

RESOLUTION NO. 2015-37

AUTHORIZING A CONTRACT WITH DANIEL ROACHE IN AN AMOUNT NOT TO EXCEED ONE HUNDRED THIRTY FIVE THOUSAND ONE HUNDRED NINETY-SEVEN DOLLARS (\$135,197.00) FOR PUBLIC ARTWORK AT THE BROOKPARK RAPID TRANSIT STATION (DEVELOPMENT FUND, PROGRAMMING AND PLANNING DEPARTMENT BUDGET)

WHEREAS, the Greater Cleveland Regional Transit Authority (GCRTA) is committed to the inclusion of public art at its facilities and sets aside at least one percent (1%) of construction capital construction budget for public art; and

WHEREAS, the Greater Cleveland Regional Transit Authority (GCRTA) has proposed the design, fabrication and installation of an independent artwork for the Brookpark Rapid Transit Station Reconstruction Project; and

WHEREAS, the GCRTA conducted a Call to Artists competitive selection process, resulting in the selection of the artwork concept submitted by Daniel Roache; and

WHEREAS, Daniel Roache will execute the management of the art contract to carry out the scope of work and construction coordination with the Brookpark Rapid Transit Station Reconstruction Project as required in the agreement and in accordance with the construction schedule for final art installation; and

WHEREAS, the sum of all the costs and expenses related to design, fabrication and installation shall not exceed one hundred thirty-five thousand one hundred ninety-seven dollars (\$135,197.00).

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

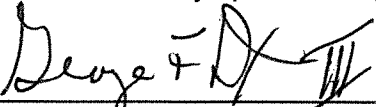
Section 1. That the General Manager/Secretary-Treasurer of the Greater Cleveland Regional Transit Authority is hereby authorized to enter into a contract with Daniel Roache to design, fabricate and install artwork at the Brookpark Rapid Transit Station exterior entrances.

Section 2. That said contract is payable from the RTA Development Fund, Programming and Planning Department budget, including but not limited to Capital Grant OH-90-X809, in an amount not to \$135,197.00 (\$108,157.60 in Federal funds which represents 80% of the total cost).

Section 3. That said contract shall be binding upon and an obligation of the Authority contingent on all Arts-in-Transit policies and federal requirements, and if any, the Affirmative Action Plan adopted by the Board of Trustees in Resolution 2013-031, bonding and insurance requirements and all applicable laws relating to contractual obligations of the Authority.

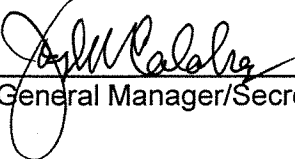
Section 4. That this resolution shall become effective immediately upon its adoption.

Adopted: March 24, 2015



President

Attest:



CEO, General Manager/Secretary- Treasurer

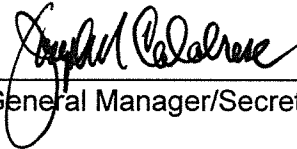


TITLE/DESCRIPTION: CONTRACT: AWARD OF A CONTRACT FOR PUBLIC ARTWORK AT THE BROOKPARK RAPID TRANSIT STATION VENDOR: DANIEL ROACHE AMOUNT: COST NOT TO EXCEED \$135,197.00	Resolution No.: 2015-37
	Date: March 19, 2015
	Initiator: Programming & Planning
ACTION REQUEST: <input checked="" type="checkbox"/> Approval <input type="checkbox"/> Review/Comment <input type="checkbox"/> Information Only <input type="checkbox"/> Other _____	

- 1.0 **PURPOSE/SCOPE:** This action will allow the Authority to enter into a contract with Daniel Roache for an art installation to be located at the new Brookpark Rapid Transit Station located in both the cities of Cleveland and Brook Park.
- 2.0 **DESCRIPTION/JUSTIFICATION:** This contract will allow GCRTA to fund the design, fabrication and installation of 2 metal relief sculptures that reflect the industrial context of northeast Ohio at both exterior entrances of the station. The sculptures portray a collage of industrial themes in a colorful pattern of metals that will adorn the exterior walls to the station. The art reflects the theme identified by the Public art call of an industrial celebration of the businesses in the Brook Park/Cleveland station area. The artwork is part of the GCRTA Arts-in-Transit Program.
- 3.0 **PROCUREMENT BACKGROUND:** The selection of this artist included a competitive process with a Call to Artist announcement being advertised to solicit artists to submit proposals for review and evaluation by the Arts-In-Transit Selection Committee. Twenty-four (24) Artists submitted proposals for consideration. Artists were provided \$1,000 stipends to cover travel (when necessary) and concept development required for their submittal presentations. The Committee selected Daniel Roache as the top submission based on the best use of space and art contribution to the area. The award amount was determined to be fair and reasonable to the Authority and commensurate with other projects of its size and scale.
- 4.0 **DBE/AFFIRMATIVE ACTION BACKGROUND:** A zero (0%) percent DBE participation goal was established for procurement due to a lack of certified DBE firms.
- 5.0 **POLICY IMPACT:** This contract is consistent with the GCRTA Public Art program that reserves at least 1% of the construction budget for public art elements. In addition, the Brookpark Rapid Transit Station Reconstruction Project is part of the GCRTA Capital Improvement Program, the NOACA TIP, and the State of Ohio STIP.
- 6.0 **ECONOMIC IMPACT:** This will be funded from the RTA Development Fund, Programming and Planning Department budget, FTA Capital Grant OH-90-X809, Line Item 12.93.04 in the amount of \$135,197.00 (\$108,157.60 of federal funds).
- 7.0 **ALTERNATIVES:** Do not award the contract to Daniel Roach, which would then require completion of another public art the selection process. This could delay the project and could jeopardize the integrity of the Art's-in-Transit Committee and selection process.

- 8.0 RECOMMENDATION: In Accordance with the Arts-in-Transit Policy, the Arts-in-Transit Committee recommends that a public art contract be awarded to Daniel Roache for the Brookpark Rapid Transit Station. Thus, staff recommends this contract award to the Board of Trustees for their approval.
- 9.0 ATTACHMENTS: Draft Public Art Contract with Daniel Roache.

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



CEO, General Manager/Secretary-Treasurer

**PUBLIC ART CONTRACT BETWEEN
THE GREATER CLEVELAND REGIONAL TRANSIT AUTHORITY AND
DANIEL ROACHE**

THIS AGREEMENT, entered into as of this ____ day of _____, 2015, by and between the Greater Cleveland Regional Transit Authority (hereinafter called the "Authority" or "RTA") and Daniel Roache, (hereinafter called the "Artist").

WHEREAS, the Authority 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 Authority 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 Authority 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 the Authority, be available to report to the Authority'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 the Authority's Director of Programming and Planning or his/her designee, to whom it shall address all materials and submittals.
3. Data to be Furnished to Artist. The Authority 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 the Authority or as having any contractual relationship therewith.
- b) None of the Services hereunder shall be subcontracted without the prior written consent of the Authority. In each instance, the Authority must approve any subcontractor and its contract with the Artist; absent such approval, the Authority 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 two (2) years. Any extension of this Contract or Services performed after the end of such term, may be authorized in writing, only by the General Manager of the Authority.

6. Compensation and Method of Payment.

- a) The Authority agrees to pay the Artist an amount not to exceed \$135,197.00 (One Hundred Thirty-Five Thousand One Hundred Ninety-Seven & 00/100 dollars) (Fixed Fee), as full compensation for performance of the contract, on the basis set forth in Attachment B hereto. The Authority is exempt from all State, excise, and transportation taxes, except the State of Ohio gasoline tax. All prices and rates hereunder shall be exclusive of all such taxes and shall be so construed. All other taxes and governmental impositions upon the product and services, labor and material furnished hereunder shall be paid by the Artist.
- b) Final payment shall be made by the Authority 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, the Authority 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 Authority. 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. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from the GCRT A Contracting Officer.

7. Limitation of Costs. The parties agree that the services hereunder, as presently contemplated, will not cost the Authority more than the amount specified in Paragraph 6(a) above. The Artist shall notify the Authority 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 the Authority with a revised estimate of the total cost of performing this contract.

8. Indemnification.

(a) To the fullest extent permitted by law, the Artist shall at its sole cost and expense, indemnify, defend in all litigation, satisfy and cause to be discharged all judgments that may be obtained against and save and hold harmless the Authority, and their respective officers, representatives, agents, partners and employees (hereinafter individually and collectively referred to as the "Indemnified Parties") from and against all suits, claims, costs, penalties, damages, losses and expenses, including but not limited to attorneys' and experts' fees and all costs and other expenses arising out of all litigation and claims or incurred in connection therewith (hereinafter collectively "Liability") in any way related to this Contract or the performance thereof and caused or alleged to have been caused in whole or in part by any act or omission of the Artist or its Subcontractor or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not the Liability is caused in part by an Indemnified Party, provided that any such Liability is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom.

(b) The Artist shall have the above obligations, whether or not it shall be claimed that the liability was caused through a negligent act or omission of the Artist or its employee, and whether or not the persons injured or whose property was damaged were third parties, employees of the Artist or employees of any authorized Subcontractor.

(c) 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.

(d) 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.

(e) 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, Artist and each subcontractor at all tiers shall maintain the following insurance coverage, at its cost, from insurers acceptable to the AUTHORITY and shall comply with all provisions of this article. Artist shall include language in its subcontracts and require its subcontractors to include language in their subcontracts to require the subcontractors at all tiers to establish the same requirements on all levels of subcontractors that are imposed on Artist in this section article. The insurance coverage required is:

- a. Commercial General Liability Insurance in the amount of \$1 million dollars combined single limit each occurrence for bodily injury and/or property damage with a \$1 million per project annual aggregate. Said policy shall also include:
 - 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 in Article 7.
 - Liability for explosion, collapse and underground property damage
 - Said policy shall be written on an "occurrence" basis.
 - Authority will accept any combination of primary CGL and Excess or Umbrella policies to meet the minimum coverage requirements above.
- b. Automobile Liability Insurance in the amount of \$1 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 the Artist or subcontractor. 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. General Requirements: Neither the Artist nor any subcontractor shall commence work herein until it has obtained the required insurance and has received written approval of such insurance from AUTHORITY. The Artist 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. (Accord 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 AUTHORITY's Director of Procurement.

- Name AUTHORITY, 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 AUTHORITY
- Specific reference to the subject contract.
- Specific reference to all deductibles & Self-Insured Retentions (SIR).
- Shall be primary and non-contributing to any insurance possessed or procured by AUTHORITY, and any insurance or self-insurance program maintained by any of the foregoing.
- 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 AUTHORITY. AUTHORITY 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 the Artist.

e. Approval of the insurance by AUTHORITY shall not relieve or decrease the liability of the Artist or subcontractors hereunder. It is to be understood that AUTHORITY does not in any way represent that the insurance or the limits of insurance specified herein are sufficient or adequate to protect the Artist or subcontractors' interests or liabilities. Should the required primary insurance limits of the Artist or any Subcontractor at any tier be exhausted or not available to pay a claim, the Artist shall be liable for payment of claims the insurance was intended to cover, up to the limits required above; whether it be the insurance policy of either the Artist or Subcontractor that was exhausted or not available to pay the claim.

f. In the event Artist or subcontractor neglects, refuses or fails to provide the insurance required under the Contract documents, or if such insurance is canceled for any reason, AUTHORITY shall have the right but not the duty to procure the same, and the cost thereof shall be deducted from moneys then due or thereafter to become due to Artist or subcontractor.

10. Notice to Proceed. The Authority 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 Authority 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 Authority'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 the Authority, the Authority 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 the Authority whenever the Authority determines it is in the best interest of the Authority 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 Authority, 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 Authority's General Manager or his designee.
14. Prohibited Interests. No officer, member, or employee of the Authority and no members of its governing body, and no other public official or employee of the governing body of the locality or localities included within the Authority, during his or her tenure, shall have any interest, direct or indirect, in this RFP, 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, the Authority 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 the Authority 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 the Authority endorsed thereon or attached thereto.
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 Authority 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 Authority 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 the Authority, 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 Authority. The Authority, 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 the Authority and the government 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 the General Manager of the Authority 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. Seller warrants that for a period of one (1) year (or for such longer period prescribed by the specifications) following acceptance of goods and services delivered hereunder, the goods and services are free of defects in materials and workmanship and further warrants that such goods and service are suited for the purposes intended and are of merchantable quality. Seller further warrants that it holds good and marketable title in the goods delivered, and that such goods are free of all liens, security interests or other encumbrances. Seller agrees that in the event the goods or services are not as warranted, it will promptly cure defect at its sole cost and expense. Seller further warrants that, to the extent products furnished hereunder involve electronic data processing hardware or software such hardware or software shall be able to process dates, utilizing a four-digit year format, between the twentieth and twenty-first centuries, and between the years 1999 and 2000, and all leap year data, without human intervention. Seller further agrees to indemnify the Authority for all costs and damages, both incidental and consequential, resulting from the delivery of good sand services, which fail to meet the aforesaid warranties. It is agreed that the goods and services provided hereunder are regarded as consumer goods and services.
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. Seller 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 Authority's premises in Cleveland, Contractor agrees to meet the requirements of Cleveland Codified Ordinance Section 394. Contractor 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 the Authority when deliveries are made in bulk and are to be stored by the Authority in 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 the Authority, its 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 to the Authority 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 Authority.

32. Notification of Proceedings. The Authority 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 the Authority 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 the Authority 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 the Authority, 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 the Authority personnel, including but not limited to conflicts of interest, bribery, fraud, waste, abuse, extortion, and kickbacks, the Artist shall contact the Authority's Executive Director of Internal Audit on the Authority'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 Authority have executed this Contract at Cleveland, Ohio, as of the date first written above:

ATTEST:

ARTIST

Authorized Signature

Title

ATTEST:

GREATER CLEVELAND REGIONAL
TRANSIT AUTHORITY

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

APPROVED AS TO LEGAL FORM:

By _____
Sheryl King Benford, General Counsel
Deputy General Manager for Legal Affairs

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 the Authority, subject to review and acceptance of artwork by the RTA 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 24 months.
- (d) Artist shall, prior to fabrication of Artwork, meet with the RTA or a representative approved by the RTA 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 thirty (30) days after execution of this Agreement, the Artist shall submit to the RTA detailed drawings of artwork and other graphic materials as may reasonably be requested in order to permit the RTA 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, Safety, Transit Police).
- (b) The RTA 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 RTA may also require revisions of the proposed work for other practical and non-aesthetic reasons
- (d) Within thirty (30) 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 RTA pursuant to this Section 1.2 become a part of the Proposal for artwork.

Section 1.3 Execution of Artwork

- (a) Within thirty (30) days following design review approval by the RTA, pursuant to Section 1.2 above, the Artist shall furnish to the RTA a tentative schedule for completion of fabrication and installation of artwork. After written approval of the schedule by RT A, the artist shall fabricate and transport artwork in accordance with such schedule. Such schedule may be amended by written Agreement between RTA and the Artist;
- (b) The RTA 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 to the RTA 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 the RTA, in writing, when fabrication of artwork is completed and that the Artist is ready for delivery of the artwork at the site;
- (b) The 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) The RTA 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 the RTA with written instructions for appropriate maintenance and conservation of artwork, as approved by the RTA Quality Assurance Engineer.

Section 1.6 Final Acceptance

- (a) The artist shall advise the RTA in writing when all services have been complete in substantial conformity with this Agreement and the Proposal;
- (b) The RTA shall notify the artist in writing of the final acceptance (or non-acceptance) of artwork;
- (c) Final acceptance shall be effective as of the earlier of the following dates:
 - i. The date of the RTA's notice of final acceptance; or
 - ii. The 45th day after the Artist has sent the notice and prior to the expiration of the 45-day period, gives the Artist written notice specifying and describing the services, which have been completed.

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 the RTA.

Section 1.8 Ownership of Documents

All studies, drawings, and designs prepared and submitted under this Agreement shall become the property of the RTA. RTA 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

The RTA shall pay the Artist the fixed sum of \$135,197.00 (One Hundred Thirty-Five Thousand One Hundred Ninety-Seven & 00/100 dollars) (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 RTA (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 RTA that it is near completion of artwork (See Section 1.4 Scope of Work);
- (e) 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: _____