

**CONSULTING SERVICES AGREEMENT**

**Between**

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

**And**

**ABG ART GROUP, LLC**

**To**

**PROVIDE ART DESIGN, FABRICATION, TRANSPORTATION AND INSTALLATION CONSULTING SERVICES**

**For**

**THE DUBLIN/ PLEASANTON STATION ACCESS IMPROVEMENTS**

**BART AGREEMENT NO. 6M6197  
57RR202-ARTIST.002**

**2026**

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## **ATTACHMENTS**

- EXHIBIT 1: ORIGINAL ARTIST'S CONCEPTUAL DESIGN PROPOSAL
- ATTACHMENT A: ARTIST SCOPE OF SERVICES
- ATTACHMENT B: SCHEDULE OF PERFORMANCE AND PAYMENT SCHEDULE
- ATTACHMENT C: ARTIST'S APPROVED COSTS

**CONSULTING SERVICES AGREEMENT NO. 6M6197/ 57RR202-ARTIST.002**

**Between**

**SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT**

**And**

**ABG ART GROUP, LLC**

THIS AGREEMENT (“Agreement”) is made and entered into this [ ] day of [ ], 2026, by and between SAN FRANCISCO BAY AREA RAPID TRANSIT DISTRICT (“BART” or “District”), a rapid transit district established pursuant to California Public Utilities Code, Section 28500 et seq. and ABG ART GROUP, LLC (“CONSULTANT” or “Artist”), a California Limited Liability Company with offices at 1528 Webster St. #13, Oakland, CA 94612.

**RECITALS**

This Agreement is made with reference to the following facts:

1. BART proposes to obtain from CONSULTANT artist design, fabrication, transportation and consultation services during installation for Artwork to be installed by others hired by the District for the Dublin/Pleasanton Station Access Improvements Project (“Project”);
2. ARTIST has been notified that the District originally contracted with another party for the design of the Artwork (“Original Artist”). The Original Artist resigned from the Project due to an extended delay of the Project implementation and Artist is being hired to complete the artwork based on Original Artist’s Concept (Exhibit 1) and that Artist and Original Artist will share copyright to the Artwork;
3. ARTIST represents and warrants that ARTIST is qualified to perform and possesses the requisite experience and resources to render the services required by the District as set forth under this Agreement;
4. ARTIST was selected by a panel of art professionals and stakeholders from a pool of applicants as the most qualified to design the Artwork;
5. The services required for the Project cannot be performed satisfactorily by the officers and employees of BART; and
6. The parties hereto now wish to enter into this Agreement pursuant to which ARTIST will furnish professional services in connection with the Project as hereinafter provided.

\* \* \*

## A G R E E M E N T

In consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### **Definitions:**

Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of this Agreement or the contract documents, it shall have the meaning set forth below:

- A. "Agreement" shall mean this agreement, including all addenda, appendices and modifications, whether created now or in the future.
- B. "Agreement Manager" shall mean Jennifer Easton, or the individual assigned by BART to oversee Artist's Scope of Services under this Agreement.
- C. "Architect" shall mean the design firm engaged by BART to design the portion of the Site in which the Artwork will be incorporated or installed.
- D. "Artist" shall mean ABG Art Group, LLC. Where there is more than one artist, all artists shall be referred to collectively as "Artist." If Artist is comprised of two or more individual persons or entities, each individual person or entity shall be jointly and severally responsible for satisfying Artist's obligations under this Agreement, and each individual person or entity shall be liable for the acts and omissions of every other individual person or entity comprising Artist.
- E. "Artwork" shall mean the work of art designed and fabricated by Artist for the site under the terms of this Agreement.
- F. "BART" or "District" shall mean the San Francisco Bay Area Rapid Transit District, a rapid transit district established pursuant to California Public Utilities Code, Section 28500 et seq.
- G. "Budget" such costs as are scheduled in Attachment C, "Artist's Approved Costs," including the maximum expenditure authorized for each item shall mean a specific and detailed document identifying the cost of completion of all Work under this Agreement, including all approved modifications. The Budget shall include all design fees and associated costs; preliminary and final engineering if required; materials and labor for fabrication, including Artist and Artist's subcontractors' costs, crating and transportation of Artwork; required insurance; applicable sales taxes; and a contingency allowance.
- H. "Conceptual Proposal" shall mean drawings (in plan and elevation) and/or three-dimensional (3D) models, a written description, proposed materials and samples and cost estimates. The information provided in the Conceptual Proposal shall be complete enough to fully illustrate the design intent of the Artwork.
- I. "Construction Documents" shall mean the final and complete architectural, structural, mechanical and engineering Design Development Documents (including drawings, written specifications, structural and engineering calculations at 100% design completion) prepared by Artist or Artist's subconsultants and approved by BART that sets forth in detail the design and specifications of the Artwork and its installation, which are suitable for bidding for construction. Construction Documents shall describe and fix the location, size, materials and character of the Artwork with respect to architectural, structural engineering, mechanical and electrical systems, materials, colors, methods of attachment and fabrication methods, and other such elements as may be appropriate. Construction Documents must be signed and stamped by design professionals licensed in the State of California as required by the California Building Code and any local amendments thereto.

- J. "Contingency Allowance" shall mean a portion of the Budget reserved by Artist for design, construction, transportation or other related costs that, due to factors beyond the control of Artist, exceed the initial budget estimates. The contingency allowance may only be used if approved in advance by BART in writing and will remain with BART at the end of the Project if not expended.
- K. "Contract Documents" shall mean any work, including but not limited to, design development documents, shop drawings, mock-ups, models, approved installation plans, and all material samples and product data, project budget, and any and all additional documents and submittals produced by Artist under this Agreement that BART has approved and to which the completed Artwork is expected to conform.
- L. "Design Development Documents" shall mean presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or three-dimensional (3D) models that accurately reflect the Artwork and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies and final cost estimates at design completion. When used in reference to the proposed Artwork, Design Development Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate.
- M. "Final Documentation" shall mean a written maintenance manual that includes product specification data and procedures for maintenance of the Artwork.
- N. "General Contractor" shall mean the general contractor, and its subcontractors, hired by BART to make improvements for the Station Modernization Program for the station that is the subject of this Agreement.
- O. "Mock-ups" or "Samples" shall mean illustrations such as standard schedules, performance charts, instructions, brochures, diagrams, and physical samples of all or any portion of the services, and other information furnished by Artist to illustrate any materials or equipment for all or any portion of the services. The purpose of the mock-ups and samples is to provide physical examples that illustrate materials, equipment or workmanship and establish the standards by which the Services will be judged.
- P. "Project" shall mean the Dublin/Pleasanton Station Access Improvements, which will include Artwork being integrated at the site as part of this Agreement.
- Q. "Proposal" shall mean the proposed visual, aesthetic, and Artistic intent and design of the Artwork. The most recent design approved by BART is incorporated herein as Exhibit 1 and is binding unless BART approves changes to the design in writing.
- R. "Services" shall mean all of the work by Artist pertaining to providing BART with the Artwork and related services and deliverables as required under the Agreement, including as set forth in Attachment A, ARTIST'S SCOPE OF SERVICES, and any modifications thereto.
- S. "Shop Drawings" shall mean drawings, diagrams and other data specifically prepared by Artist or Artist's consultants, contractors, fabricators, manufacturers, suppliers, or distributors (collectively, "subconsultants") illustrating in detail exactly how the work, or any element thereof, is to be fabricated and installed. Shop drawings shall be signed and stamped by a licensed design professional unless BART specifically waives this requirement.
- T. "Site" shall mean the Dublin/Pleasanton Station, specifically the pedestrian fencing that has been identified to receive Artwork.
- U. Whenever the words "as directed," "as required," "as permitted," or words of like effect are used, it shall be understood as the direction, requirement, or permission of BART. The words "sufficient,"

“necessary,” or “proper,” and the like, mean sufficient, necessary or proper in BART’s judgment. The words “approval,” “acceptable,” “satisfactory,” or words of like import, shall mean approved by, or acceptable to, or satisfactory to BART, unless otherwise specified. The terms “include,” “included” or “including” and similar terms shall be deemed to be followed by the words “without limitation.”

## **1.0 SERVICES TO BE PERFORMED**

The parties agree that the work to be performed by Artist under this Agreement shall be as hereinafter set forth in this Article 1.0.

### **1.1 SCOPE OF SERVICES**

ARTIST’s services are described in Attachment A, ARTIST’S SCOPE OF SERVICES, and any modifications thereto (both of which are incorporated herein and by this reference made a part hereof), and shall further include all of the work by ARTIST pertaining to providing BART with the Artwork and related services and deliverables as required under this Agreement (collectively, the “Services”). Artist shall be responsible to perform or secure the performance of all requested Services in their entirety subject to the prior written approval of each Phase as set forth in Attachment A by the Agreement Manager, or a designated representative.

The Agreement Manager shall monitor Artist’s performance with respect to compliance with the requirements of this Agreement.

### **1.2 PROJECT DIRECTION**

#### **A. Directions to Artist**

The Services to be performed by Artist under this Agreement shall be subject to the project direction of the Agreement Manager. As used herein, the term “project direction” shall include, but is not limited to, the following:

Directions to Artist which redirect the Agreement effort, shift work emphasis between tasks, require pursuit of certain lines of inquiry, fill in details or otherwise provide project guidance to Artist in order to accomplish the Services.

Review and, where required, obtain approvals by appropriate BART staff of drawings, specifications, or other products prepared by Artist or any of her/his subcontractors in the performance of the Services.

#### **B. Professional Responsibility**

Notwithstanding any other provision in this Agreement or in the Artist’s Scope of Services, the review and/or approval by BART, or any of its directors, officers, the Agreement Manager or its other employees or agents, of any drawings, specifications or other products or communications prepared by Artist or any of her/his subcontractors, or of any acts or failures to act by Artist or any of her/his subcontractors, shall not relieve Artist or any of her/his subcontractors of any professional responsibility for the Services performed.

### **1.3 PROCEDURE FOR EXECUTION OF SERVICES**

A. It is the general intent of the parties that ARTIST will complete the design, fabrication, delivery of Artwork to BART, and consultation to installation of the Artwork at the Site by

BART's General Contractor, provided that BART determines, in its sole discretion, to go forward with the completion of the Artwork. The Services shall be completed in separately defined, successive stages ("Phases"). Each Phase, as defined in "Attachment A" to this Agreement, shall be governed by this Agreement, and by any modifications to this Agreement setting forth specific terms and conditions governing each Phase. Each modification will include the Phase for which BART has given authorization, the scope of work covered by that Phase, the schedule of deliverables, insurance requirements, and payment terms.

- B. ARTIST shall not commence any Phase nor incur any expense in anticipation of commencing any Phase unless BART has given prior written authorization. Prior to beginning each Phase, ARTIST shall obtain the necessary approval of the previous Phase. In no event shall BART be liable for any claims or damages arising from ARTIST's unauthorized actions.
- C. The Services to be completed by ARTIST are unique and personal to ARTIST and may not be capable of completion by anyone other than ARTIST or her/his subconsultants. Therefore, if ARTIST fails or unreasonably refuses to modify this Agreement to include subsequent Phases after having been requested to do so by BART, or fails to complete the Services required by any Phase, BART may require that ARTIST return all payments made under this Agreement from the initiation of the Agreement. If BART determines, in its sole and reasonable discretion, that ARTIST's failure or refusal to complete subsequent Phases is justifiable and in good faith and for reasons beyond the control of ARTIST, BART may authorize ARTIST to keep payments made under this Agreement for prior completed Phases. In such case, BART may, at its option, engage another ARTIST or consultant to complete the Services.

#### 1.4 PROJECT AND ORGANIZATIONAL PROCEDURES

##### A. Modification of Procedures

At the direction of the Agreement Manager, and provided that the requested modifications are reasonably practicable, and further, that the requested modifications will not alter the aesthetic or physical integrity of the Artwork, Artist shall develop or modify Attachment A in accordance with a schedule and in a form approved by the Agreement Manager. Such procedures as developed or modified shall be specifically related to activities performed for the Services and basic Artist procedural functions including, but not limited to, the process of budgeting, invoicing, and submitting reports to BART hereunder. The intention of the parties is for Artist to develop, implement and maintain clear and concise Project- specific procedures.

##### B. Additional Modifications

In addition to any specific procedures as described immediately above, BART may require ARTIST to revise the Scope of Services other than those set forth immediately below in Article 1.5.A that are used throughout its organization if they conflict with the requirements of this Agreement.

#### 1.5 PERSONNEL

- A. ARTIST has, or will secure at ARTIST's expense, all personnel required to perform Services. All persons retained by ARTIST shall possess the requisite licenses, permits and insurance necessary to perform the work.
- B. ARTIST shall provide Agreement Manager with a list of all subconsultants and copies of all agreements.

- C. ARTIST shall not remove any such consultants prior to the completion of their assignment under the Project without the prior written approval of the Agreement Manager, which approval will not be unreasonably withheld. ARTIST shall nominate a replacement subconsultant to BART and shall not remove any subconsultant from the Project until his/her replacement has been approved by the Agreement Manager.
- D. BART's Agreement Manager reserves the right to direct removal of any Artist or subconsultant's personnel assigned to the Project when in BART's opinion the individual's performance is unsatisfactory or deemed unsafe.
- E. ARTIST will submit to Agreement Manager Artist's or subconsultant's DBE participation, if applicable. All DBEs shall be certified by BART or possess DBE certification which BART recognizes prior to proposal submission.

## 1.6 FINANCIAL ADMINISTRATION

ARTIST and its subconsultants shall establish and maintain records pertaining to the fiscal activities of the Project. ARTIST and subconsultants' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged to the Project, including properly executed payrolls, time records, invoices and vouchers. Attention is further drawn to Article 19.0, RECORDS, and Article 20.0, AUDIT.

## 2.0 TIME OF PERFORMANCE AND DELAYS

### 2.1 TIME OF PERFORMANCE

#### Performance of Service and Term of Agreement

ARTIST's performance of the Services shall commence upon execution of this Agreement and shall be completed by the date specified in Attachment A, ARTIST'S SCOPE OF SERVICES, unless terminated earlier in accordance with Article 5.0, TERMINATION.

### 2.2 DELAYS

Neither party hereto shall be considered in default in the performance of its obligations hereunder to the extent that the performance of any such obligation is prevented or delayed by unforeseen causes including acts of God, acts of the public enemy and governmental acts beyond the control and without fault or negligence of the affected party.

Each party hereto shall give notice promptly to the other of the nature and extent of any such circumstances claimed to delay, hinder or prevent performance of any obligations under this Agreement.

### 2.3 TIMELY PROVISION OF SERVICES; DAMAGES FOR DELAYED PERFORMANCE

#### A. Time

Time is of the essence in the ARTIST's performance of the Services. ARTIST agrees to provide all deliverables in accordance with the timelines contained herein unless changes to those timelines are approved in writing by the BART. All changes to schedule must be approved by the BART in writing.

#### B. Damages for Delayed Performance

ARTIST shall be liable for all incidental and consequential damages resulting, directly or indirectly, from delays in performance caused by ARTIST's acts or omissions. ARTIST shall not be liable to BART for damages resulting from delays caused by Force

Majeure or by acts or omissions of BART, its directors, officers, representatives, agents and employees, except to the extent Artist failed to act reasonably to mitigate such damages.

C. Third Party Contractors

1. ARTIST shall not unreasonably impede, hinder or delay any third-party consultant in the performance of the consultant's work. ARTIST shall communicate with any third-party consultant who will be performing work which may depend upon, or connect with the Artwork, and ARTIST agrees to attempt to resolve any disputes or coordination problems with any such third-party contractors or others. ARTIST is not responsible for the services of third-party consultants. In the event of conflict between Artist and third-party consultants, BART will resolve the conflict.
2. If cost impacts result from Artist's work delaying or impacting any third-party contractor resulting in additional charges from that contractor, Artist will be liable for the costs solely attributable to Artist's (or Artist's Agents') delay or impact upon third parties.
3. If any part of Artist's work depends upon the work of any other person for proper execution or results, Artist shall, prior to proceeding with such work, promptly report to BART in writing any discrepancies or defects in such other work which can be identified upon reasonable inspection that would render it unsuitable for proper execution and results. Failure to so notify BART shall constitute the Artist's acceptance of such work as suitable.

D. Delay

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

**3.0 COMPENSATION AND PAYMENT**

3.1 COMPENSATION

A. Basis

The compensation for each Phase performed under this Agreement will be on a fixed price basis, an incurred cost reimbursement basis plus a defined fee, or some combination thereof. Such compensation will be allowable only to the extent that costs incurred or cost estimates included in negotiated, or otherwise established prices, are consistent with the Federal Cost Principles (Title 48, Code of Federal Regulations, Chapter 1, Part 31).

B. Requirements

Such compensation shall be further subject to the following requirements:

1. Conform with:
  - a. The services to be performed pursuant to Attachment A: Artist's Scope of Services;

- b. Any compensation limits or sublimits set forth in the Artist's Scope of Services and this Agreement; and
  - c. All other terms of this Agreement.
- 2. Be necessary in order to accomplish the Services.
- 3. Be reasonable for the Services to be performed or goods to be purchased in connection with the performance of Services hereunder.
- 4. As used herein, the term "costs" shall include the following:
  - a. Those costs recorded by ARTIST that result, at the time of the request for reimbursement, from payment by cash, check, or other form of actual payment for items or services purchased directly for the work.
  - b. When ARTIST is not delinquent in payment of costs of agreement performance in the ordinary course of business, costs incurred, but not necessarily paid, for:
    - (1) Direct labor;
    - (2) Other direct costs that are not subcontracted; and
    - (3) Indirect costs.
  - c. The amount of reimbursement that has been paid by Artist for subcontracted services under similar cost standards.
- 5. Be for direct costs or prices incurred for work performed after the effective date of this Agreement and presented for payment within 90 days of the insurance.

### 3.2 Rate Agreement

- A. The total amount payable to ARTIST under this Agreement for all Services performed herein by ARTIST ("Contract Sum") shall not exceed \$98,700.00 (Ninety-Eight Thousand Seven Hundred Dollars) only unless this Agreement is amended as provided herein. This total amount shall include Artist's fee and all reimbursable expenses. Out of the total Agreement amount, ARTIST shall be responsible for paying all of ARTIST's costs and expenses associated with the Services, including the costs of suppliers, subconsultants, overhead, fees, taxes, permits, insurance, transportation to and from meetings, and all other expenses associated with the scope of the Services specified in this Agreement (hereinafter "Artist's Costs").

In the event ARTIST incurs costs in excess of the contract sum (as adjusted) that is not due to actions or directives of BART, ARTIST shall pay such excess from the ARTIST's fee or ARTIST's own funds, and BART shall not be required to pay any part of such excess, and the Artist shall have no claim against BART on account thereof. ARTIST shall not be responsible for any excess costs incurred due to the acts or conduct of the Architect or the General Contractor.

- B. Advance Payments: ARTIST shall be provided with advance payments at the beginning of each project phase, for the purpose of assisting ARTIST with expenses associated with the deliverables in that phase. Upon completion of any deliverable for which expenses and costs have been paid by ARTIST, ARTIST shall submit proof of the payment in the form of original receipts and invoices from the payee.
- C. ARTIST shall be entitled to payment for these costs and expenses only to the extent Artist has actually incurred such costs, and BART shall retain all funds remaining or saved from the costs quoted in Attachment C.

- D. Compensation shall be made to ARTIST based upon ARTIST's successful completion, in BART'S sole reasonable discretion, of the milestones set forth in the appendices to this Agreement.
- E. No charges shall be incurred under this Agreement nor shall any payments become due to ARTIST until Services, including deliverables, required under this Agreement are received from Artist and approved by BART as being in accordance with this Agreement. BART may withhold payment to ARTIST in any instance in which ARTIST has failed or refused to satisfy any material obligation provided for under this Agreement.

### 3.3 COMPENSATION LIMITS

Subject only to changes made in conformance with Article 4.0, CHANGES AND MODIFICATIONS, below, it is expressly understood and agreed that:

- A. In no event shall ARTIST be compensated in an amount greater than the amount specified in Section 3.2 and Attachment C (ARTIST'S APPROVED COSTS) or \$98,700.00.
- B. In no event will the total compensation, including reimbursement for costs and expenses and the applicable fixed fee, to be paid ARTIST for Services described in Article 1.1, SCOPE OF SERVICES, above, and specified in Section 3.2, exceed \$98,700.00. However, there is no guaranteed minimum level of compensation.

### 3.4 DISALLOWED OR OTHERWISE UNRECOGNIZED COSTS

ARTIST understands and agrees to the following:

#### A. No Waiver

Any compensation or reimbursement received under this Agreement does not constitute a final decision by the District as to the allowability of such compensation or reimbursement and does not constitute a waiver of any violation by ARTIST of the terms of this Agreement (including, but not limited to, requirements of the Agreement to be included in ARTIST's subcontracts).

#### B. Final Determination

Unless approved otherwise by the Agreement Manager, the District will not make final determination about the allowability of compensation or reimbursement of cost received under this Agreement until an audit of the Services performed under this Agreement has been completed.

#### C. Notification

If the District determines that ARTIST or her/his subconsultant(s) is not entitled to either the compensation or reimbursement requested or received, the District will notify ARTIST stating the reasons therefor.

#### D. Return of Funds

Completion of the work under this Agreement will not alter ARTIST's or ARTIST's subconsultants' obligation to return any funds due the District as a result of later refunds, corrections, or other transactions, nor alter the District's right to disallow or otherwise not recognize costs on the basis of a later audit or other review.

### 3.5 METHOD OF PAYMENT

#### A. Invoices/Subconsultant Payment:

Unless approved otherwise by the Agreement Manager, ARTIST's services shall be invoiced on a monthly basis and payment will be made within thirty (30) days of receipt of an acceptable invoice with satisfactory backup documentation, approved by the Agreement Manager, provided a completed Vendor Payee Data Record is on file with BART's Accounting Department. As used herein, the term "invoice" shall include ARTIST's bill or written request for payment under this Agreement for services performed.

Unless otherwise approved in writing by the Agreement Manager, ARTIST shall, within seven (7) days after receipt of payment made by BART, pay to each of his/her immediate subconsultants (or their respective assignees), for satisfactory performance of his/her contract, the amounts to which each is entitled, after deducting any prior payments and any amounts due and payable to ARTIST by those subconsultants. Any delay or postponement of payment among the parties may take place only for good cause and with the District's prior written approval. If ARTIST determines the work of the subconsultant to be unsatisfactory, ARTIST must immediately notify in writing the Agreement Manager (and the Office of Civil Rights if the subconsultant is a DBE) and state the reasons therefor. Failure by ARTIST to comply with this requirement will be construed to be a breach of contract.

#### B. Payment does not imply acceptance of services

The issuance of any payment for milestone(s), other progress payment or final payment by BART or the receipt thereof by the ARTIST shall in no way lessen the liability of the ARTIST to correct unsatisfactory work or materials, although the unsatisfactory nature of such work may or may not have been apparent or detected at the time such payment was made. Work that does not conform to the requirements of this Agreement may be rejected by BART and in such case must be replaced or performed again by ARTIST without delay.

#### C. Withholding of Payment

BART reserves the right to withhold payment(s) otherwise due ARTIST in the event of ARTIST's material non-compliance with any of the provisions of this Agreement, including, but not limited to, the requirements imposed upon Artist in Article 8.0, INDEMNIFICATION; and Article 9.0, ARTIST'S WARRANTIES, below. BART shall provide notice of withholding and may continue the withholding until ARTIST has provided evidence of compliance which is acceptable to BART.

#### D. Final Acceptance

ARTIST shall advise BART in writing when ARTIST has completed all obligations, services and deliverables under this Agreement and all modifications. Within fifteen (15) days, BART shall send a Notice of Response identifying in writing any obligations, services or deliverables that ARTIST has not satisfactorily met, any defects in ARTIST's performance, and the requirements for ARTIST to cure any such default. ARTIST shall have 30 days from dispatch of the Notice of Response to cure any defects in ARTIST's performance identified in BART's Notice of Response. The Artwork shall not be finally accepted by BART unless it has issued a Notice of Final Acceptance. BART shall make a good faith effort to make a determination as to Final Acceptance promptly.

Upon Final Acceptance, BART shall accession the Artwork into its Art Collection, and full title to Artwork shall pass to BART.

E. Invoice Procedures:

ARTIST shall invoice for each successfully completed project Phase in conformance with procedures approved by the Agreement Manager and as set forth in Attachment C, ARTIST'S APPROVED COSTS.

In no case shall ARTIST submit an invoice for costs that BART has disallowed or otherwise indicated that it will not recognize.

F. Invoice Requirements

Invoices shall be, as a minimum, (i) mechanically accurate, (ii) substantially vouchered and properly supported and (iii) in compliance with the specific requirements of Article 1.6, FINANCIAL ADMINISTRATION above. Invoices must match PO line items. Invoices must also include both the Agreement number and the applicable Phase number that corresponds to the invoice.

G. Invoice Submittal Address:

ARTIST shall submit all invoices to BART's Accounts Payable Department using one (1) of the following two (2) methods:

1. **(Preferred)** E-mail a PDF version of the invoice to: [ap\\_supplier@bart.gov](mailto:ap_supplier@bart.gov). Please save the file name using your Company name – Invoice No.  
Example: ABC Company – Invoice #123456
2. Mail your invoice to: San Francisco Bay Area Rapid Transit District  
Accounts Payable Department – BHQ-09  
Subject: Invoice Submission  
2150 Webster Street, 9th Floor  
Oakland, CA 94612

Invoices must include: Your invoice number; Agreement Number, and the Phase number that corresponds to the invoice.

ARTIST shall direct questions regarding invoice submission to the Agreement Manager. Invoice submission samples can be viewed at [www.bart.gov/bap](http://www.bart.gov/bap).

H. Taxpayer Identification Number:

ARTIST represents that ARTIST's taxpayer identification number (TIN) is evidenced by a completed Vendor Payee Data Record (VPDR) form on file with the Accounting Department on the date of execution of this Agreement. ARTIST agrees to file such tax forms as may be reasonably requested by BART to implement Internal Revenue Code Section 3406 and to accept as a part of any compensation due, any payments made by BART to the Internal Revenue Service pursuant to that Section.

I. Subconsultant Payment Tracking System Reporting Requirements:

Prior to the submittal of the first monthly invoice for work performed on this Agreement, ARTIST shall comply with the District's Subconsultant Payment Tracking System requirements by registering this Agreement on the District's website, which can be accessed at <https://suppliers.bart.gov>. ARTIST shall provide all specified information at such website about itself and all first-tier subconsultants whose Subcontracts exceed \$5,000.00.

Information required to be provided includes, but is not limited to, specified contact person, subconsultant invoices received, Subconsultant Taxpayer Identification Number (TIN), payment information for both the ARTIST and its subconsultants, as well as the total dollar amount of each first-tier Subcontract that exceeds \$5,000 and first and second-tier SB Subcontract regardless of dollar value, the total dollar amount actually paid the first-tier Subconsultant and second-tier SB Subconsultant, the date of payment, and such other information as specified in the District's website.

ARTIST shall update the above information monthly, including similar information about all applicable subconsultants added to the Agreement during the period of the Agreement. The monthly update shall be prepared by the ARTIST as specified in the District's website, and submitted electronically at <https://suppliers.bart.gov>. Such report shall be certified to be correct by the ARTIST.

Failure to comply with these reporting requirements may be grounds for withholding payments due to the ARTIST during the period of noncompliance.

#### **4.0 CHANGES AND MODIFICATIONS**

BART reserves the right to order changes in the Services to be performed by ARTIST. All such changes shall be incorporated in written change orders executed by BART and ARTIST which shall specify the changes ordered and the adjustment of compensation and completion time required therefor.

Any services added to the scope of this Agreement by a change order shall be executed under all applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a duly executed change order. The parties also understand and agree that ARTIST will not be reimbursed for costs prior to the effective date of a change order unless otherwise approved by the Agreement Manager.

#### **5.0 TERMINATION**

##### **5.1 TERMINATION FOR CONVENIENCE**

BART may, at any time prior to completion of the Services under any Phase, terminate any such Phase or this Agreement whenever BART determines that such termination is in its best interest, by written notice to ARTIST. BART's written notice to ARTIST shall state in detail the extent of such termination with respect to the Phase or this Agreement. Effective on receipt of such notice of termination from BART, no new work or obligation with respect to such Phase or this Agreement will be undertaken by ARTIST or his/her subconsultants unless so directed by BART in writing. Upon such termination, ARTIST shall submit an invoice or invoices to BART in amounts that represent the compensation specified herein for Services actually performed to the date of such termination and for which ARTIST has not been previously compensated. Upon payment of the amount due, BART shall be under no further obligation to ARTIST, financial or otherwise, with respect to terminated Services or this Agreement.

##### **5.2 TERMINATION FOR CAUSE**

A. If ARTIST is in default, with the exception of Section 6.0 Insurance, and fails to remedy this default within fifteen (15) days after receipt from BART of notice of such default setting forth the nature of the default and the requirements to cure, BART may in its discretion terminate this Agreement or such portion thereof as BART determines is most directly affected by the default.

The term "default" for purposes of this provision includes, but is not limited to, the performance of Services in violation of the terms of this Agreement; abandonment, assignment or subletting of the Agreement without approval of BART; bankruptcy or appointment of a receiver for ARTIST's property; failure of ARTIST to perform the Services or other required acts within the time specified for this Agreement or any extension thereof; refusal or failure to provide proper workmanship; failure to take effective steps to end a prolonged labor dispute; the performance of this Agreement in bad faith; and the breach of any warranty as set forth in this Agreement.

Upon BART's termination of this Agreement or any portion thereof for default by ARTIST, BART reserves the right to complete the Services, including the Artwork, by whatever means it deems expedient and the expense of completing such Services as well as any and all damages proximately caused by the default shall be charged to ARTIST.

- B. No Obligation to Pay. Except as specifically provided in this Agreement, BART shall have absolutely no payment or other obligations to ARTIST for any work or service completed, begun or contemplated by Artist subsequent to termination of this Agreement for any reason.
- C. Remedies are Cumulative. These remedies are in addition to all other remedies available to either party under this Agreement or under applicable federal, state or local laws should the other party fail to comply with the terms of this Agreement.

### 5.3 FORCE MAJEURE

The performance of work under this Agreement may be terminated by BART, in its discretion, upon application therefor by ARTIST for unforeseen causes beyond the control and without the fault or negligence of ARTIST, including acts of God, acts of the public enemy, governmental acts, fires and epidemics if such causes irrecoverably disrupt or render impossible ARTIST 's performance hereunder. An "act of God" shall mean an earthquake, flood, cyclone, or other cataclysmic phenomenon of nature beyond the power of ARTIST to foresee or make preparation in defense against.

### 5.4 TRANSFER OF TITLE UPON TERMINATION

If the District terminates this Agreement for any reason, the District shall be automatically vested with title to any works comprising the Services produced under this Agreement up to the date of termination. ARTIST shall deliver any such works to the District in the manner, at the times, and to the extent directed by the District. If termination is due to the default of ARTIST, the District may, at its option, require ARTIST to refund to District any interim payments received under the Agreement; in such case, the District shall transfer title to such works to ARTIST.

### 5.5 SURVIVAL

The rights and obligations of the parties as set forth in the following sections shall survive any termination of this Agreement: 1.6 (FINANCIAL ADMINISTRATION), 3.0 (COMPENSATION AND PAYMENT), 6.0 (INSURANCE), 7.0 (INDEPENDENT CONTRACTOR), 8.0 (INDEMNIFICATION), 9.0 (ARTIST'S WARRANTIES), 11.0 (COPYRIGHT), 15.0 (PATENTS), 16.0 (MATTERS CONFIDENTIAL AND PRIVILEGED), 17.0 (SUBCONTRACTS), 18.0 (ASSIGNMENT OF AGREEMENT), 19.0 (RECORDS), 20.0 (AUDIT), 21.0 (NOTICES).

## 6.0 INSURANCE

At all times during the life of this Agreement and as may be further required by this Agreement, ARTIST at its own cost and expense shall provide the insurance specified by this Article.

### A. Evidence Required:

At or before execution of this Agreement and at such other times as the District may request, ARTIST shall provide the District with a Certificate(s) of Insurance executed by an authorized representative of the insurer(s) evidencing that ARTIST's insurance complies with this Article. The certificate shall reference the District Agreement Number and Title to which the certificate relates. In addition, a copy of all required endorsements shall be attached to and form a part of ARTIST's Certificate(s) of Insurance.

The Certificate Holder should be addressed to the following:

San Francisco Bay Area Rapid Transit District  
Risk Management and Insurance  
Insurance Department – BHQ09  
P.O. Box 12688  
Oakland, California 94604-2688

### B. Notice of Cancellation, Reduction or Material Change in Coverage:

All policies shall be endorsed to provide the District with thirty (30) days prior written notice of any cancellation, reduction, or material change in coverage. Notices shall be sent to the Director of Risk Management and Insurance, San Francisco Bay Area Rapid Transit District P.O. Box 12688, Oakland, California, 94604-2688.

The ARTIST shall annually submit to the District's Risk Management and Insurance Department, certifications confirming that the insurance required has been renewed and continues in place.

### C. Qualifying Insurers:

Policies shall be issued by Insurers authorized to write business in California which hold a current policyholders alphabetic and financial size category rating of not less than A:VIII according to Best's Insurance Reports.

### D. Insurance Required:

1. Commercial General Liability Insurance for bodily injury (including death) and property damage which provides limits of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) annual aggregate as respects products/completed operations if applicable.

a. Coverages included shall be:

- (1) Premises and Operations;
- (2) Broad Form Property Damage;
- (3) Blanket Contractual Liability;
- (4) Products/Completed Operations;
- (5) Personal Injury and Advertising Injury Liability, expressly including liability assumed under the agreement;

- (6) Cross-liability and Severability of Interest; and
  - (7) Independent Consultants Liability, if applicable;
- b. Coverage shall be endorsed to include the following, copies of which shall be provided to the District:
- (1) Inclusion of the District, its directors, officers, representatives, agents and employees as additional insureds as respects services or operations in connection with this Agreement;
  - (2) Stipulation that the insurance is primary insurance and that no insurance or self-insurance of the District will be called upon to contribute to a loss;
  - (3) Insurer's waiver of subrogation in favor of BART, its directors, officers, representatives, agents, and employees; and
  - (4) Stipulation that the insurance is primary insurance and that no insurance or self-insurance of the District will be called upon to contribute to a loss.
2. Automobile Liability Insurance for bodily injury (including death) and property damage which provides coverage limits of not less than One Million Dollars (\$1,000,000) combined single limit per occurrence applicable to all owned, non-owned and hired vehicles. (If ARTIST has no owned autos, then only hired and non-owned auto required).
- a. Coverage shall be endorsed to include the following, a copy of which shall be provided to BART:
- (1) Inclusion of the District, its directors, officers, representatives, agents and employees as additional insureds as respects services or operations in connection with this Agreement.
3. Statutory Workers' Compensation and Employers' Liability Insurance for not less than One Million Dollars (\$1,000,000) per occurrence applicable to Employers' Liability coverage for all employees engaged in services or operations under this Agreement. The policy shall include broad form all-states/other states coverage. Coverage shall be specifically endorsed to include the insurer's waiver of subrogation in favor of the District, its directors, officers, representatives, agents and employees, a copy of which shall be provided to the District. Should any such work be subcontracted, ARTIST shall require each subconsultant of any tier similarly to comply with this Article, all in strict compliance with federal and state laws.
4. Property In Transit: ARTIST is required to provide insurance that covers all forms of physical loss or damage to completed Artwork while in transit from or to District facilities, or otherwise in the care, custody and control of ARTIST. The form of coverage shall be replacement cost.

E. Special Provisions

1. The foregoing requirements as to the types and limits of insurance coverage to be maintained by ARTIST, and any approval of said insurance by the District or its insurance ARTIST(s) are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by ARTIST pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

2. The District acknowledges that some insurance requirements contained in this Article may be fulfilled by a funded self-insurance program of ARTIST. However, this shall not in any way limit liabilities assumed by ARTIST under this Agreement. Any self-insurance program must be approved in writing by the District.
3. Should any of the work under this Agreement be subcontracted, ARTIST shall require each of his/her subconsultants of any tier at her/his own discretion.
4. The District reserves the right to withhold payments to ARTIST in the event of material noncompliance with the insurance requirements of this Article 6.0.
5. The District reserves the right to terminate this Agreement in the event of material noncompliance with the insurance requirements of this Article 6.0.

## **7.0 INDEPENDENT CONSULTANT**

ARTIST is an independent consultant and not an employee or agent of BART and has no authority to contract or enter into any other agreement in the name of BART. ARTIST has, and hereby retains, full control over the employment, direction, compensation and discharge of all persons employed by ARTIST who are assisting in the performance of services under this Agreement. ARTIST shall be fully responsible for all matters relating to the payment of ARTIST's employees, including compliance with social security, withholding tax and all other laws and regulations governing such matters. ARTIST shall be responsible for ARTIST's own acts and those of ARTIST's agents and employees during the term of this Agreement.

In ARTIST's capacity as an independent contractor, ARTIST shall comply with any and all BART operations rules and procedures that relate to the performance of the Services on BART property. Prior to commencing services, the Agreement Manager may loan ARTIST a copy of the District's Operations Rules and Procedures which shall be returned upon the completion or termination of Artist's contractual services.

### **7.1 CONFLICT OF INTEREST**

ARTIST, its subconsultants and suppliers shall perform all work under this Agreement in conformance with all applicable statutes and regulations pertaining to conflicts of interest, including but not limited to, the financial reporting requirements and the conflict prohibitions of federal law (see, e.g., Federal Transit Administration Circular 4220.1F, Third Party Contracting Guidance and California law (see, e.g., Government Code Section 1090 et seq. Government Code Section 87100 et seq. and Title 2, Division 6 of the California Code of Regulations)).

When, in the judgment of BART, it is necessary in order to avoid any potential conflicts of interest, ARTIST, its subconsultants and suppliers may be precluded from subsequently participating as a vendor or consultant on projects for which they are providing services under this Agreement.

ARTIST shall inform the District of any identified, perceived, or potential conflicts of interests that may arise during the performance of this Agreement with respect to the ARTIST or any of its subconsultants. ARTIST shall promptly report, in writing on the District Contractor Conflict of Interest Declaration form, the fact of the ARTIST's interest or connection, and the nature of it, to BART's Internal Audit division and the District's Ethics Officer at [conflictofinterest@bart.gov](mailto:conflictofinterest@bart.gov), who will inform the Director of Procurement for the District, or in the case of property development projects to the Director of Real Estate and Property Development for the District.

## 7.2 DISTRICT CONTRACTOR CODE OF CONDUCT

The ARTIST shall comply with the requirements of the District's Contractor Code of Conduct which has been adopted by The Board of Directors of the San Francisco Bay Area Rapid Transit District. This Code of Conduct is posted at the District's website: <http://www.bart.gov/about/business/procurement/>. The purpose of the District's Contractor Code of Conduct is to protect the integrity of the procurement process, and to provide a comprehensive statement of pertinent regulations and obligations governing the conduct of Consultants doing business with the District so they will be able to compete fairly and perform their work and services in an ethical manner. Failure to comply with the applicable requirements of the District's Contractor Code of Conduct, could lead to, among other things, direction to remove an offending subconsultant, rescinding, voiding, or terminating the Agreement, or other reasonable and appropriate actions. ARTIST shall include in its subagreements, and require its subconsultants of every tier to include in their respective subagreements provisions incorporating the requirements of the District's Contractor Code of Conduct.

## 8.0 INDEMNIFICATION

ARTIST to the extent permitted by law shall defend, indemnify and hold harmless BART, its directors, officers, agents and employees from all claims, demands, suits, loss, damages, injury and liability, direct or indirect (including reasonable attorney's fees and any and all costs and expenses in connection therewith), incurred by reason of any act, or failure to act, of ARTIST, its officers, agents, employees and subconsultants or any of them, under or in connection with this Agreement; and ARTIST agrees at its own cost, expense and risk to defend any and all claims, actions, suits, or other legal proceedings brought or instituted against BART, its directors, officers, agents and employees, or any of them, arising out of ARTIST's services, and to pay and satisfy any resulting judgments. Such indemnification includes without limitation any violation of proprietary rights, copyrights, rights of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement.

ARTIST is not an employee and will defend, indemnify and hold BART harmless for any injuries or claims suffered by ARTIST and/or its officers, agents, employees and subconsultants that would otherwise be subject to the Workers' Compensation Act. Further, ARTIST will defend, indemnify BART and hold it harmless for tax, wages, employees benefits, pension benefits, or other liability if ARTIST or its employee, agent, subconsultants or other person providing services pursuant to this Agreement is found to be a common law employee of BART by the IRS, CalPERS, another government agency or a court or administrative law judge.

## 9.0 ARTIST'S WARRANTIES

### 9.1 WARRANTY OF SERVICES

- A. Warranty of Workmanship. Artist shall be responsible for the professional quality, technical accuracy, and the coordination of all designs, drawings, specifications, and other Services furnished by Artist under this Agreement. Neither BART's review, approval or acceptance of, nor payment for, the Services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement. In the event that any Services provided by Artist hereunder are deficient because of Artist's failure to perform said Services in accordance with such standards, BART shall report such deficiencies in writing to Artist within a reasonable time. Artist represents and warrants that, for a period of two years after final acceptance, the Artwork will be free of defects in workmanship or materials, including Inherent Defects (as defined below), and that the Artwork will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at the Site. "Inherent Defect" refers to a quality within the material or materials, which comprise the Artwork which, either alone or in combination, results in the tendency of the Artwork

to destroy itself. "Inherent Defect" does not include any tendency to deteriorate that is specifically identified in the Contract Documents approved by BART. Artist shall, at Artist's sole cost and expense, remedy any defects in workmanship or materials that appear within a period of two years from the date of final acceptance of the Artwork by BART.

- B. Warranty of Public Safety. Artist represents and warrants that the Artwork will not pose a danger to public health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement.
- C. Warranty of Acceptable Standard of Display and Operation. Artist represents and warrants that:
  - 1. The Artwork will conform to design specifications and will function or perform in accordance with ARTIST's representations to BART without any costs beyond the final Budget for the Artwork or any additional staff assistance.
  - 2. Occasional or minimal cleaning and repair of the Artwork will maintain the Artwork within an acceptable standard of public display;
  - 3. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display;
  - 4. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
- D. Manufacturer's Warranties and Licenses
  - 1. To the extent the Artwork incorporates products covered by a manufacturer's warranty, ARTIST shall provide copies of such warranties to BART.
  - 2. ARTIST will procure, at ARTIST's expense, any necessary licenses for BART to continue using and displaying the Artwork.
  - 3. ARTIST shall procure, on BART's behalf, all licenses and maintenance agreements from third party providers used in the Artwork required to operate or display the Artwork, in form transferable to BART and acceptable by BART.
- E. Warranty of Originality and Title
  - 1. ARTIST warrants and represents that (a) the Artwork is original to ARTIST, that ARTIST is the sole author of the Artwork within the meaning of the Copyright Act (17 U.S.C. § 101 et seq.), or, if any other persons are co-authors of the Artwork within the meaning of the Copyright Act, Artist has obtained full assignment to ARTIST of all rights including copyright in such person's contributions; and, (b) to the best of Artist's knowledge the Artwork does not infringe the copyright or other intellectual property rights of others. ARTIST further warrants and represents that upon completion of Services, ARTIST shall have disclosed the identities of all persons, including but not limited to subcontractors, who have performed any of the Services to date, and shall have disclosed fully each person's contribution to the Artwork.

2. ARTIST warrants that, upon acceptance and final payment by BART of all amounts due and payable for the Services, the Artwork shall be free and clear of any liens, claims, or other encumbrances that may affect BART'S title to the Artwork.

## **10.0 DATA TO BE FURNISHED BY BART**

All data, reports, surveys, studies, drawings, and any other documents and materials made available to ARTIST by BART for use by ARTIST in the performance of its services under this Agreement shall be made available for information only and shall be returned to BART at the completion or termination of this Agreement.

## **11.0 COPYRIGHT**

- A. Except as provided in this Agreement, ARTIST retains all copyrights and other intellectual property interests in the Artwork and in the Design, drawings, sketches, prototypes and other materials for the Artwork. ARTIST's copyright shall not extend to predominantly functional aspects of the building or Site that may be incorporated into Artwork or which are in the area of the Artwork, such as flooring, walls and other fixtures and features of the Site, furnishings, or other similar objects located at the Site.
- B. If ARTIST is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Artwork.
- C. ARTIST may, at ARTIST's option, place a copyright notice on the Artwork in the form and manner required to protect copyrights in the Artwork under United States copyright law. If the copyright is registered with the U.S. Copyright Office, Artist shall provide BART with a copy of the application for registration, the registration number, and the effective date of registration.

### **11.1 REPRODUCTIONS**

ARTIST hereby grants to BART, and BART's agents, authorized contractors and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the Artwork, and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

- A. Implementation, Use and Display. BART may use and display the design development elements of the Artwork (to the extent those includes graphic representations or models) and the Artwork. To the extent the Work involves design elements that are incorporated by BART into the design of the Site, BART may implement such elements at the Site.
- B. Reproduction and Distribution. BART may make and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional (2D) reproductions. BART may use such reproductions for any BART-related purpose, including advertising, educational and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, gifts for BART benefactors, documentation of BART Art Collection, and catalogues or similar publications. BART shall ensure that such reproductions are made in a professional and tasteful manner, in its sole and reasonable judgment. The proceeds from the sale of any such reproductions shall be used to maintain and support BART's Art Collection or for any other public purposes that BART deems appropriate. The license granted hereunder does not include the right to create 3-dimensional (3D) reproductions on items such as tote-bags, T-shirts, coffee mugs and similar merchandise. Such reproductions may only be created pursuant to separate license agreements with ARTIST.

- C. Public Records Requests. Any documents provided by ARTIST to BART are public records and BART may authorize third parties to review and reproduce such documents pursuant to public records laws.

All drawings, designs, specifications, manuals, reports, studies, surveys, models, software (including source code), and any other documents, materials, data and products ("Work Products") prepared or assembled by ARTIST or obtained from others by ARTIST in connection with the Services shall be the property of BART; and copies shall be delivered to BART promptly upon the completion of the Services or upon an earlier termination of this Agreement. ARTIST shall be responsible for the preservation of any and all Work Products prior to transmittal to BART; and ARTIST shall replace any such Work Products as are lost, destroyed or damaged while in ARTIST's possession without additional cost to BART.

#### 11.2 EDITION OF ONE AND ARTIST'S RIGHT TO CREATE SIMILAR WORKS

Unless otherwise agreed to in writing by BART, ARTIST warrants that the Artwork is an edition of one, and that neither ARTIST nor ARTIST's agents will execute or authorize another to execute another work of the exact same image(s) or design(s) comprising the Artwork. This warranty shall continue in effect for a period coextensive with the term of copyright protection for the Artwork under U.S. law, and shall be binding on ARTIST and ARTIST's heirs and assigns.

Commercial Use. Neither party shall reproduce or distribute copies of the Artwork for sale without the prior written consent of the other party, which shall not be unreasonably withheld.

BART recognizes and acknowledges that the Artwork may be one of several artworks created by ARTIST embodying unique Artistic characteristics and expression comprising ARTIST's personal and distinctive style and agrees that, notwithstanding anything herein to the contrary and subject to the warranty provided herein, ARTIST shall have the nontransferable, perpetual right and license to create new artworks which may be considered "substantially similar" to or "derivative works" of the Artwork, as those terms are defined under the Copyright Act (17 U.S.C. § 101 et seq.).

#### 12.0 CREDITS

- A. BART agrees that unless ARTIST requests to the contrary in writing, all references to the Artwork and all reproductions of the Artwork will credit the Artwork to ARTIST.
- B. ARTIST agrees that all formal references to the Artwork made or authorized to be made by ARTIST shall include the following credit: "Collection of San Francisco Bay Area Rapid Transit District" or "Collection of SF BART," or other language agreed to by all parties.

#### 13.0 FUTURE MODIFICATION AND RELOCATION

- A. It is the intention of BART to display the Artwork at the Site as originally created by ARTIST and to maintain the Artwork in good condition. BART has the right to remove the Artwork from the Site at any time. In addition, in the event that any element of the Artwork constitutes a public safety hazard to the public or the safe functioning of the transit system as reasonably determined by BART, BART has the right to immediately remove the element posing the public safety hazard without prior notification to or approval by Artist.
- B. Except as provided in subsection A above, BART shall not intentionally physically deface or mutilate the Artwork. Artist acknowledges, however, that the Artwork will be sited at a BART station, a public transit facility, and that the installation, maintenance, repair or removal of

facility may result in non-intentional or grossly negligent physical defacement, distortion, mutilation, alteration, destruction or other modification of the Artwork (collectively "Mutilations"). BART shall not be liable for any Mutilations or any acts of vandalism to the Artwork whether by BART or third parties. Any Mutilations resulting from such vandalism shall be repaired, if at all, at BART's sole discretion, and such repairs, if any, would be at BART's expense.

- C. BART shall have the right to donate or, sell or remove the Artwork at any time. Where time permits, before exercising this right, BART, by written notice to Artist at Artist's last known address, agrees to give Artist the opportunity to purchase the Artwork for the greater of the Contract Sum Amount or the amount of any offer which BART has received for the purchase of the Artwork, plus all costs associated with the removal of the Artwork from the Site, clean-up of the Site and delivery to Artist. Artist shall have 30 days from the date of BART's notice to exercise the option to purchase the Artwork.
- D. If, during the term or after the term of this Agreement, BART finds the Site to be inappropriate, BART has the right to install the Artwork at an alternate location that BART chooses in its sole discretion. If the Artwork is free-standing such that it can be removed without significant damage to the Artwork or the Site, and if BART authorizes the removal of the Artwork, BART shall take reasonable precautions to minimize alteration of Artwork during removal.
- E. If BART moves the Artwork from its originally installed location without Artist's oversight, Artist shall not be held responsible for the structural integrity or safety of the Artwork to the extent BART's action impaired the structural integrity or safety of the Artwork, nor shall Artist be held responsible for code compliance of the Artwork to the extent that BART's actions rendered the Artwork non-compliant with applicable codes.
- F. Artist's Waiver of Rights. Except as specifically provided herein, Artist for Artist, and Artist's heirs, beneficiaries, devisees and personal representatives expressly waives, as against BART, any and all rights Artist now has or may hereafter have to attribution, preservation or integrity of the Artwork, including any repairs or mutilations made to the Artwork after installation, provided by current applicable law, or hereinafter created under any future laws, including without limitation moral rights, the California Art Preservation Act ("CAPA"), and the 1990 Visual Artists Rights Act ("VARA"), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed in VARA, CAPA, or any other type of moral right protecting the integrity of works of art. If the Artwork is incorporated into a building such that the Artwork cannot be removed from the building without alteration of the Artwork, Artist waives any and all such claims against any future owners of the Site, and its agents, officers and employees, for alteration of the Artwork. Further, Artist releases, acquits and discharges BART from all suits, claims, actions, liability, damages and expenses arising out of the installation, use, maintenance, repair, or Mutilations of the Artwork; provided, however, that Artist shall retain the right to disclaim authorship of the Artwork pursuant to CAPA and VARA. The waivers provided herein shall survive termination of the Agreement.
- G. Artwork Repair or Replacement. Where time permits, BART shall make reasonable good faith efforts to notify Artist at least 20 calendar days prior to authorizing any repair or replacement of the Artwork, at the last phone number or address provided by Artist to BART. After receiving such notice, Artist shall consult with BART to determine whether the Artwork can be restored or replaced and to attempt to come to a mutually agreeable plan for restoring or replacing the Artwork. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing by BART. If BART, in its sole discretion, intends to replace or repair the Artwork, BART shall make reasonable good faith efforts to engage Artist in the repair or restoration of the Artwork and to compensate Artist for Artist's time and efforts at fair market value, which may be the subject of a future agreement between Artist and BART. If, however, Artist fails or refuses to negotiate with BART in good faith and in a timely manner with respect to any repair or restoration, BART may contract with any other qualified art conservator or artist for such restoration. Notwithstanding the foregoing, BART has no obligation under this

Agreement to repair or to restore the Artwork to its original condition, to compensate Artist for any restoration work, or to maintain the Artwork on display or in any specific location.

#### **14.0 THIRD-PARTY INFRINGEMENT**

- A. BART is not responsible for any third- party infringement of Artist's copyrights and is not responsible for protecting the intellectual property rights of the Artist.
- B. In the event of infringement of the Artwork by third parties, BART and Artist shall consult with each other to determine a course of action, whether by BART or by BART and Artist jointly, to address such infringement.
- C. Third Party Mutilations. Artist reserves the rights to prosecute third parties for violations by such third parties of Artist's moral rights including without limitation CAPA and VARA, provided that Artist consults with BART prior to pursuing such claims.

#### **15.0 PATENTS**

ARTIST agrees to communicate promptly to BART full particulars with respect to any and all improvements and inventions (whether or not patentable) conceived and reduced to practice by ARTIST in performance of the Services (collectively, "Inventions"). Subject to superseding rights due to the Federal or State governments assisting in the financing of this Agreement and pursuant to Attachments D, such improvements and inventions (if patentable) shall become the property of Artist, to the extent allowed by the terms of the aforementioned Federal or State grants and Artist hereby grants to BART the non-exclusive, perpetual, worldwide, royalty-free right and license to exploit the Inventions solely in connection with the Artwork.

#### **16.0 MATTERS CONFIDENTIAL AND PRIVILEGED**

All of the drawings, designs, specifications, manuals, reports, studies, surveys, models, or other data and products prepared or assembled by ARTIST, obtained from others by ARTIST or made available to ARTIST by BART in connection with the services under this Agreement, shall be treated as confidential by ARTIST. At no time shall ARTIST use or disclose or make available, other than in the performance of ARTIST's services for BART, confidential information gained in the course of or by reason of ARTIST's retention by BART and/or performance of services for BART nor shall ARTIST permit such use or disclosure, without prior written approval by BART. It is the intention of BART to preserve and make use of all applicable legal privileges, and ARTIST shall make all reasonable efforts to cooperate with BART in this regard.

Performance of work under this Agreement will require the District to disclose Security Sensitive Information ("SSI") and require access to locations designated as security sensitive. In addition to the requirements set forth above and prior to commencement of any work involving SSI, ARTIST agrees to execute a Contractor Non-Disclosure Agreement for Release of Security Sensitive Information ("NDA") and require applicable third parties who will need to access SSI to execute a Third-Party Non-Disclosure Agreement for Release of Security Sensitive Information ("Third Party NDA"), which will be provided under separate cover by the District. In accordance with the NDA, and for purposes of services to be performed under this Agreement, confidential information shall include any documents designated as SSI.

#### **17.0 SUBCONTRACTS**

##### **A. Approved Subcontracts**

Artist is prohibited from subcontracting this Agreement or any portion of the Services, without the prior written approval of the Agreement Manager and any attempt to do so shall be void and unenforceable. Written approval by the Agreement Manager of use of a subcontractor for

specified Services shall not constitute approval for any other purpose. In the event that Artist enters into one or more subcontracts pursuant to this Article, it is understood and agreed that the participating subcontractors shall be solely and directly responsible to Artist, and BART shall have no obligation to them.

If Artist subcontracts any portion of the Work under this Agreement (including but not limited to engineering and/or architecture), BART must grant prior approval of such subcontractors.

Artist may substitute any approved subcontractor for: (a) failure to perform to a reasonable level of professional competence; (b) inability to provide sufficient resources to the Project; or (c) unwillingness to negotiate reasonable contract terms or compensation. Artist may only substitute subcontractors with the prior written approval of BART.

**B. Subcontract Provisions**

Artist agrees that the requirements in Articles 1.3 (PROCEDURE FOR EXECUTION OF SERVICES), 1.4 (PROJECT AND ORGANIZATIONAL PROCEDURES), 1.6 (FINANCIAL ADMINISTRATION), 3.0 (COMPENSATION AND PAYMENT), 3.2 (RATE AGREEMENT) and 4.0 through 34.0, inclusive, of this Agreement, will be included in every subcontract entered into relating to the Services. Upon request, Artist shall provide BART with copies of all such subcontracts, with changes and amendments thereto.

**18.0 ASSIGNMENT OF AGREEMENT**

ARTIST shall not assign this Agreement, or any part thereof without prior express written consent of the Agreement Manager, and any attempt to do so shall be void and unenforceable.

**19.0 RECORDS**

ARTIST shall maintain full and adequate records to show the actual time devoted and the cost incurred by ARTIST with respect to the performance of services under this Agreement.

ARTIST and its subconsultants shall establish and maintain records pertaining to the fiscal activities associated with the Agreement. ARTIST 's and subconsultants' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged to the Agreement, including properly executed payrolls, time records, invoices and vouchers.

**20.0 AUDIT**

ARTIST and its subconsultants shall permit BART and its authorized representatives to inspect, examine, make excerpts from, transcribe, and copy ARTIST's and subconsultant's books, work, documents, papers, materials, payrolls, records, accounts, and any and all data relevant to this Agreement at any reasonable time for the purpose of auditing and verifying statements, invoices or bills submitted by ARTIST pursuant to this Agreement, and shall provide such assistance as may be reasonably required in the course of such inspection including, but not limited to, the following:

**A. Audit Interviews:**

ARTIST shall arrange audit entrance and exit interviews in which ARTIST and/or its subconsultants and BART and/or its authorized representatives will participate.

**B. Accessing Documents:**

ARTIST's and its subconsultants' accounting divisions shall provide instruction to BART on accessing documents.

C. Letter of Representation:

ARTIST's management, or the management of a subconsultant, as well as the management of their appropriate units, will provide at BART's request a letter of representation concerning such matters as BART determines appropriate.

- D. BART further reserves the right, for itself and its authorized representatives, to examine and re-examine said books, work, documents, papers, materials, payrolls, records, accounts and data during the three-year period following the final payment under this Agreement and until all pending matters are closed; and ARTIST and its subconsultants shall in no event dispose of, destroy, alter or mutilate said books, work, documents, papers, materials, payrolls, records, accounts and any and all data in any manner whatsoever for three (3) years after the final payment under this Agreement, or until all pending matters are closed, whichever is later.
- E. Pursuant to California Government Code Section 8546.7, the parties to this Agreement shall be subject to the examination and audit of the State Auditor, at the request of BART or as part of any audit of BART by the State Auditor, for a period of three years after final payment under this Agreement. The examination and audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the cost of administering this Agreement.
- F. To uphold the highest standards of integrity and transparency throughout the Agreement performance, the District is committed to ensuring that all Agreement activities are conducted with impartiality and accountability, ensuring public trust in the stewardship of public resources. To that end, the BART or its Office of the Inspector General (OIG) reserves the right to audit or investigate any Agreement activity that may potentially provide cause for debarment under the District Suspension and Debarment Policy, or violate any District policy, state or federal law. BART's Suspending Official may suspend any Work in progress, partially or in its entirety, for this agreement during any audit or investigation. Accordingly, the ARTIST shall not be entitled to any claim for delay damages or additional compensation arising from such suspension, other than an extension of time.

**21.0 NOTICES**

Except for invoices submitted by ARTIST pursuant to Article 3.0, COMPENSATION AND PAYMENT, and Article 3.5 METHOD OF PAYMENT, above and insurance notices submitted pursuant to Article 6.0 B., Notice of Cancellation, Reduction or Material Change in Coverage, above, all notices required hereunder or other communications to either party by the other may be given by personal delivery, U.S. Mail, courier service (such as Federal Express) or email transmission. Notices shall be effective upon receipt at the following addresses:

To BART by U.S. Mail:

San Francisco Bay Area Rapid Transit District  
P.O. Box 12688  
Oakland, California 94604-2688

Attention: Jennifer Easton, Agreement Manager

To BART by Personal  
Delivery or Courier Service:

San Francisco Bay Area Rapid Transit District  
2150 Webster Street, Oakland, CA 94612

Attention: Jennifer Easton, Agreement Manager

To ARTIST:

ABG Art Group, LLC  
1528 Webster Street, #14, Oakland, CA 94612

Attention: Trent Thompson, Program Manager

Email Transmission:

To BART:

[jeaston@bart.gov](mailto:jeaston@bart.gov)

To ARTIST:

[trent@abgartgroup.com](mailto:trent@abgartgroup.com)

Either party may change its address for notices by giving written notice of the new address as provided above.

## **22.0 NON-DISCRIMINATION**

The ARTIST or subconsultant shall not discriminate on the basis of race, color, national origin or sex in the performance of this Agreement. The ARTIST shall carry out applicable requirements of 49 CFR Part 21 in the award and administration of U.S. Department of Transportation-assisted contracts. Failure by the ARTIST to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as the District deems appropriate.

In connection with the performance of services under this Agreement, ARTIST shall not, on the grounds of race, religious creed, color, national origin, ancestry, handicap, medical condition, marital status, sex, sexual orientation or age, discriminate or permit discrimination against any person or group of persons in any manner prohibited by Federal, State or local laws.

For purposes of this Article "sexual orientation" shall mean a preference for heterosexuality, homosexuality or bisexuality; or having a history of, or being identified with, any such preference.

## **23.0 SITE SECURITY AND ACCESS**

Prior to commencement of services, ARTIST shall comply with BART's site security requirements which include, but are not limited to, requiring photographic identification badges and submitting names and dates of birth of all personnel, including subconsultants and suppliers of any tier, working on BART property or facilities. All badges shall be returned to BART at the completion of services hereunder. In the event ARTIST fails to comply with BART's site security requirements, ARTIST's personnel, including subconsultants and suppliers, may not be allowed on BART property or facilities. No extension of time for completion of services or additional compensation for delay claims shall be granted in the event such personnel are excluded from BART property or facilities.

### **18.1 DATA PROTECTION AND CYBERSECURITY**

ARTIST shall implement and maintain industry-standard cybersecurity safeguards when accessing District systems or utilizing or storing District data. Safeguards shall include, but are not limited to, multi-factor authentication for access of District systems, encryption of District data, regular vulnerability assessments coupled with prompt patch management, as well as access controls based on the principle of least privilege. In the event of any suspected or confirmed cybersecurity incident involving District systems or data, ARTIST shall report the nature of the incident and affected data to the District within twenty-four (24) hours of

discovery. At the District's request, ARTIST shall submit to annual third-party security audits and provide security attestations within 10 business days of such requests. In addition, ARTIST shall utilize or store only District data necessary for the performance of the Agreement Work. Upon completion or termination of the Agreement, the ARTIST shall destroy or return all District data in its possession. ARTIST personnel shall not use personal devices to access District systems or data without the District's prior written approval.

## **24.0 LAWS AND REGULATIONS**

ARTIST shall comply with any and all laws, statutes, ordinances, rules, regulations, and procedural requirements of any national, state or local government, and of any agency of such government, including BART, which relate to or in any manner affect the performance of this Agreement. This Agreement and any documents supplied hereunder are subject to public inspection of the California Public Records Act, California Government Code Section 7920 et seq, unless exempted by law.

### **A. District's Environmental Policy**

The ARTIST and its subconsultants shall comply with the District's Environmental Policy adopted on February 10, 2005 by the Board of Directors of the San Francisco Bay Area Rapid Transit District. The District's Environmental Policy is posted at the District's website: <https://www.bart.gov/sites/default/files/docs/environmentalposter.pdf>. The purpose of the District's Environmental policy is to preserve the environment by adopting feasible practices that, among other things, prevent pollution and preserve natural resources in its operating practices. BART will monitor and implement the Environmental Policy through its Environmental Management System.

### **B. Iran Contracting Act of 2010**

Pursuant to the Iran Contracting Act of 2010, Public Contract Code Sections 2200 through 2208 (The Act), by submitting a Proposal, ARTIST certifies that it is not a firm identified in the California State Department of General Services (DGS) list of ineligible Firms that provide goods and services in the energy sector of Iran. Among other things, The Act prohibits firms from providing goods or services of \$20,000,000 or more in the energy sector of Iran. The DGS list of ineligible vendors can be found at: [Iran Contracting Act](#).

### **C. U.S. Government's Economic Sanctions on Russia and Belarus, Eo N-6-22**

In connection with Russia's invasion of Ukraine, the U.S. government has imposed economic sanctions on certain individuals and entities ("sanctioned persons"). Pursuant to state Executive Order N-6-22, by entering into this Agreement, ARTIST certifies that it is neither a vendor, nor employs individuals, identified in the U.S. Department of the Treasury, Office of Foreign Assets Control, Sanctions List Search of Specially Designated Nationals and Blocked Persons (SDNs).

## **25.0 ADDITIONAL FUNDING AGREEMENT REQUIREMENTS**

This Agreement is subject to any additional restrictions, limitations or conditions that may be required by any local, State or Federal funding agreements applicable to this Agreement.

## **26.0 CHOICE OF LAW**

All questions pertaining to the validity and interpretation of this Agreement shall be determined in accordance with the laws of the State of California applicable to agreements made and to be performed within the State, without reference to conflicts of law principles.

## **27.0 SEVERABILITY**

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

## **28.0 CAPTIONS**

The captions of the Articles and paragraphs in this Agreement are for purposes of reference only, and shall not be construed to affect the meaning of any provision hereof.

## **29.0 BENEFIT OF AGREEMENT**

This Agreement shall bind and benefit the parties hereto and their assignees, successors and permitted assigns.

## **30.0 STATE OF CALIFORNIA LABOR CODE REQUIREMENTS**

In the event work performed under this Agreement is subject to the payment of prevailing wages, special attention is directed to Division 2, Part 7, Chapter 1, Article 2 of the California State Labor Code, including Section 1774 and Section 1775, concerning the payment of prevailing wages. ARTIST and each subconsultant shall pay not less than the appropriate prevailing wages to all workers performing work that is subject to the prevailing rate of wages as determined by the Director of the State Department of Industrial Relations. Pursuant to Section 1773 of the State Labor Code, the District has obtained from the Director of the State Department of Industrial Relations the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in the locality(ies) in which the Work is to be performed and has copies available upon request from the Procurement Department, 2150 Webster Street, 4th Floor, Oakland, CA 94612. The prevailing rates of wages are also available at the following website: [www.dir.ca.gov/dlsr/pwd](http://www.dir.ca.gov/dlsr/pwd). For crafts or classifications not shown on the prevailing wage determinations, ARTIST may be required to pay the wage rate of the most closely related craft or classification shown in such determinations for contract work. The ARTIST may contact the Division of Labor Statistics and Research, Prevailing Wage Unit, P.O. Box 420603, San Francisco, CA 94142, (415) 703-4774, for questions concerning job classifications not found in the general prevailing wage determinations. The CONTRACTOR shall comply with the provisions of State Labor Code Section 1776 and Section 1812, and shall be responsible for compliance by its subcontractors. Furthermore, the CONTRACTOR shall post Jobsite notices, as prescribed by regulations. The penalties specified in subdivision (f) of State Labor Code Section 1776 for noncompliance by the CONTRACTOR or any of its subcontractors of every tier may be deducted from any monies due or which may become due to the CONTRACTOR. Among other things, the CONTRACTOR shall comply with the requirements of State Labor Code Section 1777.5 applicable to Apprentices. A certified copy of payroll records shall be provided by the CONTRACTOR in accordance with State Labor Code Section 1776 and shall be furnished to the District each week within seven (7) Days after the regular payment date of the payroll period. Failure to comply with these requirements may cause suspension of progress payments during the period of noncompliance or may delay final payment. In the event work performed under this Agreement is subject to the payment of prevailing wages or the registration and reporting requirements for public works projects, the CONTRACTOR and all subcontractors performing work subject to the payment of prevailing wages shall comply with the requirements of State Labor Code Section 1725.5 and Section 1771.1 which, among other things, require all such CONTRACTORS and subcontractors to be registered with the State Department of Industrial Relations (DIR) in order to be qualified to perform work under this Agreement or to be listed as a subcontractor for such work, or engage in the performance of such Work in this Agreement. Failure to comply with the DIR registration requirements may delay the issuance of a Purchase Order. Within thirty (30) days following Award of the Agreement and issuance of a Purchase Order, the CONTRACTOR and its subcontractors performing work subject to the payment of prevailing wages shall register with State DIR at

<https://www.dir.ca.gov/Public-Works/Certified-Payroll-Reporting.html> in order to enroll in the electronic system for monthly submittal of Certified Payroll Records. Thereafter, each month the CONTRACTOR and such subcontractors shall submit electronically a copy of their respective Certified Payroll Records to DIR. CONTRACTOR shall include in its subcontracts, and require its subcontractors of every tier to include in their respective subcontracts, provisions incorporating the requirements of this Article for Certified Payroll Records submittal to DIR. Failure to comply with these requirements may cause a suspension of progress payments during the period of noncompliance or may delay final payment. Should the Work be subject to this Article, ARTIST shall comply with all applicable requirements of Division 2, Part 7, Chapter 1, Article 2 of the State Labor Code.

**31.0 ADDITIONAL FUNDING AGREEMENT REQUIREMENTS**

This Agreement is subject to any additional restrictions, limitations or conditions that may be required by any local, state or Federal funding agreements applicable to this Agreement.

**32.0 COVENANT AGAINST CONTINGENT FEES**

ARTIST warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ARTIST for the purpose of securing business. For breach or violation of this warranty, BART will have the right to annul this Agreement without liability, or at its discretion, to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**33.0 COVENANT AGAINST GRATUITIES**

ARTIST warrants that it will not and has not offered or given gratuities in the form of entertainment, gifts or otherwise, to any director, officer or employee of BART to secure favorable treatment in the awarding, amending or evaluating performance of the Agreement.

**34.0 ENTIRE AGREEMENT**

This Agreement is the entire agreement of the parties, and supersedes and replaces all prior communications, written and oral, regarding the subject matter hereof. ARTIST represents that in entering into this Agreement, it has not relied on any previous representations, inducements, or understandings, written or oral, of any kind or nature.

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the day and year first written above.

SAN FRANCISCO BAY AREA RAPID TRANSIT  
DISTRICT

ABG ART GROUP, LLC

\_\_\_\_\_  
By Director of Procurement (or designee)

\_\_\_\_\_  
By (Signature)

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**EXHIBIT 1: ORIGINAL ARTIST'S CONCEPTUAL DESIGN PROPOSAL**

## EXHIBIT 1: ORIGINAL ARTIST'S CONCEPTUAL DESIGN PROPOSAL

*Until the Hills Become Us*  
Matthew Passmore, Artist  
Iron Horse Trail Public Art Project

***Until the Hills Become Us*** (working title) is a linear artwork comprising intricately cut and brightly-colored steel fence panels inspired by local ecological forms visible from the Iron Horse Trail, as well as the roof of the Dublin/Pleasanton BART station. The piece appears as a horizon of multiple interwoven hill forms. Observant visitors will discover within some of the hills intricately cut patterns that reference the unique physical, historical and social characteristics of the region around the Dublin/Pleasanton BART station and the intersecting Iron Horse Trail.

Designed to be viewed by visitors in motion at various speeds and from various distances, *Until the Hills Become Us* offers a large-scale, site-specific artwork and a bright splash of color to viewers of all ages along the BART multi-use path.

Example of a 10-panel run of the art barrier.  
Patterns in Panels

- Interspersed in the “under hills” of the piece will be patterns derived from the specific historical, social, and contemporary identity of the Dublin/Pleasanton region. These patterns are still under study and design, and we are looking at patterns derived from local elements of:
- ecology
- history
- the Native peoples of the area
- the transportation infrastructure and the future.

Patterns shown are for illustration purposes only.



**ATTACHMENT A**

**ARTIST'S SCOPE OF SERVICES**

## ATTACHMENT A: ARTIST'S SCOPE OF SERVICES

### ART DESIGN, FABRICATION, TRANSPORTATION AND INSTALLATION CONSULTATION SERVICES

#### For the San Francisco Rapid Transit District Dublin/Pleasanton Station Access Improvements

Artist agrees to design, fabricate, transport and consult as necessary during the installation of Artwork. in accordance with Artist's Conceptual Design Proposal, a copy of which is attached hereto as Exhibit 1 and incorporated herein by reference.

#### PHASE I: DESIGN

##### SCOPE OF WORK

##### 1. GENERAL

- A. The Original Artist's Conceptual Design Proposal (the "Original Proposal") is incorporated herein by reference as Exhibit 1. The scope of work under this phase includes the design development of the Original Proposal through all phases of final design.
- B. Artist shall not commence any Phase nor incur any expense in anticipation of commencing any Phase unless BART has given prior written authorization.
- C. The Work shall reflect the requirements of the project as expressed in the Request for Qualifications Quotes and the Proposal Artist's accepted bid and as further discussed in communications with BART.
- D. Artist shall attend project meetings and make presentations to BART and other individuals and organizations, as needed.
- E. Artist agrees to collaborate closely with BART through in-person meetings and other necessary means of communication to successfully incorporate the Artwork into the station's design and construction schedule. Artist shall coordinate his/her communications with the BART through the Agreement Manager.
- F. Artist shall deliver documentation establishing that all Artist's employees, and all of Artist's consultants, contractors, fabricators, manufacturers, suppliers, or distributors (collectively, "Subcontractors"), have been paid in a timely manner (collectively, "Subcontracts and Documentation"). With each invoice, Artist shall submit Subcontracts evidencing Artist's payments to subcontractors subsequent to Artist's submittal of last invoice to BART.

##### 2. DESIGN DEVELOPMENT

- A. BART shall provide Artist with available construction documents and specifications for the Site as required for the Artist to complete Design Development Documents. BART shall provide all available specifications to coordinate for the design and installation of the Artwork.
- B. As required, Artist shall review the drawings, materials and documents provided by BART for consistency with any documents previously reviewed by Artist and for accuracy of the integration of Artist's Proposal with the Site. Artist shall report any structural or constructability concerns in writing to BART.

- C. BART shall provide Artist will current renderings indicating the location of furnishings, signage, mechanical and electrical systems, and other structural or architectural elements that may affect, or be affected by, the placement of the Artwork, if applicable.
- D. If applicable, Artist shall submit Design Development Documents that illustrate the final design and placement of the Artwork. Artist's Design Development documents shall include presentation-quality materials, including computer- generated color images and/or 3-dimensional models that accurately reflect the design and location of the Artwork, final colors and materials, and final cost estimates. When used in reference to the proposed Artwork, Design Development documents shall fix and describe the size and character of the Artwork with respect to its relationship to the Site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate. Artist will also submit Maintenance Plan, and Budget.
- E. If requested to do so by BART, Artist shall construct a one to one-scale Mock-Up of the Artwork. The Mock-Up will incorporate the same materials proposed for use in the final Work and may be included in the final installed Artwork if appropriate.
- F. Artist will submit a Fabrication Schedule indicating anticipated dates for the Artwork to be at 50% and 100% completion.
- G. Maintenance Plan. At the time Artist submits Artist's amended Proposal for review by BART as part of the Design Development documents, Artist shall provide BART with a General Maintenance Plan for the Artwork, with a detailed description of future anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement/upgrade of any part of the Artwork and associated moving parts or equipment including any staff time involved in displaying or operating Artwork and the frequency of such staff involvement; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Artwork. Artist shall also provide BART with a description of all equipment and or machinery needed to operate the Artwork and any anticipated or required staffing, supervision or operational needs. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment, and may also be subject to graffiti and vandalism. Artist shall ensure that all maintenance requirements will be reasonable in terms of time and expense. The Artist shall be responsible for making any updates or clarifications to this Maintenance Plan if the maintenance requirements and estimates change over the course of the Project.

### 3. Construction Documents/Shop Drawings

- A. The plans for the construction and/or installation of the proposed Artwork as set out in the Construction Documents must conform to the California Uniform Building Code and any BART amendments to the Building Code as approved, as well as the applicable sections of the BART Facility Standards. As required by the California Building Code, Construction Documents/Shop Drawings and must be signed and stamped by design and/or engineering professionals licensed in the State of California.
- B. Artist shall deliver Mock-ups and Samples, as required by BART.
- C. Artist and its subcontractor architect or engineer shall review the Architect's plans, designs and specifications to ensure they accurately reflect the agreed installation of the Artwork at the Site, and Artist shall provide the BART and Architect with written comments and/or corrections.

- D. If the anticipated maintenance requirements and estimates have changed, Artist shall provide the BART with a revised Maintenance Plan.
- E. Artist shall deliver an updated schedule describing Artist's specific timelines for completing the Work.

## Phase II: Fabrication of Artwork

### 1. SCOPE OF WORK

- A. Artist shall deliver subcontracts prior to the start of fabrication of all or any Work under Phase II, as well as all Subcontracts and Documentation.
- B. Artist shall fabricate or cause the Artwork to be fabricated in accordance with all Contract Documents approved by BART.
- C. Artist shall develop in coordination with BART, and others as directed by BART, a transportation plan for delivering the Artwork for installation.

### 2. INSPECTION OF ARTWORK

- A. Artist shall notify BART 30 working days in advance of date on which Artwork fabrication will be 50% complete so that BART can do a site inspection of the artwork in studio fabrication. Alternatively, BART may choose to approve the Artwork based on accurate and detailed photo documentation submitted by Artist. Documentation of Artwork at 50% completion shall be sent to the Agreement Manager for approval prior to advancing to next phase of fabrication.
- B. Artist shall notify BART 30 working days in advance of date on which Artwork fabrication will be 100% complete so that BART can do a field inspection of the Artwork in studio. Alternatively, BART may choose to approve the Artwork based on accurate and detailed photo documentation submitted by Artist. Documentation of Artwork at 100% completion shall be sent to the Agreement Manager for approval prior to advancing to transportation and installation.

### 3. TRANSPORTATION PLAN

Artist shall deliver a written Transportation Plan including a list of the company (ies), vehicles, and equipment that will be involved in the transportation of the Artwork to the Site. BART shall approve transportation plan at time of submittal and notify Artist of any required amendments to the plan up to the time of transportation of the Artwork to BART.

## **PHASE III: TRANSPORTATION AND CONSULTING SERVICES FOR INSTALLATION OF ARTWORK**

### 1. SCOPE OF WORK

- A. Artist shall provide for the transportation of the completed Artwork in accordance with the Transportation Plan approved by BART in Phase II. Artist shall prepare the Artwork for transportation in accordance with customary industry standards for the transportation of fine art and in accordance with the following additional specifications set forth below.
- B. Artist shall not transport the Artwork until delivery to the Site has been approved and scheduled by BART. Notwithstanding the foregoing, Artist and BART will coordinate closely as to the date for the delivery of the Artwork ("Art Delivery Date") and shall give Artist at least

10 working days notice. It is anticipated that the Artwork will be completed and ready for delivery.

- C. If at any time or from time-to-time BART changes the anticipated Art Delivery Date given to Artist, then the BART shall notify Artist in writing of the change as soon as reasonably practicable and the Art Delivery Date shall be adjusted accordingly.
- D. All Artwork materials will be delivered to the Site securely packed and/or crated in a manner appropriate to the safe transportation and on-site management of the Artwork. Packing and crating must be clearly marked and ordered. to assist the General Contractor in correctly siting the Artwork during installation.
- E. BART, or a designated representative, shall receive, unload, and inspect the Artwork upon delivery. Upon inspection and acceptance of the Artwork, the Artwork becomes the property of the General Contractor who shall provide insurance necessary to cover Risk of Loss until such time that the Artwork becomes the property of BART.
- F. The preparation of the Site for installation of the Artwork shall be the responsibility of the General Contractor in accordance with a separate written agreement between the General Contractor and BART.
- G. Artist shall consult with BART and the General Contractor prior to and during the installation of the Artwork. If necessary, Artist shall be on-site during the installation to provide consulting services for the correct handling and placement of the Artwork.

## 2. FINAL DOCUMENTATION

- A. Artist will submit written maintenance manual and product specification data for the artwork ("Final Documentation").
- B. Artist shall provide biographical materials, an artist statement, information on the design process, and other educational materials to be used by BART for marketing, educational outreach and publicity purposes.
- C. Artist shall deliver a minimum of five professional quality digital images that represent the artwork in whole and in detail. Images files should be of a quality reproducible for color printing

**ATTACHMENT B**

**ARTIST'S SCHEDULE OF PERFORMANCE AND PAYMENT SCHEDULE**

**ATTACHMENT B**

**ARTIST’S SCHEDULE OF PERFORMANCE AND PAYMENT SCHEDULE**

- A. Artist’s fee for Artwork Design, Fabrication, Delivery and Consultation to Installation, including all expenses related thereto, shall not exceed \$98,700 (Ninety-eight Thousand Seven Hundred Dollars only) An amount of \$4,700 (Four Thousand Seven Hundred Dollars only) of the non-design fee shall be held as a contingency to cover unforeseen costs that may be incurred during the course of producing the Artwork, which shall be retained by BART and shall not be paid to the Artist except where unforeseeable and unavoidable circumstances cause an increase in the costs incurred by Artist in the Fabrication and Delivery of the Artwork.
- B. Commencement of Work. Artist shall commence work upon full execution of this Agreement. The following are milestone dates that must be met in accordance with this Agreement.
- C. Modification of Schedule. The parties agree that the schedule set forth below may be modified by mutual agreement and only upon prior written authorization of BART’s Agreement Manager.

<b>Deliverable</b>	<b>Amount</b>	<b>Submittal Due Date</b>
Upon execution of Agreement. Payment in advance is contingent upon satisfactory achievement of Design Development Documents – Phase 1, Section 2 of Attachment A	\$20,000	Upon execution of agreement
Upon approval of Construction Documents – Phase 1, Section 3 of Attachment A. Payment includes advance of \$31,000 (Payment amount) contingent upon satisfactory completion of 50% completion of Fabrication - Phase 2, Section 2A	\$42,000	9/11/2026
Upon Approval by BART of 100% completion of Fabrication – Phase 2, Section 2B and delivery of Transportation Plan – Phase 2, Section 3	\$24,250	2/27/2027
Upon delivery of Artwork to BART – Phase 3, Section 1	\$5,000	4/30/2027
Upon Final Acceptance of Artwork and delivery of all required documentation – Phase 3, Section 2	\$2,750	6/30/2027
Contingency	\$4,700	

- D. Contingency Draw. Included in the Budget is a contingency of \$4,700 (Four Thousand, Seven Hundred Dollars only). The contingency shall not be paid to the Artist except where unforeseeable and unavoidable circumstances cause an increase in the costs incurred by Artist during the art project. In the event Artist wishes to draw from the Contingency, Artist shall submit a written request (“Contingency Draw Request”) specifying the reason for the request and the total amount of the request. No contingency draw shall be paid without the written approval of Agreement Manager, which will not be unreasonably withheld. Without limitation of the foregoing, BART shall have no obligation to approve a Contingency Draw to make corrections for which the Artist or Artist’s subcontractors are responsible nor to pay for any costs that Artist or Artist’s subcontractors could have reasonably avoided. In the event that any of the amounts budgeted for contingency remain unpaid upon BART’s acceptance of the Artwork as satisfactory, the remaining Contingency will be retained by BART. In no event shall BART be required to make payments in excess of the total budget.

**ATTACHMENT C**

**ARTIST'S APPROVED COSTS**

**ATTACHMENT C**

**ARTIST'S APPROVED COSTS**

<b>Item:</b>	<b>Amount</b>
Material (10-gauge steel)	\$15,000.00
Laser cutting & framing	\$25,000.00
Powder coat/finishing fee*	\$11,000.00
Design and drafting	\$30,000.00
Prototyping*	\$3,500.00
Crating & shipping allowance*	\$6,000.00
Project Management/Overhead	\$3,500.00
Contingency	\$4,700.00
<b>Total:</b>	<b>\$98,700.00</b>

\*Items indicated as allowance are a maximum amount and will be paid on a reimbursable basis. Remainder funds of each line item can be applied to other line items as needed upon approval of Agreement Manager.