

CONTRACT NO. RTA/OT
ARTIST AGREEMENT

Contract Name

THIS AGREEMENT is entered into by Central Puget Sound Regional Transit Authority ("Sound Transit") and _____(the "Artist").

WHEREAS, Sound Transit desires to retain the Artist to perform artistic services described in this Agreement for the STart Program (the "Project"), which services may include design services or commissioned artwork; and

WHEREAS, the Artist desires to provide artistic services described in this Agreement;

NOW, THEREFORE, the parties mutually agree as follows:

A. DURATION OF CONTRACT

The term of this agreement will be effective upon the date of contract execution through _____, 20____, subject to the "Time of Performance" and the Termination provisions of this Agreement. Contract prices shall remain firm-fixed during the contract term.

OR

The term of this agreement will be effective upon the date of contract execution until final acceptance of the work by Sound Transit's Project Manager or other designated individual, subject to the "Time of Performance" and the Termination provisions of paragraph ____ of this Agreement. Contract prices shall remain firm-fixed during the contract term.

B. SCOPE OF WORK

1. The Artist shall perform the services required under this Agreement in a satisfactory and competent manner. If Sound Transit permits the Artist to employ or subcontract with any third persons in the performance of this Agreement, the Artist agrees that all such third persons shall be bound by the terms and conditions of this Agreement.
2. Sound Transit retains the Artist upon the terms and conditions contained herein to perform the services described in Attachment 2, entitled "Scope of Work," and incorporated into this Agreement by this reference. The Artist shall perform work or sell products only as permitted within the contract scope and shall not accept orders or provide services not within the contract scope

C. EXTRA WORK

Sound Transit may request additional work or services other than that expressly provided for in the "Scope of Work" section of this agreement. This will be considered extra work, supplemental to this agreement, and shall not proceed unless authorized by a written change order. Any costs incurred due to the performance of extra work prior to execution of a written change order will not be reimbursed.

D. RESPONSIBILITY OF THE ARTIST

1. The Artist shall be responsible for providing services described in Attachment 2, Scope of Work.
2. The Artist agrees to comply with all applicable local, state and federal laws, regulations, and ordinances regarding performance of the work.

3. The Artist shall notify Sound Transit of changes in his/her address. Failure to do so shall constitute a waiver by the Artist of any notices required from Sound Transit.
4. The Artist shall give credit substantially in the following form for any public showings of reproductions of the work: "From Sound Transit, Central Puget Sound Region, Washington."
- E. COMPENSATION
 1. Sound Transit shall pay the Artist for satisfactory completion of the Scope of Work specified in this Agreement in an amount **not to exceed \$_____** payable at the intervals and in the amounts specified in Exhibit A, entitled "Schedule of Payments." This amount is inclusive of all applicable state and federal taxes, including any Washington State Sales Tax owed by Sound Transit as a result of this Agreement.
 2. Retail Sales Taxes
 - a. Sound Transit has determined that the work to be performed under this Contract is exempt from the retail sales tax pursuant to RCW 82.04.050(7) and WAC 458-20-171 ("Rule 171"). Consequently, the Contract Price is not subject to Washington State retail sales tax and no retail sales tax shall be invoiced to or collected from Sound Transit with respect to the Contract Price. The Artist is advised that, under Washington law, it will be considered the consumer of all materials, equipment and supplies, including prefabricated and precast items, used or consumed by them in performing the work and all sales taxable services and must pay the state and local retail sales/use tax to their Suppliers. If an Artist has questions regarding the application of Rule 171, the Artist should contact the Washington State Department of Revenue. (ONLY if applicable)
 - b. In the event that the Washington State Department of Revenue should determine, on audit or otherwise, that all or any portion of the work does not qualify for exemption under Rule 171, or that Sound Transit is otherwise obligated to pay sales/use tax on the Contract, the Artist agrees that the Contract and any subsequent invoices will be amended (with respect to activities under the Contract following such determination) to add and separately state any applicable retail sales tax to the Contract Price, and to reduce the Contract Price by the amount of any sales tax payable by Artist that was previously included in the Contract price.
 - c. The Artist is responsible for determining its tax liability to the State of Washington; and Sound Transit shall not be responsible for any increases to the Contract Price because of any misunderstanding by or lack of knowledge of the Artist as to liability for, or the amount of, any taxes for which the Artist is liable or responsible by law or under this Contract.
 - d. It is the responsibility of the Artist to remit the sales taxes to the Washington State Department of Revenue.
 3. Other Direct Costs. Other direct costs shall be billed at cost without markup by the Artist and shall include the following described costs and expenses actually incurred by the Artist for Project work:
 - a. Sound Transit shall not reimburse the Artist for meals, travel or parking for meetings within the Sound Transit boundaries.
 - b. Travel costs, including transportation, lodging, subsistence, and incidental expenses incurred by employees of the Artist and each of its subconsultants

while in a travel status (a trip originating 50 miles beyond Sound Transit boundaries) in connection with Project work; provided, as follows:

- 1) Travel for local firms on Sound Transit business within the Puget Sound vicinity is not considered a reimbursable cost unless expressly authorized in writing by Sound Transit. This authorization must be rendered in advance of said travel.
 - 2) Sound Transit does not pay for travel, parking, etc., to or from Sound Transit's main office, or Sound Transit's satellite offices for any work related to this Agreement. This includes both full time and part time employees.
 - 3) Sound Transit does not pay per diem for travel within the Puget Sound vicinity.
 - 4) Local travel shall be by bus, taxi, or compact rental car.
 - 5) A maximum approved IRS per-mile rate will be paid for the operation, maintenance, and depreciation costs of company or individually owned vehicles for that portion of time they are used for Project work.
 - 6) Reimbursement for meals and lodging inclusive of tips and exclusive of alcohol shall not exceed the per diem rates for Washington State as established by the General Services Administration, Transportation Management Policy Division of the Federal Government (<http://www.gsa.gov/travel.htm>). Receipts are required for all charges over \$30.00, including transportation tickets.
 - 7) Accommodations shall be at a reasonably priced hotel/motel; and
 - 8) Air travel shall be by coach class at lowest price available.
4. Sound Transit's Art Program Manager shall have sole responsibility for determining stages of completion, which determination shall be reasonable. It is understood that Sound Transit has no obligation regarding sales commissions or any agreements with galleries, agents, or any other third parties with which the Artist may have contracted.
 5. The Artist is entirely responsible for cost control. No extra payments will be allowed as a result of cost overruns, unless specifically provided for in this Agreement.
 6. If the Artist fails to comply with any terms or conditions of this Agreement or to provide in any manner the work or services agreed to herein, Sound Transit may withhold any payment due the Artist until Sound Transit is reasonably satisfied that corrective action, as specified by Sound Transit, has been completed. This right is in addition to and not in lieu of Sound Transit's right to terminate this Agreement as provided in this Agreement.
 7. No payment in advance or in anticipation of services or artwork to be provided under this Agreement shall be made by Sound Transit.

F. INVOICES

The Artist shall submit invoices for services or artwork as specified in the Schedule of Payments. Invoices shall be in such form as may be approved by the Art Program Manager.

Payment will be net 15 days following receipt of a properly completed invoice, which must include the Purchase Order number, be fully itemized, with substantiating documentation, and sent to:

accountspayable@soundtransit.org

OR

Sound Transit
Attn: Accounts Payable
401 South Jackson Street
Seattle, WA 98104

Sound Transit reserves the right to request additional substantiating documentation, including receipts, for invoiced charges as Sound Transit deems necessary. Incorrect invoices or invoices without the Purchase Order number identified may be returned to the Artist.

G. REPRESENTATIONS AND WARRANTIES

1. The Artist represents that he/she has not previously and will not grant any rights in the artwork to any third party that are inconsistent with the rights granted to Sound Transit herein.
2. The Artist represents and warrants that the artwork does not infringe or violate any copyright, trade secret, trademark, patent, or other proprietary or personal right held by any third party. If the artwork is in any action held to constitute an infringement of any third party's rights and its use is enjoined, the Artist shall immediately and at his/her expense (a) procure for Sound Transit the right to continue its use of the artwork in accordance with this Agreement, (b) alter the artwork to eliminate infringing portions, subject to Sound Transit approval, or (c) replace the artwork with a version acceptable to Sound Transit that is non-infringing.
3. The Artist shall be responsible for a period of two years from the date of installation of the artwork for the integrity of the materials and fabrication techniques of the artwork, the installation, and function as required by this Agreement. The Artist's liability for breach of this warranty shall be limited to the cost of repairs of the artwork and/or the installation. The responsibility for the determination of the Artist's liability for faults or defects in the work during the two-year period shall be solely that of Sound Transit, which determination shall be reasonable.
4. **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, THAT MAY BE APPLICABLE TO THE ARTWORK, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

H. MAINTENANCE

Sound Transit shall maintain and repair the artwork consistent with Sound Transit's art collection maintenance program, and in accordance with any specifications that the Artist considers integral to the artwork and which are approved by Sound Transit as part of the Artist's maintenance recommendations.

I. USE OF ARTWORK

1. Sound Transit shall own the original artwork. Sound Transit shall have sole control over the siting, function, and display of the artwork. Prior to commencing any substantial change to the siting, function, or display of the artwork, Sound Transit shall attempt to notify the Artist of the proposed change and shall provide the Artist a reasonable opportunity to consult with Sound Transit, in accordance with terms and conditions as approved by Sound Transit, regarding the change. In the event that the Artist and Sound Transit do not agree, the Artist shall have the right to remove his/her name from the artwork, and Sound Transit shall no longer use the Artist's name in association with that

artwork. The foregoing shall be the Artist's exclusive remedy regarding Sound Transit's siting, function, or display of the artwork.

2. The Artist acknowledges and agrees that the artwork, described in Attachment 2, is intended to be incorporated in a public transit system and Sound Transit has sole authority over the present and future design and use of that transit system. The Artist further acknowledges and agrees that it is inherent in the nature of a public transit system that the artwork may be subjected to destruction, distortion, mutilation, or other modification (collectively, "damage") due to repair, renovation or other alteration of the transit system. Prior to commencing any work that may subject the artwork to damage, Sound Transit shall attempt to notify the Artist of the proposed work and shall provide the Artist a reasonable opportunity to consult with Sound Transit, in accordance with terms and conditions as approved by Sound Transit, regarding the avoidance or repair of potential damage to the artwork. In the event that the Artist and Sound Transit do not agree, the Artist shall have the right to remove his/her name from the artwork, and Sound Transit shall no longer use the Artist's name in association with that artwork. The foregoing shall be the Artist's exclusive remedy regarding damage to the artwork.
3. If Sound Transit proposes to do any work that will destroy the artwork, Sound Transit shall attempt to notify the Artist prior to commencement of that work and the Artist shall have the right to remove the artwork, at the Artist's sole expense and without unreasonably delaying or interfering with Sound Transit's work. Ownership of any artwork removed by the Artist pursuant to this provision shall revert to the Artist.
4. In the event the artwork is damaged from any cause, the Artist shall have the right to remove his/her name from the artwork, and Sound Transit shall no longer use the Artist's name in association with that artwork.
5. With regard to any notices required or permitted by this Section, Sound Transit shall be deemed to have made a diligent, good faith effort to notify the Artist if Sound Transit sends the notice by registered mail to the last address provided to Sound Transit by the Artist.

J. PROPRIETARY RIGHTS AND RIGHTS OF REPRODUCTION

1. The artwork is intended to be incorporated in a public transit system in the United States, and that the funding for the artwork is intended to be provided from public sources in the United States. Therefore, the parties intend and agree that all rights in the artwork shall be determined exclusively in accordance with this Agreement and the laws of the United States and the State of Washington.
2. If any patentable or copyrightable material or article should result from the work described herein, all rights accruing from such material or article shall be the sole property of the Artist; except for ownership of the physical embodiment of the original artwork, or as otherwise provided in this Agreement.
3. The Artist expressly reserves every right available to him/her to control the making and dissemination of copies or reproductions of the artwork, except as those rights are limited by this Agreement. The Artist authorizes Sound Transit and its assigns to electronically scan, duplicate, or download images of the artwork, and to make photographs, drawings, and other two-dimensional reproductions of the artwork without consent of the Artist for any noncommercial use for the sole use and benefit of the public, including, but not limited to, education, public relations, advertising, brochures, and similar material. The Artist shall not make any exact duplications of the artwork to

full scale or in any manner that could cause confusion as to which is the original and which is the duplicate.

4. All reproductions by Sound Transit, including, without limitation, electronic or digital reproduction, shall contain a credit to the Artist and a copyright notice substantially in the following form: "Copyright, Artist's name, all rights reserved, date", and/or any other credit mutually agreed upon by the parties, in such a manner and location as shall comply with the U.S. Copyright Laws.

K. DIVERSITY PROGRAM REQUIREMENTS

1. Sound Transit is committed to a policy of providing fair and representative employment and business opportunities for minorities and women in the procurement of non-professional and professional services, consistent with Sound Transit's policies, procedures and guiding principles for employment and contracting.
2. The Artist shall fully comply with all federal, state and local laws, regulations and ordinances pertaining to non-discrimination, equal employment and affirmative action, including but not limited to the Washington State "law against discrimination", Chapter 49.60 RCW.
3. The Artist shall not, on the basis of race, religion, color, creed, national origin, marital status, sex, sexual orientation, ancestry, age or the presence of any sensory, mental or physical disability in an otherwise qualified person, deny any person the benefits of, or exclude any person from participation in, the award and performance of any work under this Agreement and shall afford equal, non-discriminatory opportunities to potential joint venture partners, subconsultants, subcontractors and suppliers.
4. The Artist shall not, on the basis of race, religion, color, creed, national origin, marital status, sex, sexual orientation, ancestry, age or the presence of any sensory, mental or physical disability in an otherwise qualified person, discriminate against any employee or applicant for employment. The Artist shall make efforts to ensure that applicants are employed, and employees are treated during employment, without regard to their race, religion, color, creed, national origin, marital status, sex, sexual orientation, ancestry, age or the presence of any sensory, mental or physical disability. The Artist shall post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination provision.
5. Participation by Subconsultants or Subcontractors.
 - a. Sound Transit did not anticipate that participation by subconsultants or subcontractors would be required by the Artist to satisfactorily perform the work under this Agreement. Accordingly, Sound Transit did not establish any goal for participation by Small Businesses in the work under this Agreement.
 - b. If the Artist determines that subcontracting is necessary to satisfactorily perform the work under this Agreement, the Artist shall take all necessary affirmative steps to assure that Small Businesses are used when possible. The definition of Small Businesses is set forth in Sound Transit's Small Business Program.
 - c. If requested by the Artist, Sound Transit will assist the Artist to identify available and capable Small Businesses for subcontract work.
 - d. Affirmative steps related to participation by Small Businesses could include the following actions, as applicable:
 - 1) placing qualified Small Businesses on solicitation lists;

- 2) assuring that Small Businesses are solicited whenever they are potential sources;
 - 3) dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by Small Businesses;
 - 4) establishing delivery schedules, where the requirement permits, which encourage participation by Small Businesses; and
 - 5) using the services and assistance of Sound Transit and the Washington State Office of Minority and Women Business Enterprises.
- e. The Artist shall provide periodic reports concerning its affirmative efforts and the actual participation by Small Businesses, as such reports are deemed necessary by Sound Transit.
 - f. The provisions in this Paragraph K are in addition to the provisions elsewhere in this Agreement related to participation by Disadvantaged Business Enterprises (DBEs). In the event subconsultants or subcontractors are necessary, the Artist shall comply with the provisions in this Paragraph K and the DBE provisions.
6. Equal Employment Opportunity (EEO)
- a. The Artist shall implement and carry out the obligations regarding EEO submitted as part of its Proposal to perform this Agreement and the nondiscrimination in employment provisions included in this Agreement.
 - b. The Artist shall prepare and maintain records of employment, employment advertisements, application forms and other pertinent data and records to demonstrate compliance with its EEO obligations under this Agreement. The Artist shall permit reasonable access by Sound Transit to such records.
 - c. The Artist shall provide periodic reports concerning its efforts related to EEO, as such reports are deemed necessary by Sound Transit.
- L. DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS
1. As a recipient of financial assistance from the federal Department of Transportation (DOT), through the Federal Transit Administration (FTA), Sound Transit developed and administers a Disadvantaged Business Enterprise (DBE) Program in accordance with 49 Code of Federal Regulations (CFR) Part 26 (the "DBE Regulations"). The Artist shall review and comply with applicable provisions in the DBE Regulations.
 2. In the performance of work under this Agreement, the Artist shall afford DBEs an equal, non-discriminatory opportunity to compete for business as joint venture partners, subconsultants, subcontractors and suppliers and shall ensure its subconsultants and subcontractors also afford DBEs such opportunities.
 3. Sound Transit did not anticipate that participation by subconsultants or subcontractors would be required by the Artist to satisfactorily perform the work under this Contract. Accordingly, Sound Transit did not establish any goal for participation by DBEs in the work under this Agreement.
 4. If the Artist determines that subcontracting is necessary to satisfactorily perform the work under this Agreement, the Artist shall make good faith efforts to assure that DBEs are used when possible. The Artist shall make good faith efforts to reach out to DBEs to solicit and achieve participation by DBEs under this Agreement and maintain

documentation of its efforts. The description of “good faith efforts” is set forth in the DBE Regulations.

5. The definition of DBEs is set forth in the DBE Regulations. Only firms that have been certified as eligible to participate as DBEs by the Washington State Office of Minority and Women Business Enterprise (MWBE) shall be considered to be DBEs under this Agreement. A listing of DBEs certified by OMWBE is available on the Internet at <http://www.omwbe.wa.gov/biznetwas/mainmenu.asp> or by contacting OMWBE at 360-753-9693.
6. In each subcontract it awards under this Agreement, the Artist shall include the following assurance:

“The Subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Subcontract. The Subconsultant shall carry out applicable requirements of 49 CFR Part 26 in the award of contracts under this Subcontract. Failure by the Subconsultant to carry out these requirements is a material breach of this Subcontract, which may result in the termination of this Subcontract or such other remedy as the Artist or Sound Transit shall deem appropriate.”
7. The Artist shall provide periodic reports concerning its good faith efforts and the actual participation by DBEs, as such reports are deemed necessary by Sound Transit.
8. The provisions in this Paragraph L are in addition to the provisions elsewhere in this Agreement related to participation by Small Businesses. In the event subconsultants or subcontractors are necessary, the Artist shall comply with the provisions in this Paragraph L and the provisions pertaining to Small Businesses.

M. COMPLIANCE WITH LAWS AND REGULATIONS

The Artist agrees to comply with all applicable federal, state and local laws and regulations applicable to such services, including all regulations, requirements and registrations related to lobbying activities and including the conditions of the federal Occupational Safety and Health Act of 1970 (OSHA) and the Washington Industrial Safety and Health Act of 1973 (WISHA) whenever such laws are applicable to work and services provided under this Agreement.

The Artist shall comply with all federal, state and local licensing, registration, filing and/or certification standards, all applicable accrediting standards, and any other standards or criteria established by any agency of the State of Washington or of the federal government applicable to the Artist's operation.

The Artist shall comply and, to the best of his/her ability, shall require his/her subcontractors to comply, with all Sound Transit resolutions and federal, state and local laws, regulations and ordinances applicable to the work and services to be performed under this Agreement.

Sound Transit and the Artist agree to exercise reasonable efforts to stay apprised of any changes to federal, state or local laws, regulations and ordinances referred to in this section, to bring any such changes to the attention of the other party and to negotiate in good faith, the effects of any such changes.

N. PUBLICITY

During the period of this Agreement the Artist shall not release for publication any document, report or other material of any nature pertaining to the services provided under this Agreement unless such release has been given prior written approval by the Art Program Manager. The provisions of this clause shall extend also to the release of any such material to any person not authorized by the Art Program Manager.

0. LEGAL RELATIONS

1. The Artist shall comply, and shall require its subconsultants comply, with all Sound Transit resolutions, motions and federal, state, and local laws, regulations, and ordinances applicable to the work and services to be performed under this Agreement.
2. In performing work and services hereunder, the Artist and its subconsultants, employees, agents, and representatives shall be acting as independent contractors and shall not be deemed or construed to be employees or agents of Sound Transit in any manner whatsoever. The Artist shall not hold itself out as, nor claim to be, an officer or employee of Sound Transit by reason hereof and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of Sound Transit. The Artist shall be solely responsible for any claims for wages or compensation by Artist employees, agents, and representatives, including subconsultants, and save and hold Sound Transit harmless therefrom.
3. The Artist shall indemnify, defend and hold Sound Transit harmless for any costs and pay any damages or judgments related to any claim brought by any person employed in any capacity by Artist, subconsultants, or any agency on the Project, with respect to the payment of wages, salaries, or other compensation or benefits, including but not limited to benefits such as medical, health, retirement, vacation, sick leave, etc.
4. To the maximum extent permitted by law or the provisions of this Section, the Artist agrees to release, indemnify and save harmless Sound Transit, its successors and assigns, and its and their shareholders, officers, officials, directors, consultants, and employees, (collectively "the Indemnified Parties") from and against any liability including any and all suits, claims, actions, losses, costs, penalties, response costs, and damages of whatsoever kind or nature to the extent arising out of, in connection with, or incident to the Artist's negligence in its performance of this Agreement or the Work; provided, however, that if the provisions of RCW 4.24.115 apply to the Work and any such injuries to persons or property arising out of performance of this Agreement are caused by or result from the concurrent negligence of the Artist or its subconsultants, agents or employees, and an Indemnified Party, the indemnification applies only to the extent of the negligence of the Artist, its subconsultants, agents or employees.

THE ARTIST SPECIFICALLY ASSUMES POTENTIAL LIABILITY FOR ACTIONS BROUGHT BY THE ARTIST'S OWN EMPLOYEES OR FORMER EMPLOYEES AGAINST ANY INDEMNIFIED PARTY, AND FOR THAT PURPOSE THE ARTIST SPECIFICALLY WAIVES ALL IMMUNITY AND LIMITATIONS ON LIABILITY UNDER THE WORKERS COMPENSATION ACT, RCW TITLE 51, OR ANY INDUSTRIAL INSURANCE ACT, DISABILITY BENEFIT ACT OR OTHER EMPLOYEE BENEFIT ACT OF ANY JURISDICTION THAT WOULD OTHERWISE BE APPLICABLE IN THE CASE OF SUCH CLAIM. THIS INDEMNITY OBLIGATION SHALL NOT BE LIMITED BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR ARTIST OR A SUBCONSULTANT UNDER WORKERS' COMPENSATION, DISABILITY BENEFIT OR OTHER EMPLOYEE BENEFITS LAWS. THE ARTIST RECOGNIZES THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO AND WAS THE SUBJECT OF MUTUAL NEGOTIATION. PROVIDED, HOWEVER, ARTIST'S WAIVER OF IMMUNITY BY THE PROVISIONS OF THIS PARAGRAPH EXTENDS ONLY TO CLAIMS AGAINST ARTIST BY SOUND TRANSIT, AND DOES NOT INCLUDE, OR EXTEND TO, ANY CLAIMS BY ARTIST'S EMPLOYEE DIRECTLY AGAINST ARTIST.

5. The Artist further agrees to assume the defense of the Indemnified Parties with legal counsel acceptable to Sound Transit, whose acceptance shall not be unreasonably withheld, in all legal or claim proceedings arising out of, in connection with, or incidental to the performance of this Agreement or the Work. The Artist shall pay all defense expenses, including attorneys' fees, expert fees, and costs (collectively "defense costs") incurred directly or indirectly on account of such litigation or claims, and the Artist shall satisfy any judgment rendered in connection therewith. In the event that any lien is placed upon the property of any of the Indemnified Parties as a result of such suits or legal proceedings, the Artist agrees to immediately cause the same to be dissolved and discharged by giving bond or otherwise. The Artist may settle any suit, claim, action, loss, cost, penalty, or damages, subject to the approval of Sound Transit, whose approval shall not be unreasonably withheld, if such settlement completely and forever extinguishes any and all liability of the Indemnified Parties. In the event of litigation between the parties to enforce the rights under this Section, reasonable attorney fees shall be allowed to the prevailing party.
6. Artist further agrees that any review and/or approval by Sound Transit and/or others hereunder shall not relieve Artist of any of its obligations to perform to generally accepted professional standards applicable to the types of services and work provided hereunder or in any way diminish its liability for the performance of such obligations or its obligations to provide the indemnities hereunder.
7. The foregoing indemnities and duties to defend shall survive the termination of this Agreement and final payment hereunder, and are in addition to any other rights or remedies which Sound Transit and/or any of the Indemnified Parties may have by law or under this Agreement. In the event of any claim or demand made against any Indemnified Party hereunder, Sound Transit may, in its sole discretion, reserve, retain or apply any monies due to the Artist under the Agreement for the purpose of resolving such claims; provided, however, that Sound Transit may release such funds if the Artist provides Sound Transit with adequate assurance of the protection of Sound Transit's and the other Indemnified Parties' interests.
8. The Artist shall not assign any interest, obligation, or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent by Sound Transit; provided, however, that claims for money due or to become due to the Artist from Sound Transit under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such claim assignment shall be furnished promptly to Sound Transit.
9. Sound Transit's rights and remedies in this Agreement are in addition to any other rights and remedies provided by law.
10. This Agreement and all provisions hereof shall be interpreted in accordance with the laws of the State of Washington in effect on the date of execution of this Agreement. Subject to the provisions herein regarding exhaustion of administrative remedies, the Superior Court of King County, Washington, shall have exclusive jurisdiction and venue over any legal action arising under this Agreement.
11. The Artist covenants that neither the Artist, nor any officer or controlling interest holder of the Artist, is currently, or has been previously, on any debarred bidders list maintained by the United States Government.

P. ASSIGNMENT

No assignment by the Artist or Sound Transit of their responsibilities, monies due, or claims arising out of this Agreement may be made without the prior written consent of the other, which consent shall not be unreasonably denied or delayed. Sound Transit must approve in advance all work assigned by the Artist to subcontractors, which approval shall not be unreasonably withheld. All compensation of subcontractors shall be the responsibility of, and shall be paid by, the Artist.

Q. SCOPE OF WORK AMENDMENTS

Sound Transit may propose changes in the Scope of Work under this Agreement not provided for in the Scope of Work, at any time or from time to time, during the term of this Agreement, by notifying the Artist of his/her proposal in writing. Within 10 working days of receiving such notice, the Artist shall either (a) inform Sound Transit in writing that he/she is rejecting the proposed change, or (b) prepare and submit to Sound Transit an estimated cost, if any, for the proposed change and an estimate of the additional time, if any, he/she would require for performance. If Sound Transit accepts these estimates in writing within 10 working days, then the change proposed by Sound Transit shall become effective immediately and the Artist's estimates of additional costs and time shall become effective immediately and shall be reflected in a written amendment to this Agreement. If Sound Transit fails to approve the Artist's estimates within 10 working days, then the parties shall negotiate in good faith with respect thereto provided that the Artist shall not be authorized to perform such additional work, and Sound Transit shall not be obligated to pay for such work unless the parties execute a written agreement regarding the compensation to be paid for the work.

R. TERMINATION OF AGREEMENT

1. Either party may terminate this Agreement, in whole or in part, in writing if the other party substantially fails to fulfill any or all of its material obligations under this Agreement through no fault of the other; provided, that insofar as practicable, the breaching party will be given (1) not less than 10 calendar days' written notice of intent to terminate and (2) an opportunity for consultation with the other party before termination to review what steps are deemed necessary by the other party to cure the default.
2. In addition to termination under Paragraph 1 of this Section, Sound Transit may terminate this Agreement, in whole or in part, in writing, for its convenience; provided, the Artist will be given (1) no less than 10 calendar days' written notice of intent to terminate and (2) an opportunity for consultation with Sound Transit before termination.
3. In the event of the termination of this Agreement, Sound Transit shall pay the Artist for services performed and expenses incurred in accordance with the terms of this Agreement prior to the effective date of termination. Sound Transit also will consider any reasonable contract closeout costs, but shall have sole discretion whether to pay such costs.
4. Upon receipt of a termination notice under Paragraphs 1 or 2 above, the Artist shall (1) promptly discontinue all services affected (unless the notice directs otherwise); (2) promptly deliver or otherwise make available to Sound Transit all data, calculations, reports, estimates, summaries, such other information and materials as the Artist or subcontractors may have accumulated in performing this Agreement, whether completed or in progress, and all equipment/materials purchased specifically for the work where Sound Transit has reimbursed the Artist for such costs; and (3) promptly take all necessary steps to terminate related contractual commitments to minimize termination settlement costs.

5. In the event that the Artist's design is not accepted, implemented, or incorporated in the Project, all rights in the design shall revert to the Artist.

S. RISK OF LOSS

The Artist shall bear the risk of loss and shall take such measures as are reasonably necessary to protect the artwork from loss or damage until final acceptance and shall insure for loss of materials paid for by Sound Transit while in the Artist's exclusive possession and control, except that the risk of loss or damage shall be borne by Sound Transit prior to final acceptance during such periods of time as the partially or wholly completed artwork is in the exclusive custody, control, or supervision of Sound Transit or its agents.

T. INSURANCE REQUIREMENTS

1. **Evidences and Cancellation of Insurance:** The Artist shall file with Sound Transit evidences of insurance from the insurer(s) certifying to the coverage of all insurance and endorsements required herein. All evidences of insurance must be certified by an authorized officer, agent, general agent, or qualified representative of the insurer(s) and shall certify the name of the insured, the type and amount of insurance, the location and operations to which the insurance applies, and the expiration date. **The evidence of insurance shall reference the contract number and title of this Contract (NUMBER; NAME)** and contain a provision that obligates the insurance company(ies) issuing such policy(ies) to notify Sound Transit in writing of any cancellation at least 30 days prior thereto. Any failure to mail such notice shall not relieve the insurance company, its agents, or representatives from obligations and/or liability hereunder. The Artist, the Artist's insurance broker/agent or insurance company shall notify Sound Transit in writing of any material alteration, including any change in the retroactive date of any "claims made" policies or substantial (>40%) reduction of aggregate limits, if such limits apply.

The Artist shall, upon demand of Sound Transit, deliver to Sound Transit a certified copy of any such policy or all such policies of insurance. Should the Artist neglect so to obtain and maintain in force any such insurance, Sound Transit may suspend or terminate the Artist's work. Suspension or termination of this Agreement shall not relieve the Artist from his/her insurance obligations hereunder.

Taking into account the scope of work and services to be performed by a subcontractor, the Artist shall prudently determine whether, and in what amounts, each subcontractor shall obtain and maintain public liability, professional liability, and any other insurance coverage. Any insurance required of subcontractors shall, where appropriate and/or applicable, name Sound Transit as an additional insured.

2. **Insurance Requirements:** Except as otherwise specified, the Artist shall at his/her sole cost and expense, obtain and maintain during the entire term of this Agreement the minimum insurance set forth below. **The workers' compensation insurance requirement shall not apply if the Artist has no full or part time employees.** In the event the Artist is a Joint Venture, these insurance requirements shall apply to each Joint Venture member separately. By requiring such minimum insurance, Sound Transit shall not be deemed or construed to have assessed the risks that may be applicable to the Artist under this Agreement. The Artist shall assess his/her own risks and, if he/she deems appropriate and/or prudent, maintain greater limits and/or broader coverage. The fact that insurance is obtained by the Artist shall not be deemed to release or diminish the liability of the Artist, including without limitation, liability under the indemnity

provisions of this Agreement. Damages recoverable by Sound Transit shall not be limited to the amount of the required insurance coverage.

- a. **General Liability:** Commercial General Liability for bodily injury including death, personal injury, and property damage coverage, with a contractual liability endorsement, and Employer's Liability coverage, utilizing insurers and coverage forms acceptable to Sound Transit, with a limit of at least \$1,000,000 per occurrence.
- b. **Automobile Liability:** Commercial Auto Liability coverage for bodily injury and property damage utilizing insurers and coverage forms acceptable to Sound Transit, with a limit of at least \$1,000,000 combined single limit per accident.

Such liability insurance, identified in a and b above, shall name Sound Transit, its officers, directors, agents, and employees as additional insureds with respect to the work under this Agreement.

- c. **Property Insurance:** Upon commencement of the fabrication phase, which includes purchasing or acquiring material to be used in the artwork, the Artist shall obtain and maintain throughout the fabrication phase, in transit and delivery, the installation phase, and until final acceptance by Sound Transit, property insurance on the full value of the materials and finished artwork to be furnished under this Agreement, which shall also include in transit coverage and an installation floater.
- d. **Workers' Compensation:** If the Artist employs part or full time employees, the Artist shall certify that his/her operations are covered by the Washington State Worker's Compensation Fund. The Artist shall provide his/her account number or, if self-insured, his/her Certificate of Qualification number. The Artist shall also provide evidence of Stop-Gap Employer's Liability Insurance.
- e. Except as otherwise specified, such insurance shall be maintained throughout the entire term of this Agreement and, except for automobile liability, for a period of three years after termination or three years after acceptance of work, whichever occurs later. If coverage is on a "claims made" basis, coverage shall be further extended to cover claims made during three additional years beyond said initial three-year period for a total of six years.
- f. The Artist's insurance shall be primary to and not contributing with any insurance or self-insurance that may be carried by Sound Transit. The insurance policy(ies) shall be written by a reputable insurance company(ies) acceptable to Sound Transit or with a current Best's Insurance Guide rating of B and class VII or better, and authorized to do business in the state(s) in which the job site is located.
- g. The Artist and his/her insurers shall endorse the required insurance policy(ies) to waive their right of subrogation against Sound Transit. The Artist and his/her insurers also waive their right of subrogation against Sound Transit for loss of his/her owned or leased property or property under his/her care, custody and control.
- h. Complete copies of the Additional Insured Endorsement(s) required in 1 and 2 above, the Waiver of Subrogation Endorsements, and the Primary and Non-Contributory Endorsements, or policy provisions, from the General Liability and Automobile Liability policies shall be attached to the Certificates of Insurance required in this section.

- i. No provision in this Section shall be construed to limit the liability of the Artist for work not done in accordance with the Agreement, or express or implied warranties. The Artist's liability for the work shall extend as far as the appropriate periods of limitation provided by law and up to any legal limits.
- j. The Artist may obtain any combination of coverage or limits that effectively provides the same or better amounts and types of coverage as stipulated above, subject to review and approval by Sound Transit.
- k. The Artist warrants that this Agreement has been thoroughly reviewed by the Artist's insurance agent(s)/broker(s), who have been instructed by Artist to procure the insurance coverage required by this Agreement.
- l. **Railroad Protective Liability:** If the artwork site is within 50 feet of a railway, upon commencement of installation, Artist shall provide Railroad Protective Liability coverage either by (1) endorsing the General Liability policy with an ISO form CG 24 27 10 01 – Contractual Liability – Railroads endorsement, or equivalent, or (2) obtaining a separate Railroad Protective Liability policy. This insurance shall name Central Puget Sound Regional Transit Authority, dba Sound Transit, its officers, directors, agents, and employees as additional insured with coverage of at least \$2,000,000 per occurrence and \$6,000,000 in the aggregate. The coverage shall be effective for the entire duration of the work to be performed on site. The policy shall be issued on a standard ISO form CG 00 35 10 93, or equivalent. (If necessary)

U. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of this Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this Agreement unless stated to be such in writing, signed by an authorized representative of the nondefaulting party.

V. TIME OF PERFORMANCE

Performance of work under this Agreement shall be in accordance with the Scope of Work and any amendments thereto. The parties agree that time is of the essence of this Agreement and is one of the considerations for the compensation specified herein. Failure to complete the work according to the established schedule and failure to make sufficient progress during the course of performance, through no fault of Sound Transit, its agents, contractors, or assignees, shall constitute default under this Agreement. Sound Transit agrees to perform in a timely manner its reviews, approvals, and other duties.

W. COORDINATION AND INTEGRATION

1. **COORDINATION:** The Artist understands and agrees that he/she will not have exclusive or unrestricted access to the site where the artwork is to be installed. The Artist shall be responsible for coordinating his/her schedule and activities with the other contractors working on the site. Sound Transit shall incorporate the Artist's schedule and activities in the construction documents to the extent that they have been made known in writing to Sound Transit by the Artist.
2. **INTEGRATION:** In the event the artwork is integrated into, combined, or otherwise coordinated with services by third parties not within the control of the Artist, the Artist shall not be responsible for such third party services. If any part of the Artist's work depends for proper execution or results upon the work of Sound Transit or a third party,

the Artist shall, prior to proceeding with the work, promptly report to Sound Transit any apparent discrepancies or other defects in such work that renders it unsuitable for proper execution and results. The Artist shall not be responsible for any liability or failure to fulfill his/her obligations because of such discrepancies or defects. Failure of the Artist to report a discrepancy or defect shall constitute acceptance of Sound Transit's or a third party's work as fit and proper to receive the Artist's work, except as to defects that may subsequently become apparent in such work by others. Any costs caused by defective or ill-timed work shall be borne by the party responsible therefor. Nothing in this Paragraph shall limit the responsibility of the Artist to take all necessary steps to coordinate his/her work with the work of Sound Transit or a third party on the project.

X. AUDIT

1. MAINTENANCE OF RECORDS: The Artist, including his/her subcontractors, shall maintain complete and accurate books, records, documents, and other evidence directly pertinent to performance of the work under this Agreement in such a way as to facilitate access and recovery of such records for the purpose of compliance with any audits required or permitted by this Agreement.
2. ACCESS FOR AUDIT PURPOSES: Sound Transit, the Comptroller General of the United States, or any of their duly authorized representatives shall, for the purpose of audit and examination, have access to and be permitted to inspect such books, records, documents, and other evidence for inspection, audit, and copying for a period of six years after final payment is made under this Agreement. Sound Transit shall also have access to such books, records, and documents during the performance of Project work if deemed necessary by Sound Transit to verify Artist work and invoices, to assist in negotiations for additional work, and to resolve claims and disputes. Audits conducted under this Section shall be in accordance with generally accepted auditing standards and established procedures and guidelines of the reviewing or audit agency(ies).
3. The Artist shall require that substantially the foregoing paragraphs are included in each subcontract for work on the Project.
4. **The Artist agrees to the disclosure of all information and reports resulting from access to records under Paragraphs 1 and 2 of this Section provided that the Artist is afforded the opportunity for an audit exit conference and an opportunity to comment and submit any supporting documentation on the pertinent portions of the draft audit report and that the final audit report will include written comments of reasonable length, if any, of the Artist.**

Y. ACCESS FOR PURPOSES OF PUBLIC DISCLOSURE

The public, from time to time, may request access to records relating to the Project. Sound Transit has a duty to disclose documents as requested unless such requests call for documents that are specifically exempted from disclosure pursuant to Washington Law. Such requests from the public will be made in writing in a stipulated form to Sound Transit. Sound Transit will administer the request by serving as the point of contact with the public member making the request, invoicing for the costs of copying and reviewing the records for potential exemptions. Sound Transit will refer the collection, compilation, indexing, and copying of the actual records to the Artist. The Artist shall maintain the records in a condition that will facilitate such responses and shall provide the necessary documents.

Z. NOTICES

Any notice required to be given under the terms of this Agreement shall be directed to the party at the address set forth below. Notice shall be considered issued and effective upon receipt thereof by the addressee-party or twenty-four hours after mailing to the place of business set forth below, whichever is earlier.

Sound Transit
401 South Jackson Street
Seattle, WA 98104-2826
Attn: Doug Haffie
Senior Contracts Specialist

Artist:

Attn:

AA. WASHINGTON LAW

The laws of the State of Washington will govern this Agreement. The venue for any legal action brought by either party against the other will be King County Superior Court unless otherwise agreed to in writing.

BB. FEDERAL TERMS AND CONDITIONS

This agreement is subject to the provisions included in Attachment 1, entitled "Federal Terms and Conditions," and incorporated into this Agreement by this reference.

CC. ALL TERMS AND CONDITIONS

This Agreement merges and supersedes all prior negotiations, representations and agreements between the parties related to the subject matter hereof and constitutes the entire agreement between the parties. This Agreement may be amended only by written agreement of both parties.

This Agreement is a fully integrated contract that contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

The parties hereto expressly reserve the right to modify or amend this agreement from time to time as deemed necessary, by mutual agreement.

DD. CONFLICTS OF INTEREST AND NON-COMPETITIVE PRACTICES

The Artist, by entering into this Agreement with Sound Transit to perform work or provide services, confirms that there exist no actual conflicts of interest between the Artist and Sound Transit. Further, the Artist covenants that he/she has no direct or indirect pecuniary or proprietary interest, and that he/she shall not acquire any such interest, that conflicts in any manner or degree with the services required to be performed under this Agreement and that he/she shall not employ any person or agent having any such interest. In the event that the Artist or his/her agents, subcontractors, employees or representatives hereafter acquires a conflict of interest, he/she shall immediately disclose such interest to Sound Transit and take action immediately to eliminate the conflict or to withdraw from this Agreement as Sound Transit may require.

The Artist, by entering into this Agreement with Sound Transit to perform or to provide services or materials has thereby covenanted:

1. That no person or selling agency except bonafide employees or designated agents or representatives of the Artist has been employed or retained to solicit or secure this

Agreement with an agreement or understanding that a commission, percentage, brokerage, or contingent fee would be paid; and

2. That no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Artist or any of his/her agents, employees or representatives, to any official, member or employee of Sound Transit or other governmental agency with a view toward securing this Agreement or securing favorable treatment with respect to the awarding or amending, or the making of any determination with respect to the performance of this Agreement.

No money, fee, commission, gift, gratuity, or other thing of value may be offered to or accepted by a Sound Transit Board member, officer, employee or consultant, or subcontractor as a reward for favorable treatment in connection with the Agreement award or the purchase of a good or service.

EE. DISPUTES AND REMEDIES

1. **PREVENTING CONFLICT.** The parties agree to use the principles of Project Partnering, that is: collaboration and cooperation, to identify and engage in measures to prevent and resolve potential sources of conflict before they escalate into disputes, claims or legal actions.

2. **RESOLVING CONFLICTS.** Sound Transit and the Artist agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations and the principles of Project Partnering by engaging in the following Dispute Resolution Process should any such disputes arise:

- a. Level One - The Art Program Manager for Sound Transit, the Artist and any subcontractors involved in the work that gives rise to the dispute shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot do so, they pass the dispute to Level Two.

- b. Level Two - The Director of Design, Engineering, and Construction Management (DECM), the Artist, and the subcontractors involved in the work shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot do so, they pass the dispute to Level Three.

- c. Level Three - The Chief Executive Officer shall make a decision regarding the dispute, after conferring with the Artist as may be necessary.

In the event the Artist disagrees with the decision of the Chief Executive Officer, the disputes shall be referred to mediation as a condition precedent to the commencement of a civil action in the Superior Court of King County.

At all times during the course of the conflict or dispute resolution efforts the Artist agrees to continue to perform the work with due diligence.

FF. APPROVAL OF CHIEF EXECUTIVE OFFICER

This Agreement shall be subject to the written approval of Sound Transit's Chief Executive Officer or his/her designee and shall not be binding until so approved.

IN WITNESS WHEREOF: Sound Transit and the Artist have signed this Agreement.

Artist

**Central Puget Sound Regional
Transit Authority**

By: _____

By: _____

Printed name and Title

Joni Earl, Chief Executive Officer

REVIEWED:

By: _____
April Alexander, Contract Manager

Attachment 1 Federal Terms and Conditions

A. APPLICABILITY OF FEDERAL GRANT CONTRACT

This procurement may be subject to one or more financial assistance contracts between Sound Transit and the U.S. Department of Transportation, which incorporate the current FTA Master Agreement and Circular 4220.1, as amended. The Artist is required to comply with all terms and conditions prescribed for third party contracts in these documents.

Federal laws, regulations, policies and administrative practices may be modified or codified after the date this Agreement is established and may apply to this Agreement. To assure compliance with changing federal requirements, Contract Award indicates that the Artist agrees to accept all changed requirements that apply to this Agreement.

B. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

All contractual provisions required by DOT, as set forth in FTA Circular 4220.1, as amended, (http://www.fta.dot.gov/laws/circulars/leg_reg_4063.html), as amended and the Master Grant Agreement (<http://www.fta.dot.gov/documents/13-Master.doc>), are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Artist shall not perform any act, fail to perform any act, or refuse to comply with any Sound Transit request that would cause Sound Transit to be in violation of the FTA terms and conditions.

The FTA Master Agreement obligates Sound Transit to incorporate certain provisions into this Agreement and any lower tier subcontracts at any level and to take appropriate measures to ensure that Artist and its lower tier subconsultants at any level comply with certain applicable requirements set forth in the Master Agreement. The FTA Master Agreement is hereby incorporated by reference into this Agreement, and Artist shall comply with all such requirements.

Copies of the FTA Master Agreement are available from Sound Transit.

C. FEDERAL FUNDING LIMITATION

Artist understands that funds to pay for Artist's performance under this Agreement are anticipated to be made available from the United States Department of Transportation through the Federal Transit Administration (FTA). All funds must be approved and administered by FTA. Sound Transit's obligation hereunder is payable from funds that are appropriated and allocated by FTA for the performance of this Agreement. If funds are not allocated, or ultimately are disapproved by FTA, Sound Transit may terminate or suspend Artist's services without penalty. Sound Transit shall notify Artist promptly in writing of the non-allocation, delay, or disapproval of funding.

D. NO FEDERAL GOVERNMENT OBLIGATION TO THIRD PARTIES

Artist agrees that, absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to the Grant Agreement in connection with this Project. Notwithstanding any concurrence provided by the Federal Government in or approval of any solicitation, subagreement, or third party contract, the Federal Government continues to have no obligations or liabilities to any party, including a subrecipient or third party contractor.

E. GOVERNING LAW/VENUE

The laws of the State of Washington shall govern the interpretation of this Agreement or any disputes arising out of it, and the jurisdiction and venue of any action relating hereto shall be in the Superior Court for King County, Washington.

F. CHANGES TO FEDERAL REQUIREMENTS

Artist shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master License Agreement between Sound Transit and FTA, as they may be amended or promulgated from time to time during the term of this contract. Artist's failure to so comply shall constitute a material breach of this contract.

G. ACCESS TO THIRD PARTY CONTRACT RECORDS

Refer to Paragraph X of the Agreement.

H. DISADVANTAGED BUSINESS ENTERPRISES (DBEs)

Refer to Paragraph L of the Agreement.

I. FALSE OR FRAUDULENT STATEMENTS AND CLAIMS

1. The Artist recognizes that the requirements of the Program Fraud Civil Remedies Act of 1986, as amended, 49 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this Agreement. Accordingly, by signing the Agreement, the Artist certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, or it may make pertaining to the covered Grant Agreement, cooperative agreement, or this Agreement. In addition to other penalties that may be applicable, the Artist acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the Artist, to the extent the Federal Government deems appropriate.
2. The Artist also acknowledges that if it makes a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government in connection with an urbanized area formula project financed with Federal assistance authorized by 49 U.S.C. § 5307, the Government reserves the right to impose on the Artist the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1), to the extent the Federal Government deems appropriate.
3. The Artist agrees to include the above two clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

J. EXCLUSIONARY OR DISCRIMINATORY SPECIFICATIONS

Apart from inconsistent requirements imposed by Federal statute or regulations, the Artist agrees that it will comply with the requirement of 49 U.S.C. § 5323(h)(2) by refraining from using any Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications.

K. ENERGY CONSERVATION

The Artist shall recognize mandatory standards and policies relating to energy efficiency that are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC Section 6321 et seq.).

L. ELECTRONIC AND INFORMATION TECHNOLOGY

When providing reports or other information to Sound Transit, or to the Federal Transit Administration (FTA), among others, on behalf of Sound Transit, the Artist agrees to prepare such reports or information using electronic or information technology capable of assuring that the reports or information delivered will meet the applicable accessibility standards of Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

M. TERMINATION

Refer to Paragraph R of the Agreement.

N. PATENT AND RIGHTS IN DATA

Refer to Paragraph J of the Agreement.

O. FEDERAL CIVIL RIGHTS REQUIREMENTS

In addition to Sound Transit nondiscrimination requirements set forth in other Sections in this Agreement, the following Federal requirements apply to the Artist's performance under this Agreement:

1. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Artist agrees that it will not discriminate against any person on the basis of race, color, creed, national origin, sex, age, or disability under any program or activity receiving Federal financial assistance. In addition, the Artist agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue. Specific requirements to implement Title VI and the Americans with Disabilities Act of 1990 are included in Sections 21 and 22, respectively, of this Agreement.
2. Equal Employment Opportunity - In addition to the provisions set forth in Section 15 of this Agreement, the following equal employment opportunity requirements apply to this Agreement:
 - a. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Artist agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Artist agrees to take affirmative action to ensure that

applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Artist agrees to comply with any implementing requirements FTA may issue.

- b. Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623 and Federal transit law at 49 U.S.C. § 5332, the Artist agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Artist agrees to comply with any implementing requirements FTA may issue.
- c. Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Artist agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Artist agrees to comply with any implementing requirements FTA may issue.

- 3. Disadvantaged Business Enterprises -- This Agreement is subject to the requirements of Title 49, Code of Federal Regulations (CFR), Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Artist and its subconsultants 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 26 in the award and administration of this DOT-assisted Agreement. 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 Sound Transit deems appropriate. Each subcontract the Artist signs with a subconsultant must include the assurance in this paragraph (see 49 CFR 26.13(b)). Specific requirements to implement 49 CFR Part 26 are included in Paragraph 2.16 of this Agreement.

The Artist also agrees to include these requirements in each subconsultant agreement entered into under this Agreement, modified only if necessary to identify the affected parties. In addition, the Artist agrees to comply with any implementing requirements FTA may issue.

P. CERTIFICATION REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

- 1. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Artist is required to verify that none of the Artist, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.
- 2. The Artist is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

3. By signing and submitting its proposal, the proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Sound Transit. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to Sound Transit, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Q. LOBBYING CERTIFICATION AND DISCLOSURE

1. This Agreement is subject to Section 319, Public Law 101-121 (31 U.S.C. §1352) and U.S. DOT regulations "New Restrictions on Lobbying," 49 CFR Part 20, which prohibits Federal funds from being expended to influence or to attempt to influence an officer or employee of any agency, members of Congress, an office or employee of Congress or an employee of an Member of Congress in connection with the awarding of any federally funded contract, the making of any Federal grant or loan, or entering into any cooperative agreement and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. Artists and Subconsultants at any time who apply or bid for an award of \$100,000 or more shall file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or any employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient. The Artist shall submit the "Certification Regarding Lobbying," included in the Request for Proposals. The Artist's signature on this certification shall certify that: a) it has not engaged in the prohibited activity and b) the language of the certification shall be included in all lower tier subcontracts, which exceed \$100,000, and that all such subconsultants shall certify and disclose accordingly. Sound Transit is responsible for keeping the certification form of the Artist, who is in turn responsible for keeping the certification forms of subconsultants. Further, by executing the Agreement, the Artist agrees to comply with these laws and regulations.
2. If the Artist has engaged in any lobbying activities to influence or attempt to influence the awarding of this Agreement, the Artist must disclose these activities. In such a case, the Artist shall complete Standard Form SF-LLL, "Disclosure of Lobbying Activities". Sound Transit must also receive all disclosure forms.
3. The Artist and any subconsultants shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that

materially affects the accuracy of a previously filed disclosure form. An event that materially affects the accuracy of the information reported includes:

- a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence this federally funded Agreement; or
- b. A change in the person(s) influencing or attempting to influence this federally funded Agreement; or
- c. A change in the officer(s), employee(s) or member contracted to influence or attempt to influence this federally funded Agreement.

R. CLEAN WATER

The Artist agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Artist agrees to report each violation to Sound Transit and understands and agrees that Sound Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Artist also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

S. CLEAN AIR

The Artist agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Artist agrees to report each violation to Sound Transit and understands and agrees that Sound Transit will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

The Artist also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

T. DISPUTES AND REMEDIES

RESOLVING CONFLICTS: Sound Transit and the Artist agree to use their best efforts to resolve disputes arising out of or related to this Agreement using good faith negotiations and the principles of Project Partnering by engaging in the following Dispute Resolution Process should any such disputes arise:

1. Level One

The Project Manager for Sound Transit, the Project Manager for the Artist and the Project Managers for any subconsultants involved in the services that gives rise to the dispute shall meet to discuss and attempt to resolve the dispute, in a timely manner. If they cannot do so, they pass the dispute to Level Two.

2. Level Two

The Department Director shall make a decision regarding the dispute, after conferring with the Artist as may be necessary.

In the event the Artist disagrees with the decision of the Department Director, the disputes shall be referred to mediation as a condition precedent to the commencement of a civil action in the Superior Court of King County. At all times during the course of the conflict or dispute resolution efforts the Artist agrees to continue to perform the services with due diligence.

U. FLY AMERICA

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by US flag air carriers to the extent service by these carriers is available, as required by the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 USC § 40018, in accordance with US GAO regulations, "Uniform Standards and Procedures for Transportation Transactions." 4 CFR Part 52, and US GAO Guidelines for Implementation of the "Fly America Act," B-138942, 1981 US Comp. Gen. LEXIS 2116, March 31, 1981.

V. NATIONAL INTELLIGENT TRANSPORTATION SYSTEMS ARCHITECTURE AND STANDARDS

The Artist agrees to conform, to the extent applicable, to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by section 5206(e) of TEA-21, 23 U.S.C. § 502 note, and with FTA Notice, "Federal Transit Administration National ITS Architecture Policy on Transit Projects," 66 Fed. Reg., 1455 et seq., January 8, 2001, and other subsequent Federal directives that may be issued.

END OF ATTACHMENT 1

ATTACHMENT 2 SCOPE OF WORK

Sound Transit is committed to integrating art and artistic ideas into the design and construction of transit facilities and public spaces by involving artists in the design process.

The artist or artist team of FIRSTNAME LAST NAME, (the “Artist”) is commissioned to develop an art concept that upon approval will go through design development and be integrated into the XYZ Station design, with inclusion in the station’s construction documents. The Artist will design the artwork for \$ABC. There is an additional budget of \$XYZ for the fabrication/installation phase (Phase II) upon approved design and Notice to Proceed. Any sales tax amount in Phase II will be in addition to the budgeted amount.

The Artist will coordinate the design, fabrication and installation of the artwork with Sound Transit’s Art Program Manager, the design team and other project personnel. The Artist will also participate in design review and public presentations about the artwork.

The artwork will be located within the light rail facility at Nth Avenue NE between NE Lth and Xth Streets in Seattle/Bellevue, Washington.

XYZ Station will serve the Leaf and Flower neighborhoods and surrounding area. The Artist will create an artwork that enhances the experience of the light rail riders and the sense of place at the new station.

The Artist will produce submittals as needed to convey the intent of their concept to a wide-variety of project participants ranging from the public to technical experts. Most documents will be formatted for 8.5 x 11 reproduction, or for digital projection. Art concept materials suitable for exhibition will be produced as part of the Design Development stage. The Artist’s design may require reports from additional technical professionals, and those products will be part of the Final Artwork Design submittals, and any associated costs in their production will be part of this contract.

General Artwork Guidelines

The design must be of a durable nature and the Artist must consider issues of maintenance and public safety when designing the artworks and recommending materials.

The project goal is to create high quality artwork that:

- Creates memorable experiences for its riders
- Fosters livable/walkable communities
- Addresses the scale, flow patterns and focal points of the station design
- Relates to and/or enhances the surrounding station area context
- Creates a visual landmark for the transit center
- Draws pedestrians from the adjacent community
- Provides interest day and night
- Either relates or contrasts harmoniously with the transit center architecture
- Is safe for public interaction
- Is very low maintenance

The Artist will research and assist in the preparation of cost estimates working closely with Sound Transit, members of the design team and the Art Program Manager. The Artist will be prepared to modify the artwork or seek alternatives in order to realize the project within the established budget. The Artist should assume they will be responsible for installation when

preparing the artwork concept and final design. Based on the approved design, construction and installation responsibilities will be further refined during design development.

Sound Transit reserves the right to exhibit proposal materials at its discretion. All proposal materials will be held by Sound Transit for the purpose of display for a period of time to be agreed upon with the Artist. Models and original drawings will be returned to the Artist. All other proposal materials will become the property of Sound Transit.

Design Development and Final Design

The Artist will collaborate with the design team and project personnel to develop and integrate the Artist's ideas into the project and to provide the information necessary for inclusion of art-related elements in the construction bid documents. The Artist, along with the station design team, will determine what elements of the artwork will be included in the bid documents and fabricated by the general contractor and what elements the Artist will fabricate and install.

The Artist will work in partnership with the design team and structural engineer to provide information regarding technical specifications, construction/fabrication methods, thickness and gauge of materials to be used in the creation of the artwork, mounting techniques and requirements. The Artist will be expected to modify the design and/or construction of the artwork based on the engineer's recommendations if necessary. The Artist is not responsible for payment of engineering fees for those elements included in the bid documents. If an engineering review is required for elements fabricated by the Artist or the Artist's subcontractors, the Artist shall be responsible for securing independent engineering reviews by a Washington licensed engineer and paying for those reviews.

The Artist will not begin work on the fabrication and installation of Phase II for this contract until Phase I is completed and a written Notice-To-Proceed (NTP) is issued by Sound Transit.

Washington State Prevailing Wages may be applicable to the Phase II portion of the contract.

Stated dates are based on best information and may be subject to change with notification as the project develops.

PHASE I DESIGN

Task 1a. Orientation and Mobilization

Research and Information Gathering: Review available project information and complete independent research. Visit the site. Meet with the architects and design team. Discuss the project with the Sound Transit Art Program Manager and representatives of the Leaf and Flower communities and do independent research. Attend designated meetings.

Product: Completion of a brief written report about initial project approach.

Due: Report is due early January 20XX or before

ANTICIPATED PHASE II (ABBREVIATED OUTLINE OF ANTICIPATED SCOPE).

Upon completion of final design and Notice to Proceed, a Change Modification to the Agreement will be submitted, which defines scope of work and payment of remaining \$XYZ (2013 dollars) in funds for fabrication and installation of approved artwork. Anticipated tasks will include:

1. Oversee fabrication and installation of artwork.
2. Provide maintenance guidelines for the artwork.
3. Final written evaluation of the project, along with completed long-term care forms, artist statement and résumé.

General Guidelines for Phase II Implementation:

It is anticipated that the Phase II Scope of Work will include but not be limited to the following:

1. The approved proposal and budget developed under the Phase I Scope of Work is attached to this contract as Exhibit A. When the proposal and budget for Phase II are finalized, the new payment schedule and dates will be added to the Agreement by Change Modification.
2. The total project budget for Phase II shall not exceed \$XYZ for the fabrication and implementation of the artwork. A payment schedule will be negotiated during Task 4 Final Design of Phase I dependent on the approved artwork design. At each fee/fabrication milestone of Phase II, the Artist will submit a brief written report which describes project progress to date. The Artist will submit current samples of materials and prototypes if they are available
3. For those elements fabricated by the Artist, the Artist shall provide all labor and materials necessary to produce and complete a finished work of art, delivery of artwork, and installation of the artwork. For those elements of the Artist's design fabricated by the general contractor, the Artist shall provide any necessary information or on-site coordination.
4. The artwork must be completed in accordance with the construction schedule.
5. The estimated completion date for Phase II, Fabrication and Installation, is September 00, 20xx. The artwork is anticipated to be installed near the end of the station's substantial completion. This date may be amended by mutual agreement of the Artist and Sound Transit; any change will be by written Change Modification.
6. The Artist will be informed in writing of all construction scheduling information and deadlines relevant to the Artist's project as it becomes available, and all provisions set forth for working within the project areas.
7. The Artist shall be responsible for completion of fabrication, delivery and installation of the artwork in accordance with the agreed upon schedule. The Artist shall seek out regular updates from the Art Program Manager regarding schedule for completion and installation of the artwork.
8. The Artist shall coordinate the schedule for implementation and completion of all studio fabrication with the Art Program Manager.
9. The Artist shall coordinate all activities necessary for implementation of onsite fabrication, delivery and installation with the Sound Transit designated representative. Onsite activities must be coordinated in accordance with the construction schedule.

The Artist must comply with all provisions provided by Sound Transit for working within the project areas.

10. In the event that the Artist must make changes to the design during construction, the Artist shall present any significant changes in the scope, design, character or medium of the project to Sound Transit's Project Manager for approval. Aesthetic changes must be approved by Sound Transit.
11. In the event that Sound Transit must make changes during construction to the designated site the Artist will be notified immediately of the proposed changes. Sound Transit will work with the Artist to find means of mitigating any negative impacts to the art project. Any changes required of the Artist after the Notice to Proceed for Phase II Scope of Work will require a written Change Modification and the increased cost of such change order in the Artist's labor and materials will be added to the total contract price.
12. The Artist may be required to make a public presentation(s) regarding the finished artwork. This presentation(s) will be coordinated by the Art Program Manager.
13. Upon completion of the artwork and prior to final payment, the Artist must submit the following to Sound Transit:
 - Exhibit D, Technical and Maintenance Record, which details the materials used in and the care required for each work covered by this agreement;
 - Artist statement concerning the artwork purchased under this Agreement; and
 - Artist professional résumé.

EXHIBIT A PAYMENT SCHEDULE

Phase I Compensation:

The Artist shall be paid as follows, provided that maximum payment under this contract does not exceed \$_____.

Upon completion of Task 1, the Artist may submit an invoice for \$_____.

Upon completion of Task 2, the Artist may submit an invoice for \$_____.

Phase II Compensation:

The Artist will be funded in the amount of \$XX for the Scope of Work included in Phase II. A payment schedule will be negotiated during Task 4 Final Design of Phase I dependent on the approved artwork design. At each fee/fabrication milestone of Phase II, the Artist shall submit a brief written report which describes project progress to date. The Artist shall submit current samples of materials and prototypes if they are available.

The Artist may submit all invoices in the format shown on the following page.

Artist LOGO

Artist BUSINESS INFO

Name: _____

Address: _____

City/ST/ _____

Zip _____

INVOICE

Invoice #: _____

Date: _____

TO: **S**Start, Sound Transit art program
accountspayable@soundtransit.org
OR

Accounts Payable
Sound Transit
401 South Jackson Street
Seattle, WA 98104-2826

Purchase Order # _____

Social Security or Tax ID # _____

Contract Amount: \$ _____

Amount of this Invoice
(without Sales Tax): \$ _____

Sales Tax Amount: \$ _____

Total Invoiced Amount \$ _____

Previously Invoiced: \$ _____

Remaining in Contract: \$ _____

Description of Services: _____

(Receipts must be included if billing for direct expense reimbursement)

Artist/Firm Signature: _____

EXHIBIT B Start ARTWORK PROPOSAL FORMAT

Artwork proposals shall be submitted as follows:

1. 8-1/2"x11" booklet to include the following (with copy of text in digital format, if possible):
 - a. Written description of artwork, including:
 - Concept (information on relationship to site/context/neighborhood)
 - Dimensions, materials
 - Location of artwork on architectural/urban design site plan
 - b. Budget, including:
 - Estimate of fabrication/installation costs
 - State sales and other taxes
 - Artist fees to complete the art project, delineated by phase
 - Artwork costs to be charged to art budget
 - Artwork costs to be charged to the project construction budget
 - c. Next steps delineated as follows:
 - Artist responsibilities
 - Project architect/engineer responsibilities
 - Contractor responsibilities
2. Visual depiction of artwork in digital, slide or negative format suitable for reproduction.
 - Include relevant sketches of sources for art concept and development, if appropriate.
3. Presentation materials suitable for public meetings and display in public buildings.
 - Size: 30"x40" mounted on foam core, poster board, or other similar board
 - Format: 1-2 boards as necessary to tell the artwork story, i.e., concept, location on site plan, visual depiction of artwork, with the project and artist clearly identified.
 - Optional: Model at a scale manageable for transporting and display, with project and artist clearly identified.

EXHIBIT C SPECIFICATIONS FOR ARTWORK

To be completed at each design development milestone defined in Artist's scope of work, once artwork proposal as described in Exhibit B has been approved. The Artist shall provide specification information in all categories to the level of detail known at the time. By 100% design development, artwork specifications shall be at 100% level of detail.

1. An 8-1/2" x 11" booklet to include the following:
 - Written description of artwork
 - a. Dimensions: width, height, and depth
 - b. Approximate weight
 - c. Materials, finishes, colors. Include samples, color chips with specific suppliers/manufacturers noted if relevant
 - Relevant sketches or images to show conceptual basis for the artwork
 - Location and placement of artwork shown on site plan prepared by Sound Transit architects/engineers
 - Fabrication and installation tasks for:
 - a. Artist
 - b. Subcontractors to the artist (list and identify tasks)
 - c. Sound Transit general contractor
 - Schedule for fabrication
 - Schedule for installation
 - Storage requirements or other necessary logistical information/needs for the artwork between fabrication and installation
 - Budget (fabrication, installation, artist fees, taxes)
 - Maintenance, cleaning and repair specifications
2. High quality rendering of artwork in digital, slide or negative format suitable for reproduction
3. Detailed to-scale design/construction drawings appropriate to phase of development, including any engineering drawings.
4. Attach any relevant specification sections to be included in bid documents at 100% completion of design.

EXHIBIT D TECHNICAL AND MAINTENANCE RECORD

The Artist shall complete and submit the Technical and Maintenance Record, which will be supplied by Sound Transit during Phase II as a digital form.