

ASSIGNMENT AND TRANSFER OF COPYRIGHT AND WAIVER OF MORAL RIGHTS IN ARTWORK

This Assignment and Transfer of Copyright and Waiver of Moral Rights in Artwork (the “**Agreement**”) is entered on the [] day of [____], 20[] (the “**Effective Date**”), by and between the Artist, [INSERT NAME OF ARTIST HERE], with his/her principal address at [INSERT ADDRESS OF ARTIST HERE] (the “**ASSIGNOR**”) and the California Department of Transportation located at 1120 N Street, Sacramento, CA 95814 (the “**ASSIGNEE**”) (collectively, known as the “**PARTIES**”), with respect to this original visual artwork described below as the [INSERT NAME OF ARTWORK HERE].

RECITALS:

WHEREAS the **PARTIES** agree to the following definitions as used herein and throughout this **Agreement**:

1. **Copyrights**: means a form of protection provided, as defined and enforceable under the U.S. Copyright Act of 1976, to authors of original works of authorship. The original works of authorship include all categories of artistic work protectable under the copyright laws, including but not limited to, the intangible property rights in pictorial, graphic, architectural, and sculptural works, fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated either directly or with the aid of a machine or device.
2. **Copyright Ownership**: means the owner of all **Copyright** interests in the work, as defined and enforced under the U.S. Copyright Act of 1976, to whom the law grants specific and exclusive rights to do and authorize any of the following: 1) to reproduce and make copies of the work; 2) to prepare derivative works based on the work; 3) to sell or distribute copies of the work to the public or other transfer of ownership, or by rental, lease, or lending; 4) to display the work publicly; 5) to perform the work publicly; and 6) to enforce the work against unauthorized use.
3. **Local Agency Agreement**: means the agreement entered into between **ASSIGNOR**, [INSERT NAME OF ARTIST HERE] and the [INSERT THE NAME OF SPONSORING LOCAL AGENCY HERE] (hereinafter, “**Local Agency**”) pertaining to the design, installation, operation, maintenance, removal of the transportation art, and incorporation of **ASSIGNOR**’s Assignment and Transfer of Copyright and Waiver of Moral Rights in Artwork as part of the **Local Agency Agreement**. The signed and executed **Local Agency Agreement** is hereby incorporated by reference and made part of this **Agreement**, and attached as **Exhibit A** to this **Agreement**.
4. **Final Artwork**: means the original visual artwork described below as [INSERT NAME OF ARTWORK HERE], developed and/or created by **ASSIGNOR** which form the final **Material Object** (as defined below) of the work commissioned exclusively for the **Project** (as defined below), and as detailed in the **Project** description, provided by

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ASSIGNOR and the **Local Agency** and approved by **ASSIGNEE** through the **Transportation Art and Community Identification Proposal** application process (as defined below). **ASSIGNOR** acknowledges that the **Final Artwork** (as defined below) includes **Preliminary Works** (as defined below) and the **Material Object** (as defined below) which are incorporated and made part of the final representation of the **Final Artwork**. All documentation pertaining to **Final Artwork** is hereby incorporated by reference and made part of this **Agreement**, and attached as **Exhibit B** to this **Agreement**.

5. **Material Object**: means the tangible visual **Final Artwork** created, constructed, and installed on **ASSIGNEE**'s right of way by **ASSIGNOR** pursuant to the **Local Agency Agreement** and the **Transportation Art and Community Identification Proposal** process. Photographs of the **Material Object** are hereby incorporated by reference and made part of this **Agreement**, and attached as **Exhibit C** to this **Agreement**, upon completion of installation of the **Material Object**.
6. **VARA**: means the Visual Artists Rights Act of 1990, which confers upon authors of works of visual art, several types of attribution and integrity rights, including but not limited to, the right to prevent any intentional distortion, mutilation, or other modifications, and to prevent the destruction of their visual artwork.
7. **CAPA**: means the California Art Preservation Act of 1979, which confers certain rights to artists of works of fine art (original paintings, sculptures, drawings or original works of art in glass, of recognized artistic quality), including, but not limited to, the right to prohibit the intentional commission of any physical defacement, mutilation, alteration, or destruction of a work of fine art by any person or entity who possesses or owns the fine art.
8. **Project**: means the content, size, and proposed location where the **Final Artwork** will be installed (as detailed below), including, but not limited to, the approved by the **Transportation Art and Community Identification Proposal** application (as defined below), the attachments, reproducible drawings, sketches, visual presentations, photographs, photo simulations or other appropriate renditions of the visual art to be installed. The **Transportation Art and Community Identification Proposal** application, documentation and photographs of the **Project** are hereby incorporated by reference and made part of this **Agreement**, and attached as **Exhibit D** to this **Agreement**.
9. **Preliminary Works**: means all documentation developed specifically in order to prepare the **Final Artwork**, as set forth in **Exhibit B**. The **Preliminary Works** include, but are not limited to, concepts, sketches, other visual presentations or other alternate or preliminary designs and documents developed by **ASSIGNOR** and which form part of or all of the **Final Artwork**. The **Preliminary Works** are hereby incorporated by reference and made part of this **Agreement**, and attached as **Exhibit E**.

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10. **Transportation Art and Community Identification Proposal (“TA”)**: means the application, administrative procedures for submittal, review, required documentation, approval and processing of transportation art proposal applications by **ASSIGNEE**, prior to the issuance of encroachment permits for the installation of the proposed transportation art **Project** on **ASSIGNEE**’s right of way.
11. **Artist(s)**: refers to any artists hired or commissioned by **ASSIGNOR** to assist in the creation, development and/or installation of the **Final Artwork** and the **Material Object**, detailed below in “**Description of the Final Artwork.**” For the avoidance of doubt the term “**Artist(s)**” does refer to any person, adults, youths, students or minors who contribute to the creation, development, and/or installation of the **Preliminary Works**, the **Final Artwork** or the **Material Object**.

WHEREAS the **PARTIES** agree to the description of the **Final Artwork** (attached as **Exhibit B**) as described by **ASSIGNOR** as follows:

1. **Description of the Final Artwork:**
- a) **Title:** [INSERT NAME OF ARTWORK HERE]
 - b) **Size:** [INSERT SIZE OF ARTWORK HERE]
 - c) **Category of Work:** (Works of Visual Art) - [INSERT TYPE OF VISUAL ARTWORK (MURAL, SCULPTURE, PICTORIAL, GRAPHIC, ETC.)]
 - d) **Project:** [INSERT NAME OF PROJECT HERE] and attached as **Exhibit D**;
 - e) **Installation Location:** [INSERT DETAILED LOCATION HERE, INCLUDING POST MILE AND STATE HWY]
 - f) **Year Final Artwork Created:** [INSERT YEAR ART WAS CREATED HERE]
 - g) **Artist (ASSIGNOR):** [INSERT NAME OF ARTIST HERE]
 - h) **Artist’s (ASSIGNOR) Signature:** [ARTIST’S SIGNATURE REQUIRED HERE]

NOW THEREFORE, in consideration of the mutual promises, covenants, warranties, mutual obligations and terms and conditions hereinafter set forth; and other good and valuable consideration received by **ASSIGNOR** from the **Local Agency**, the receipt and sufficiency of which is hereby acknowledged by **ASSIGNOR**, the **PARTIES** hereby agree as follows:

1. **Assignment and Transfer of Copyright Ownership in the Final Artwork:**
- a) **ASSIGNOR** hereby conveys, transfers and irrevocably assigns to **ASSIGNEE** all of **ASSIGNOR**’s **Copyright Ownership** rights, title and interests in the **Final Artwork**, including, but not limited to, **ASSIGNOR**’s rights in: (i) **ASSIGNOR**’s entire and exclusive **Copyrights** under federal and state copyright laws, in the United States and all jurisdictions outside the United States; (ii) **ASSIGNOR**’s exclusive rights, title, and interests under common law **Copyrights**; (iii) any and all other privileges and rights in the **Final Artwork** attributed to a copyright owner; and (iv) all other intellectual property rights assigned to **ASSIGNOR** by additional **Artist(s)** in (i)-(iv) associated and subsisting in the **Final Artwork** (if any). **ASSIGNEE** shall

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- be the sole and exclusive copyright owner of **ASSIGNOR's Copyright Ownership** rights in the **Final Artwork** and of **ASSIGNOR's Copyrights** in the **Final Artwork** from the **Effective Date** forward. **ASSIGNEE** shall have the sole and exclusive right to secure registration of the **Copyrights** in the **Final Artwork** internationally. No **Copyrights Ownership** rights in the **Final Artwork** and/or **Copyrights** in the **Final Artwork**, shall be retained by **ASSIGNOR**, nor shall there be any reversion of those rights to **ASSIGNOR** in the future, other than those rights specifically licensed and described in **section 5** below, in this **Agreement**;
- b) **ASSIGNOR** hereby conveys, transfers and irrevocably assigns to **ASSIGNEE** all of **ASSIGNOR's** ownership interests in the **Material Object** in its tangible form, in which the copyrightable **Final Artwork** is embodied. **ASSIGNOR** acknowledges that the **Material Object** is the **Final Artwork** in its tangible form as defined in **section 3** of the definitions in this **Agreement**;
 - c) **ASSIGNOR** hereby conveys, transfers and irrevocably assigns to **ASSIGNEE** **ASSIGNOR's** full-term and renewal term **Copyright Ownership** rights, title and interests in the **Final Artwork** under federal, state and common copyright laws;
 - d) **ASSIGNOR** agrees that this assignment and transfer of **Copyright Ownership** rights, interests and title subsisting in the **Final Artwork**, will remain in effect for the entire duration of such **Copyrights** and will include all of **ASSIGNOR's** exclusive rights, interests, title and ownership under the copyright laws, subject to the license **ASSIGNEE** grants to **ASSIGNOR** in **section 5**.

2. Waiver of Statutory Moral Rights by **ASSIGNOR**:

a) **ASSIGNOR** hereby acknowledges the existence of his or her federal and state statutory moral rights and protections under **VARA** and **CAPA**, as those rights and protections are more particularly described in 17 U.S.C. section 106A(a) **VARA**, and in the California Civil Code section 987 **CAPA**, and knowingly executes this waiver on the following terms:

- i. **Scope:** This waiver applies to the following visual work: **Final Artwork**, described in this **Agreement** and attached as **Exhibit B**, entitled, **[INSERT TITLE OF THE ARTWORK HERE]**.
- ii. **Uses Covered:** This waiver applies to all applicable uses reserved to an owner of a lawfully copyrighted work under the copyright laws, including, but not limited to, the display of the **Final Artwork** publicly and to any and all applications in which either the attribution right, the integrity right, or the personal moral right of **ASSIGNOR** may be implicated.
- iii. **Waiver:** With respect to the **Final Artwork** enumerated in **section 2(a)(i)** above and the uses enumerated in **section 2(a)(ii)** above, **ASSIGNOR**, hereby expressly and forever waives any and all moral rights and protections arising under 17 U.S.C. section 106A(a) and California Civil Code section 987, and any other rights arising under U.S. federal or state laws or under the laws of any other country that conveys rights and

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protections of the same nature as those conveyed under 17 U.S.C. section 106A(a) and California Civil Code section 987, or any other type of moral rights or *droit moral* in the **Final Artwork**.

3. Covenant to Cooperate by ASSIGNOR:

- a) **ASSIGNOR** does hereby covenant and agree to cooperate with **ASSIGNEE** whereby, **ASSIGNEE** may enjoy to the fullest extent the exclusive **Copyright Ownership** rights, title, and interests herein conveyed. Such cooperation shall include.
 - i. Prompt execution of all papers (prepared at the expense of **ASSIGNEE**) which are deemed necessary or desirable by **ASSIGNEE** to perfect its rights, title, and interests herein conveyed; and
 - ii. Prompt execution of all petitions, oaths, specifications, declarations, or other papers (prepared at the expense of **ASSIGNEE**) which are deemed necessary by **ASSIGNEE** for obtaining copyright registration with the United States Copyright Office covering said **Final Artwork**.

4. Relationship of the PARTIES:

The **PARTIES** agree that **ASSIGNEE** is solely a third-party beneficiary and that **ASSIGNEE** is not a party to nor legally obligated or bound by any of the terms and conditions contained in the **Local Agency Agreement** described in **section 3** of the definitions section of the **Agreement**. The **PARTIES** agree that **ASSIGNOR** is an independent contractor commissioned to create, develop and install the **Final Artwork** by the **Local Agency** and that no agency, partnership, joint venture, employee-employer relationship is intended or created by this **Agreement**. All rights, interests and title granted to **ASSIGNEE** are contractual in nature and expressly defined by this **Agreement**.

5. Grant to ASSIGNOR:

- a) **ASSIGNEE** grants to **ASSIGNOR**, pursuant to this **Agreement**, a perpetual, worldwide, irrevocable, sub-licensable, royalty-free license to use and exploit the **Final Artwork**, including in its **Preliminary Works** and final **Material Object** form. These rights include the following:
 - i. **Right to Reproduce:** **ASSIGNOR** may reproduce the **Final Artwork** and derivatives thereof in copies or phonorecords, without **ASSIGNEE**'s prior consent;
 - ii. **Right to Prepare Derivatives:** **ASSIGNOR** may prepare derivatives based upon the **Final Artwork** (in which the underlying work is recast, transformed, altered or adapted), without **ASSIGNEE**'s prior consent;

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- iii. **Right of Public Distribution:** ASSIGNOR may publish, sell and distribute copies of the **Final Artwork** and derivatives thereof, publicly, without ASSIGNEE's prior consent (including the right to exploit copies of the **Final Artwork** and derivatives thereof);
- iv. **Right of Public Performance:** ASSIGNOR may publicly perform the **Final Artwork** and derivatives thereof in any manner applicable, without ASSIGNEE's prior consent;
- v. **Right of Public Display:** ASSIGNOR may publicly display the **Final Artwork** and derivatives thereof, including but not limited to, the display of the **Final Artwork** and derivatives thereof in ASSIGNOR's portfolio, websites, galleries, design periodicals and other media or exhibits. ASSIGNOR may describe, its role in relation to the **Project** and the services provided to other parties on its website and in other promotional materials, for any purpose, without ASSIGNEE's prior consent;
- vi. **Accreditation of Final Work:** ASSIGNEE shall make reasonable efforts to credit ASSIGNOR as the original creator of the **Final Artwork** in connection with any uses by ASSIGNEE;
- vii. **Reprography Right:** ASSIGNOR may make reprographic reproductions database storage or retrieval, as well as making visually perceivable facsimile copies of previously published material, in each case by any means and using any technology, whether now known or hereafter developed, by photocopying, xerograph, duplicating (from stencil) or similar means, microform (including microfiche), transcription or drawing (including tracing) for an overhead or slide projection; and
- viii. **Enforcement of Intellectual Property Rights:** ASSIGNOR will have the exclusive right (but not the obligation) and ASSIGNEE grants ASSIGNOR the exclusive authority, to protect and enforce ASSIGNEE's **Copyrights** in the **Final Artwork**, including bringing legal proceedings against infringers and issuing notice and take-down requests under the Digital Millennium Copyright Act (**DMCA**) (each a "Protection Action"), at the sole expense of ASSIGNOR.

6. Copyright Designation:

All displays or publications of the **Final Artwork** shall bear ASSIGNEE's copyright designation notice as suggested by the U.S. Copyright Office.

7. Term:

The **Copyrights** protection term of this irrevocable and exclusive assignment shall be for the full term of the copyrighted work, including its renewal term and any applicable extended renewal term of the **Copyrights**' protection. The terms, covenants, and provisions of this assignment shall inure to the benefit of ASSIGNEE, its officers,

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successors, assigns, and/or other legal representatives, and shall be binding upon said **ASSIGNOR**.

8. **Warranty:**

a) **ASSIGNOR** warrants and represents that:

- i. The **Final Artwork** is an original visual work of authorship of **ASSIGNOR**;
- ii. The **ASSIGNOR** as creative originator is the sole proprietor of the **Final Artwork**;
- iii. The **Final Artwork** does not infringe any existing **Copyrights**;
- iv. The **Final Artwork** is not regarded by **ASSIGNOR** as Site-Specific Art and therefore **ASSIGNOR** will not seek legal protection for the **Final Artwork** as visual art that derives its meaning from the surrounding environment;
- v. The **ASSIGNOR** has not entered into any assignments, transfers, licenses, contracts or mutual understandings in conflict with the terms and conditions of this **Assignment and Transfer of Copyright and Waiver of Moral Rights in Artwork Agreement**; and
- vi. There are no claims currently pending or threatened, nor does **ASSIGNOR** have any reason to believe that any claims will be brought or threatened in the future, against **ASSIGNOR**'s rights, ownership, title or interests in the **Final Artwork**.

9. **Indemnification:**

ASSIGNOR agrees to indemnify **ASSIGNEE** against any and all claims, lawsuits or legal actions made in connection with the **Final Artwork**, including but not limited to, any copyright infringement claims, moral rights violation claims, loss claims, personal and/or real property claims, injury claims, breach of contract claims, and/or damage claims (including any related legal costs, fees or expenses properly incurred by **ASSIGNEE**).

10. **Delivery:**

ASSIGNOR must provide **ASSIGNEE** with this **Agreement**, properly execute, signed, dated, and notarized and attach the required **Exhibit A (Local Agreement)**, **Exhibit B (Final Artwork)**, **Exhibit C (Material Object)**, **Exhibit D (Project)** and **Exhibit E (Preliminary Works)**, necessary to give effect to this **Agreement**. **ASSIGNOR** shall provide to **ASSIGNEE** the "original wet signature" of this **Agreement** with the attached above-mentioned Exhibits. **ASSIGNOR** will receive a copy of the fully executed **Agreement**.

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11. General Terms:

- a) **Applicable Law:** This **Agreement** must be read and construed according to the laws of the State of California and the **PARTIES** submit to the jurisdiction of the State of California.
- b) **Amendments:** This **Agreement** may not be varied, modified, renewed, or revoked, unless agreed to by both **PARTIES**, made in writing and signed by both **PARTIES**, by a person in authority to contractually bind and sign on behalf of such party.
- c) **Severability:** If any provision of this **Agreement** is held by a court to be unlawful, unconscionable, invalid, unenforceable or in conflict with any rule or law, statute, ordinance or regulation, it is to be severed so that the validity and enforceability of the remaining provisions are not affected.

12. Further Agreements:

This instrument contains the entire and only agreement between the **PARTIES** and supersedes all pre-existing agreements between them respecting its subject matter. Any representation, promise, or condition in connection with said subject matter that is not incorporated in this **Agreement** shall not be binding upon either party.

IN WITNESS WHEREOF, the **PARTIES** have caused this **Agreement** to be executed the day and year first written above:

ARTIST (ASSIGNOR): [SIGNATURE OF ARTIST/ASSIGNOR MUST BE NOTARIZED]

PRINT NAME OF ARTIST (ASSIGNOR):

ARTIST (ASSIGNOR) ADDRESS:

SIGNATURE OF ARTIST (ASSIGNOR):

_____,
DATE: _____ [MONTH, DAY AND YEAR], before me,
_____, [Name of Notary], personally appeared
_____, [Name of ARTIST/ASSIGNOR], and proved to me on with
satisfactory evidence to be the person whose name is subscribed to the above **Assignment and Transfer of Copyright and Waiver of Moral Rights in Artwork**, and acknowledged to me that [he or she] executed the same in his authorized capacity and that by his signature on the **Assignment and Transfer of Copyright and Waiver of Moral Rights in Artwork**, did

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[himself or herself] execute this **Assignment and Transfer of Copyright and Waiver of Moral Rights in Artwork**.

WITNESS MY HAND AND OFFICIAL SEAL

NOTARY PUBLIC

California Department of Transportation (ASSIGNEE):

ASSIGNEE SIGNATURE: _____

ASSIGNEE PRINTED NAME:

ASSIGNEE TITLE: _____

ASSIGNEE ADDRESS:

DATE: _____

APPROVED AS TO LEGAL FORM BY:

MARIA S. SAPIANDANTE, ATTORNEY FOR ASSIGNEE