inserted, or it not correctly inserted, then upon the application of either party the Agreement shall forthwith be amended to make such insertion or correction.

IN WITNESS WHEREOF, The Artist and the \_\_\_\_\_ have executed this Contract at Cleveland, Ohio, as of the date first written above:

ATTEST:

ARTIST

\_\_\_\_\_

\_\_\_\_\_  
*Authorized Signature*

\_\_\_\_\_  
*Title*

ATTEST:

\_\_\_\_\_

\_\_\_\_\_

**ATTACHMENT A.  
SCOPE OF WORK**

**Section 1.1 General**

- (a) Artist shall perform all services and furnish all supplies, materials and equipment as necessary for the design, execution, fabrication, transportation and installation of artwork at the site.
- (b) The artistic expression, scope, design, color, size, material, texture of artwork and placement of artwork on the site shall be in accord with the Artist's proposal previously submitted and previously accepted by GCRTA, subject to review and acceptance of artwork by the GCRTA as set forth in this Agreement.

- (c) Artist shall perform all services under this agreement by the Notice of Proceed date with completion within approved schedule not to exceed \_\_\_\_\_ months.
- (d) Artist shall, prior to fabrication of Artwork, meet with the GCRTA and/or \_\_\_\_\_ to preview the proposed artwork and ensure that it can be maintained over the period of its lifetime without extraordinary expense.

**Section 1.2 Design Review, Revisions to Proposed Work**

- (a) Within \_\_\_\_\_ (\_\_\_\_\_) days after execution of this Agreement, the Artist shall submit to \_\_\_\_\_ detailed drawings of artwork and other graphic materials as may reasonably be requested in order to permit \_\_\_\_\_ and GCRTA to carry out design review of Artwork and to certify the compliance of artwork with applicable statutes and ordinances with internal staff (i.e. structural engineers, GCRTA Safety personnel, GCRTA Transit Police).
- (b) GCRTA may require the artists to make such revisions to the proposed work as are necessary for artwork to comply with applicable statutes, ordinances or regulations governing the project.
- (c) The GCRTA may also require revisions of the proposed work for other practical and non-aesthetic reasons
- (d) Within \_\_\_\_\_ (\_\_\_\_\_) days after receipt of the Artists revisions, pursuant to this Section 1.2, the RTA shall notify the Artist of its approval or disapproval of such revisions. Revisions made and accepted by the GCRTA pursuant to this Section 1.2 become a part of the Proposal for artwork.

**Section 1.3 Execution of Artwork**

- (a) Within \_\_\_\_\_ (\_\_\_\_\_) days following design review approval by the RTA, pursuant to Section 1.2 above, the Artist shall furnish to \_\_\_\_\_ a tentative schedule for completion of fabrication and installation of artwork. After written approval of the schedule, the Artist shall fabricate and transport artwork in accordance with such schedule. Such schedule may be amended by written agreement.
- (b) \_\_\_\_\_ and GCRTA shall have the right to review artwork at reasonable times during its fabrication. The Artist shall submit a prototype before all required artwork goes into full production. The Artist shall submit progress reports in accordance with the schedule provided for in Section 1.3 (a), above;
- (c) The Artist shall complete the fabrication and installation of artwork in substantial conformity with the proposal and any revisions thereto;
- (d) The Artist shall present to the Artist, in writing for further review, any "significant changes" in the scope, design, color, size, material, texture of Artwork not permitted by or not in substantial conformity with the accepted proposal. A significant change is 1) any material change in the scope, design, color, size, material, texture or location of Artwork on the site; 2) any material change in artwork that affects installation, scheduling, site preparation, or maintenance of artwork; or 3) any change in the concept of artwork as represented in the accepted proposal.

**Section 1.4 Delivery and Installation**

- (a) Prior to delivery, the Artist shall notify \_\_\_\_\_, in writing, when fabrication of artwork is completed and that the Artist is ready for delivery of the artwork at the site;

- (b) Artist shall deliver artwork at the site in compliance with the schedule approved pursuant to Section 1.3 (a);

**Section 1.5 Post Installation**

- (a) GCRTA shall have the right to duplicate and distribute for any commercial or non-commercial purpose the photographs and documentation supplied by the artist under this Agreement.
- (b) Upon installation of artwork, the Artist shall provide \_\_\_\_\_ and the GCRTA with written instructions for appropriate maintenance and conservation of artwork.

**Section 1.6 Final Acceptance**

- (a) The Artist shall advise \_\_\_\_\_ in writing when all services have been complete in substantial conformity with this Agreement and the Proposal;
- (b) \_\_\_\_\_ shall notify the Artist in writing of the final acceptance (or non-acceptance) of artwork; .

**Section 1.7 Risk of Loss**

The risk of loss or damage to Artwork shall be borne by the Artist until final acceptance, and the Artist shall take measures as are necessary to protect Artwork from loss of damages until final acceptance; except that the risk or loss shall borne by the Artist prior to final acceptance during such periods of time as the partially or wholly completed work is in the custody, control or supervision of \_\_\_\_\_ or GCRTA.

**Section 1.8 Ownership of Documents**

All studies, drawings, and designs prepared and submitted under this Agreement shall become the property of the GCRTA. GCRTA may reference Artist as the designer of artwork if photos, renderings for all external communications and publications.

**ATTACHMENT B.  
Compensation and Payment Schedule**

**Fixed Fee**

\_\_\_\_\_ shall pay the Artist the fixed sum of \$\_\_\_\_\_ (\_\_\_\_\_ and 00/100) (Fixed Fee), which shall constitute full compensation for all services and materials to be performed and furnished by the Artist under this Agreement without exception subject to adjustments pursuant to Section 1.2 (d) above. The Fixed Fee shall be paid in the following installments, expressed as percentage of such Fixed Fee:

- (a) Up to 20 percent (20%) can be requested when the design drawings have been approved by \_\_\_\_\_ (See Section 1.2, Scope of Work);
- (b) Up to 75 percent (75%) can be requested from artist and must be in fabrication stage (See Section 1.3 Scope of Work);
- (c) Up to 90 percent (90%) can be requested after the artist notifies \_\_\_\_\_ that it is near completion of artwork (See Section 1.4 Scope of Work);
- (d) 100 percent (100%) upon completion and installation of artwork (See Section 1.6 Scope of Work).

**Attachment C.  
General VARA Waiver for Works of Visual Art**

Artist hereby acknowledges the rights of attribution and integrity, as well as all other specified rights, conferred by the Visual Artists' Rights Act (VARA), 17 USC §106A, along with any other rights of the same nature granted by federal, state, or foreign laws. Furthermore, Artist, of his or her own free act, hereby waives such rights in their entirety in as much as said rights may exist in relation to this Contract.

Date: \_\_\_\_\_ Signature of Artist: \_\_\_\_\_

# DRAFT

Attachment \_\_\_\_\_

## TEMPORARY RIGHT OF ENTRY AGREEMENT

THIS TEMPORARY RIGHT OF ENTRY, made this \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_\_\_, by and between the GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY ("Licensor") and \_\_\_\_\_ ("Licensee"), collectively, "the Parties."

Licensor hereby permits Licensee to enter upon property owned or controlled by Licensor located at \_\_\_\_\_ (address) in Cleveland, Ohio, and being located substantially as shown upon print marked Exhibit "A" dated \_\_\_\_\_, attached hereto and made a part hereof.

This Right of Entry is granted upon the following terms and conditions:

I. the Right of Entry is granted only for the purpose of \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_.

2. Licensor shall be given at least seventy-two (72) hours' advance notice before entry upon the property. Notices to Licensor shall be directed to: GCRTA's Director of Programming & Planning, 1240 W. 6<sup>th</sup> Street, Cleveland, Ohio, whose telephone number is (216) 566-5160.

3. All reasonable care shall be exercised and such precautions taken as Licensor may deem necessary to protect Licensor's facilities and operations. Licensor reserves the right to place watchmen, flagmen, inspectors and supervisors for protection purposes during the operations hereunder and the expense thereof, including the expense of any material furnished, shall be promptly paid by Licensee upon receipt of Licensor's bill therefore. In addition to direct wage and material cost, such expense shall include, but shall not be limited to, cost of supervision, traveling expenses, Ohio Public Employee's Retirement System (OPERS) and Unemployment Taxes, vacation allowances, and all other expense incidental thereto.

4. Licensee hereby agrees to indemnify and save harmless Licensor from and against any and all liability, losses, damages, claims, actions, causes of action, costs and expenses (including attorneys' fees) for personal injury (including death) and/or property damage to whomsoever or whatsoever occurring, arising from or growing out of, directly or indirectly, the presence of Licensee, its agents, servants or employees upon or about the property of Licensor or in connection with the privileges herein granted.

5. Licensee shall, at its expense, obtain and maintain during the period of time when Licensee exercises the rights granted herein, in a form and with companies satisfactory to Licensor:

- a. Commercial General Liability Insurance in the amount of \$3 million dollars combined single limit each occurrence for bodily injury and/or property damage with a \$4 million per project annual aggregate. Said policy shall also include:

# DRAFT

- The Inter|Urban Project, inclusive of all individually named Artists selected for the Project
  - Premises / Operations coverage
  - Personal Injury coverage
  - Liability for independent contractors
  - Products / Completed Operations liability insurance: This insurance must be maintained for a period of not less than 5 years from the completion of the work.
  - Contractual liability coverage insuring the "hold harmless" provision set forth herein.
  - Liability for explosion, collapse and underground property damage
  - Said policy shall be written on an "occurrence" basis.
  - GCRTA will accept any combination of primary CGL and Excess or Umbrella policies to meet the minimum coverage requirements above.
  - Railroad endorsement, CG 24 17 – Contractual Liability – Railroads or the Cincinnati Insurance form GA 4144 10 01, with a copy of the endorsement attached to the Certificate of Insurance.
- b. Automobile Liability Insurance in the amount of \$2 million combined single limit each accident for bodily injury and/or property damage. Said policy shall apply to all owned, leased, hired and non-owned vehicles used in connection with the work.
- c. Statutory Workers' Compensation coverage in compliance with all applicable state workers' compensation laws to cover all employees furnishing labor under the terms of this contract and under the control of Land Studio. Employers' Liability coverage in the amount of \$1 million per accident / \$1 million per employee for disease will also be included, either under the Workers' Compensation policy or under the Commercial General Liability policy (Stop Gap) referenced under a. above. In Ohio: a copy of a certificate of premium payment from the Industrial Commission and Bureau of Workers' Compensation, or a copy of the Certificate of Employer's Right to Pay Compensation Directly.
- d. Installation Floater in an amount sufficient to cover all materials to be installed or transported on any component of the Project that requires boring into the Airport Tunnel.
- e. General Requirements: Neither Land Studio nor any subConsultant shall commence work herein until it has obtained the required insurance and has received written approval of such insurance from GCRTA. Land Studio shall furnish evidence of such insurance for itself and each of its subcontractors at all tiers in the form of a certificate prior to commencement of any work. (Acord or similar form). The certificate shall provide the following:
- In the event the insurance should be materially changed or cancelled, such material change or cancellation shall not be effective until 30 days after the contracting parties have received written notice of such change or cancellation from the insurance company. Such notice shall be mailed by certified mail, return receipt requested to GCRTA's Director of Programming & Planning.



## DRAFT

- Name GCRTA, as Additional Insured for coverages required under a. and b. above, for claims arising out of operations in conjunction with the contract.
  - Contain a waiver of subrogation in favor of GCRTA.
  - Specific reference to the subject MOU.
  - Specific reference to all deductibles & Self-Insured Retentions (SIR).
  - Shall be primary and non-contributing to any insurance possessed or procured by GCRTA and any insurance or self-insurance program maintained by any of the foregoing.
  - Include a copy of the policy endorsements providing thirty (30) days' notice of material change/cancellation to GCRTA, adding GCRTA as an additional insured, and waiving subrogation in favor of GCRTA.
  - An insurance company having less than an A- X rating by The A. M. Best Company will not be considered acceptable. All certificates are subject to acceptance by GCRTA. GCRTA shall be entitled to receive a full copy of the insurance policy(ies) upon request and reserves the right to review financial statements and approve any deductibles or self-insured retention (SIR). Any deductible or SIR is for the account of Land Studio.
- f. Approval of the insurance by GCRTA shall not relieve or decrease the liability of the Land Studio. It is to be understood that GCRTA does not represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect Land Studio's interests or liabilities. Should the required primary insurance limits of Land Studio be exhausted or not available to pay a claim, Land Studio shall be liable for payment of claims the insurance was intended to cover, up to the limits required above.
- g. In the event Land Studio neglects, refuses or fails to provide the insurance required herein, or if such insurance is canceled for any reason, GCRTA shall have the right but not the duty to procure the same. If this occurs, the cost of the insurance procured on behalf of L.A.N.D. studio by GCRTA will be borne by L.A.N.D. studio.
6. At the termination of this Right of Entry, Licensor's property shall be restored by Licensee to its original condition, or to a condition satisfactory to Licensor.
7. No drainage conditions shall be created or allowed to exist which would be adverse to Licensor's property.
8. A minimum clearance of fifteen feet (15') from the centerline of the nearest track shall be maintained at all times for any material, equipment or vehicles of Licensee occupying Licensor's property unless authorized in writing by Licensor or Licensor's Superintendent.
9. The license and permission hereby granted is for the sole benefit of Licensee, and Licensor is to receive no benefit therefrom nor any consideration therefor except the covenants, promises and agreements set forth in this Right of Entry.
10. No explosives of any kind shall be used on Licensor's property.
11. No debris will be buried in or burned upon Licensor's property.

# DRAFT

12. This Right of Entry (a) shall not be assigned or transferred by Licensee, (b) may be terminated at will by Licensor or Licensee, and (c) shall terminate automatically on \_\_\_\_\_ (date); however, that termination shall not relieve Licensee of any obligation or liability incurred prior to such termination.

IN WITNESS WHEREOF, the parties hereto have executed this Temporary Right of Entry Agreement in duplicate as of the date first hereinabove written.

Signed in the presence of:

**THE GREATER CLEVELAND REGIONAL  
TRANSIT AUTHORITY**

\_\_\_\_\_  
(Witness)

By: \_\_\_\_\_  
Joseph A. Calabrese, CEO  
General Manager/Secretary-Treasurer

\_\_\_\_\_  
(Witness)

Date: \_\_\_\_\_, 201\_\_

**APPROVED AS TO LEGAL FORM**

\_\_\_\_\_  
Sheryl King Benford, General Counsel  
Deputy General Manager for Legal Affairs

Signed in the presence of:

**Licensee**

\_\_\_\_\_  
(Witness)

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_  
(Witness)

Date: \_\_\_\_\_

