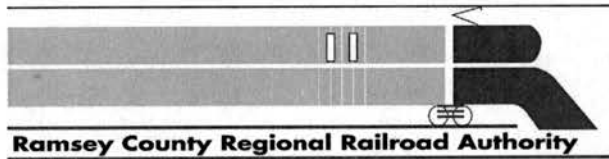




Ramsey County Regional Railroad Authority.
Records.

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Union Depot, Suite 200
214 4th Street East
St. Paul, Minnesota 55101
(651) 266-2760

REGIONAL RAILROAD AUTHORITY MEETING

August 7, 2012

Immediately following the Housing and Redevelopment Authority Meeting
Council Chambers – Third Floor Court House

.....
ROLL CALL and Call to Order

AGENDA of the August 7, 2012 Regional Railroad Authority Meeting is presented for approval.

MINUTES of the July 24, 2012 Regional Railroad Authority Meeting is presented for approval.

ADMINISTRATIVE AGENDA

1. Contract with In Plain Sight, LLC to design, fabricate and install public art at Union Depot

Board Action Requested:

- 1) Approve a contract with In Plain Sight, LLC, 681 17th Ave NE, Studio 121, Minneapolis, MN 55413, for commission of public art at the Union Depot for the period of 8/7/2012 through 12/31/2013, in the amount of \$150,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

2. Contract with Ray King Studios Ltd to design, fabricate and install public art at Union Depot

Board Action Requested:

- 1) Approve a contract with Ray King Studios Ltd., 200 835 N. 3rd Street, Philadelphia, PA 19123, for commission of public art at the Union Depot for the period of 8/7/2012 through 12/31/2013, in the amount of \$200,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

3. Contract with Tim Prentice to design, fabricate and install public art at Union Depot

Board Action Requested:

- 1) Approve a contract with Tim Prentice, 129 Lake Road, West Cornwall, CT 06796, for commission of public art at the Union Depot for the period of 8/7/2012 through 12/31/2013 in the amount of \$200,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

(Continued)

4. Contract with Northern Lights.mn to design, fabricate and install public art at Union Depot

Board Action Requested:

- 1) Approve a contract with Northern Lights.mn, 2751 Hennepin Ave. S. #231, Minneapolis, MN 55408, for commission of public art at the Union Depot for the period of 8/7/2012 through 12/31/2013 in the amount of \$500,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

POLICY AGENDA

5. 2013 Ramsey County Regional Railroad Authority Supplemental Budget

Board Action Requested:

Discussion will occur on RCRRA critical success indicators, performance measures, and addenda.

CORRIDOR UPDATES

ADJOURNMENT

RAMSEY COUNTY REGIONAL RAILROAD AUTHORITY

July 24, 2012

The Ramsey County Regional Railroad Authority met with the following members present: Bennett, Carter, Ortega, Parker, Reinhardt, Rettman, McDonough – 7. Absent – 0. Also present were Julie Kleinschmidt, County Manager and Paul Zisla, Assistant County Attorney, Ramsey County Attorney's Office.

Chair McDonough called the meeting to order at 10:50 A.M.

AGENDA

Commissioner Rettman moved approval of the Agenda of the July 24, 2012 Regional Railroad Authority Meeting, seconded by Commissioner Reinhardt. Roll Call: Ayes – Parker, Reinhardt, Rettman, Bennett, Carter, Ortega, McDonough – 7. Nays – 0.

MINUTES

Commissioner Reinhardt moved approval of the Minutes of the May 22, 2012 Regional Railroad Authority Meeting, seconded by Commissioner Parker. Roll Call: Ayes – Parker, Reinhardt, Rettman, Bennett, Carter, Ortega, McDonough – 7. Nays – 0.

1. Amendment One to the contract with Mortenson Construction for renovation of the Union Depot

Commissioner Ortega moved approval of the following resolution, seconded by Commissioner Reinhardt. Roll Call: Ayes – Parker, Reinhardt, Rettman, Bennett, Carter, Ortega, McDonough – 7. Nays – 0. (R12-28)

WHEREAS, The Ramsey County Regional Railroad Authority has worked to develop the Union Depot Multi-Modal Transit Hub to benefit the citizens of Ramsey County; and

WHEREAS, An Agreement dated November 8, 2010 is in place between the Ramsey County Regional Railroad Authority and Mortenson Construction to carry out the project; and

WHEREAS, The contract includes bonding requirements that can be modified to result in a savings to RCRRA; and

WHEREAS, An Amendment to the Agreement has been negotiated to reduce bonding costs; Now, Therefore, Be It

RESOLVED, The Ramsey County Regional Railroad Authority approves Amendment One to the Mortenson Construction Manager at Risk Agreement for the Union Depot Multi-Modal Transit Hub to modify bonding requirements in the Agreement; and be it further

RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to execute Amendment One.

2. Red Rock Corridor – Reassignment of Funds

Commissioner Rettman moved approval of the following resolution, seconded by Commissioner Parker. Roll Call: Ayes – Parker, Reinhardt, Rettman, Bennett, Carter, Ortega, McDonough – 7. Nays – 0. (R12-29)

WHEREAS, The Red Rock Corridor originates in Hastings, extends north to the Union Depot in St. Paul and on to Minneapolis generally following Trunk Highway 61, Interstate 94, and the freight tracks; and

WHEREAS, The Red Rock Corridor Commission was formed in 1998 by a Joint Powers Agreement to address the transportation needs of the Red Rock Corridor; and

WHEREAS, The Ramsey County Regional Railroad Authority is a member of the Red Rock Corridor Commission; and

WHEREAS, The Red Rock Corridor Commission completed its Alternatives Analysis in 2007 which identified commuter rail as the preferred long-term transit mode for the Corridor; and

WHEREAS, Conditions in the corridor and region have changed and there is additional technical data available which may have an influence on the long term vision of the Red Rock Corridor; and

WHEREAS, The Red Corridor Commission has identified a need to complete an update to the Alternatives Analysis; and

WHEREAS, The Alternative Analysis Update study will allow the Red Rock Corridor Commission to make decisions on how to create short and long term transit improvements in the corridor; and

WHEREAS, An existing FTA grant for the Red Rock and Rush Line Corridors has unspent funds available to allocate to planning activities related to alternative analyses work in these corridors;

WHEREAS, The Red Rock Corridor Commission desires to use up to \$200,000 in federal 5339 funds designated for the Red Rock and Rush Line Corridors in the completion of the alternative analysis update study; and

WHEREAS, The Red Rock Corridor Commission will provide the federally required 20% local match; and

WHEREAS, The existing federal 5339 funds were designated to go to Ramsey County Regional Railroad Authority; and

WHEREAS, The Metropolitan Council is the designated recipient for all funds flowing to the region from the Federal Transit Administration (FTA); and

WHEREAS, The Washington County Regional Railroad Authority is the fiscal agent for the Red Rock Corridor Commission and will serve as the lead agency to the Red Rock Corridor Alternatives Analysis Update Study; and

WHEREAS, The reassignment of funds to Washington County Regional Railroad Authority streamlines the management of the grant funds. Now, Therefore, Be it

RESOLVED, The Ramsey County Regional Railroad Authority authorizes \$200,000 from FTA 5339 earmarks #E2006-ALTA-004 and #E2007-ALTA-005 to be reassigned to Washington County Regional Railroad Authority for use by the Red Rock Corridor Commission on a Red Rock Corridor Alternatives Analysis Update study; and Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority requests the Metropolitan Council and Washington County Regional Railroad Authority to enter into a subrecipient agreement for the purposes of implementing this redirection of funds.

3. Contract with Jones Lang LaSalle to provide property management and activation and development services at Union Depot

Commissioner Ortega moved approval of the following resolution, seconded by Commissioner Reinhardt.

Tim Mayasich, Director, Ramsey County Regional Railroad Authority (RCRRA), introduced Josh Olson, Planning Specialist for RCRRA, and Mark Hunter, Senior Vice-President – Midwest Regional Retail Division, Jones Lang LaSalle.

Mr. Hunter said Jones Lang LaSalle (JLL) truly appreciates the opportunity to work with RCRRA to help carry-out its vision for the Union Depot, and commended the RCRRA for its commitment to reactivate this historic asset. He said over the past four to five months, JLL developed an initial strategic property plan that will begin with a lot of traffic-driving events to engage the entire community. Bringing traffic to the Depot will

not happen overnight, but JLL will engage their leasing team on numerous initiatives to bring retailers back into the Depot to reactivate it. He mentioned JLL's success with other transit hubs around the country such as Chicago's Union Station, Washington DC's Union Station, and New York City's Grand Central Terminal. He again reiterated that this will all take time, but if they have patience and keep on track with their plan and vision, it could be a great future for the Union Depot.

Commissioner Rettman asked if the items listed on pages 83 to 84 of the Request for Board Action, which amount to about \$1.3 million, are included with the \$25,000 the board is being asked to approve today.

Mr. Olson said they are a part of the action requested and the board is being asked to approve these amounts.

Commissioner Rettman said it would make sense to reference this in the resolution because it will more accurately show what this resolution does.

Chair McDonough suggested adding a reference in the first resolve to the page numbers of the contract that lists the additional items: "as identified on pages 57 and 58 of the contract".

The amendment was seen as friendly.

Chair McDonough thanked Mr. Hunter and said they look forward to the partnership with Jones Lang LaSalle.

Roll Call: Ayes – Parker, Reinhardt, Bennett, Carter, Ortega, McDonough – 6. Nays – Rettman – 1. (R12-30)

WHEREAS, The Ramsey County Regional Railroad Authority has identified the completion of The Union Depot Multi-Modal Transportation and Transit Hub in St. Paul ("Union Depot") as a high priority and has expressed an interest in maximizing the Union Depot's development and economic output potential; and

WHEREAS, In advance of the Union Depot's opening, several key elements vital to the facility's operations need to be addressed, including the identification of a third party entity that will assist the Ramsey County Regional Railroad Authority with ongoing property management and the activation and development of the Union Depot; and

WHEREAS, On November 22, 2011, by resolution R11-43, Ramsey County Regional Railroad Authority authorized the issuance of a Request for Proposals for Property Management Services at the Union Depot; and

WHEREAS, A Request For Proposals for property management services was issued on November 22, 2011, and proposals were received from four management firms; and

WHEREAS, On May 15, 2012, by resolution R12-23, Ramsey County Regional Railroad Authority authorized the selection of Jones Lang LaSalle, 200 East Randolph Drive Chicago, IL 60601 to provide property management and activation and development services at the Union Depot and authorized staff to enter into negotiations with Jones Lang LaSalle, with direction to staff to return to the Ramsey County Regional Railroad Authority for approval of a final contract, Now, Therefore, Be It

RESOLVED, The Ramsey County Regional Railroad Authority approves a contract with Jones Lang LaSalle, 200 East Randolph Drive, Chicago, IL 60601 for property management and activation and development services at the Union Depot for the period of 07/24/2012 through 12/31/2017, in the amount of 4% of gross revenues with a monthly minimum of \$25,000 including fees and reimbursable expenses, as identified on pages 57 and 58 of the contract, And Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to execute the contract, And Be It Further

RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

4. Presentation of the 2013 RCRRA Supplemental Budget

Julie Kleinschmidt, Ramsey County Manager, submitted the 2013 RCRRA Recommended Supplemental Budget to the RCRRA Board for their consideration. The PowerPoint presentation was distributed and the RCRRA 2013 Supplemental Budget Forms are being delivered to the Commissioners.

[The PowerPoint presentation of the 2013 RCRRA Supplemental Budget is on file with the RCRRA office]

This is the second year of the 2012-2013 biennial budget and will be focusing on progress toward achieving the RCRRA goals. The budget hearing and addenda review are scheduled for August 7, 2012 and RCRRA sets its maximum 2013 property tax levy on September 11, 2012. Public hearings are held on August 7 and August 26, 2012 and final approval of the 2013 RCRRA Supplemental Budget and levy is scheduled for December 11, 2012.

The RCRRA's mission is – *Providing effective and efficient transit alternatives for Ramsey County and surrounding regions*. The mission also sits under Ramsey County's broader goal – *Promote multi-modal transit and transportation solutions that effectively serve our citizens*. The RCRRA Critical Success Indicators that relate to this goal are a variety of safe and effective transportation options are accessible and safe for users of all abilities and incomes, and transit and transportation investments support economic growth and stability and minimize resource impacts and pollution. These measures are growing, and as RCRRA completely activates the Union Depot, they will see many more measures that drive toward these critical success indicators.

The 2013 RCRRA budget is consistent with the long-term funding strategy adopted by the RCRRA in 2005 to advance its capital projects. The proposed property tax levy for 2013 is \$19,938,811, which is no increase from 2012. A budget addendum is included to set up a Debt Service Account to be used to pay the principal and interest of a \$10,000,000 loan taken in March 2012. Another budget addendum is included to account for an increase in the Union Depot operating budget. The 2012 budget is \$15,202,568 and the 2013 budget is \$17,127,615.

More information is available at the following website: <http://www.co.ramsey.mn.us/ba/index.htm>.

Commissioner Parker noted that the map on page three shows the Northeast Diagonal Corridor following along highway 36, but the corridor is supposed to go up to White Bear Lake. She said she doesn't want to lose that route.

Mr. Mayasich said the map came from the Counties Transit Improvement Board and RCRRA will make the correction to the map.

Ms. Kleinschmidt added that in a report, the state economist has pointed out that there are four ways that local government can deal with this increase in demand and need for services and declining revenues. We have aggressively done all four of them, but we have an opportunity here to do even more. We have reduced services and programs, we increased our productivity, we have made strategic tax increases, yet we have also fundamentally looked at economic development. The investment the RCRRA has made is critical to our future and the work they are doing is particularly exciting.

CORRIDOR UPDATES

- High Speed Rail
Commissioner Rettman reported that Washington County Commissioner Gary Kriesel will be joining the Minnesota High Speed Rail Commission.

- Rush Line

Commissioner Reinhardt reported that at the last Rush Line Task Force meeting, which took place at the Union Depot, they took significant action regarding the integration of Metro Transit route 275 and Rush Line route 285. The interim plan was for service to continue through 2013. They made it a requirement for the full integration that service also continue to be provided north. It is still strongly encouraged that the route goes to the Union Depot, but it was not made a requirement. It was discussed that once the Union Depot is fully operational, it will have the ridership and will make sense for it to come to the Union Depot.

- Gateway

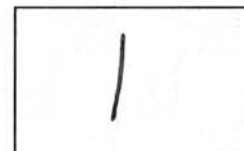
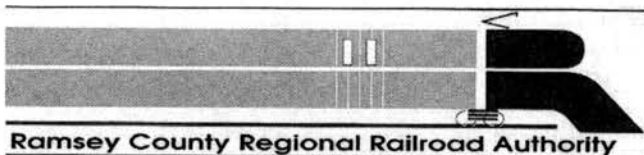
Commissioner Ortega reported that the Gateway Policy Advisory Committee will meet tomorrow, July 25.

- Robert Street

Commissioner Ortega reported that they will begin the Alternatives Analysis; there will also be open houses.

ADJOURNMENT

There being no further business, Chair McDonough declared the meeting adjourned at 11:23 A.M.



REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date: 8/7/2012

Regional Railroad Authority Meeting Date: _____

SUBJECT: Contract with In Plain Sight, LLC to design, fabricate and install public art at Union Depot

EXECUTIVE SUMMARY

The Federal Transit Administration (FTA) strongly recommends that its funded major construction projects include a public art program within the project capital costs. FTA guidelines state that the public art budget should at a minimum be one half of one percent of construction costs, but should not exceed five percent of construction costs. The proposed budget for public art at the Union Depot is \$1.25 million, which is slightly less than one percent of construction costs (0.84 percent).

Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, approved by the Ramsey County Regional Railroad Authority ("RCRRA") in December 2011, will provide \$1 million towards public art at the Union Depot. RCRRA funds in the amount of \$250,000 will provide the balance from the 2011 Union Depot project budget.

On February 2, 2012, RCRRA approved the release of a Call for Artists (Request for Proposals) seeking artists to participate in the Union Depot Public Art Program. FTA provides guidelines for the process by which artists should be selected. RCRRA followed the suggested FTA process, creating the Union Depot Art Selection and Design Review Panel, composed of artists, arts professionals, historians, project partners and community representatives. The panel reviewed more than 260 applications from 156 artists using best practices criteria, selected finalists for interviews, and recommended artists (or artist teams) for selection and contracting. The contracts arising from this Call to Artists represent \$1,050,000 of the budgeted \$1.25 million. Remaining funds not used for related costs will be part of a supplemental artist solicitation anticipated for next spring.

(The Executive Summary is continued on the following page)

ACTION REQUESTED

- 1) Approve a contract with In Plain Sight, LLC, 681 17th Ave NE, Studio 121, Minneapolis, MN 55413, for commission of public art at the Union Depot for the period of 8/7/2012 through 12/31/2013, in the amount of \$150,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

(Executive Summary Continued)

Amy Baur and Brian Boldon are a Minneapolis-based artist team working as In Plain Sight, LLC. The Union Depot Art Selection and Design Review Panel, following a fair and deliberative process, by consensus recommends their selection for creating a mural in the carriageway of Union Depot. The budget established for this work is fixed at \$150,000, as stated in the Request for Proposals.

SUBJECT: Contract with In Plain Sight, LLC to design, fabricate and install public art at Union Depot

ATTACHMENTS:

1. Competitive Solicitation Summary
2. Draft contract with In Plain Sight, LLC.

PREVIOUS ACTION:

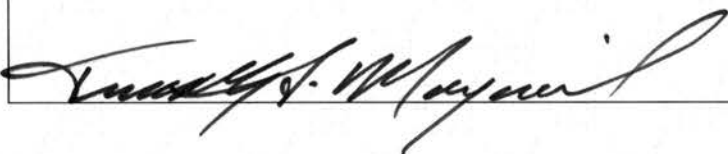
RCRRA previously approved Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, which will provide 80 percent of the funding towards public art at the Union Depot.

On February 7, 2012, Resolution R12-13 authorized the issuance of a Call to Artists (Request for Proposals) for Public Art Commissions at the Union Depot in accordance with Ramsey County policies and procedures on Requests for Proposals, with direction to staff to return to the Ramsey County Regional Railroad Authority with a selection of artists for contracting authorization.

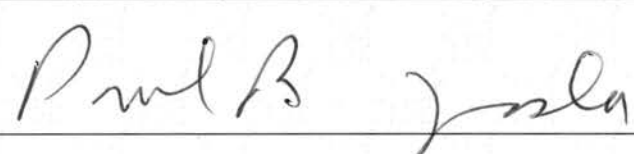
COUNTY MANAGER'S COMMENTS:

The process followed by RCRRA staff, involving the formation of the Union Depot Art Selection and Design Review Panel, was recommended by FTA under best practices for commissioning public art. The process was consistent with the County's commitment to an open, fair and competitive solicitation process and included input from project stakeholders and the community.

SUBJECT: Contract with In Plain Sight, LLC to design, fabricate and install public art at Union Depot

Regional Railroad Authority – Authorized Signature	Date
	8/2/12

Budgeting & Accounting – Authorized Signature	Date
 for Sue Kuss	8/1/12

County Attorney – Authorized Signature	Date
	7/30/12

Property Management – Authorized Signature	Date

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

SUBJECT: Contract with In Plain Sight, LLC to design, fabricate and install public art at Union Depot

Draft Resolution

1 WHEREAS, The Ramsey County Regional Railroad Authority, along with the Federal
2 Transit Administration, recognizes the importance of public art to the overall success and viability
3 of the The Union Depot Multi-Modal Transportation and Transit Hub ("Depot"); and
4

5 WHEREAS, The Federal Transit Administration's recognition of importance is coupled with
6 a commitment of \$1 million in funding towards the public art program; and
7

8 WHEREAS, Public art provides a unique opportunity to recognize and celebrate the rich
9 histories of the Union Depot, St. Paul and the Lowertown neighborhood; and
10

11 WHEREAS, Public art at the Union Depot will complement the power of the existing
12 architectural elements, supporting the Union Depot as a destination community space, while
13 serving to enhance the enjoyment of those passing through the public spaces; and
14

15 WHEREAS, On November 22, 2011, by resolution R12-13 Ramsey County Regional
16 Railroad Authority authorizes the issuance of a Call to Artists (Request for Proposals) for Public Art
17 Commissions at the Union Depot in accordance with Ramsey County policies and procedures on
18 Requests for Proposals, with direction to staff to return to the Ramsey County Regional Railroad
19 Authority with a selection of artists for contracting authorization; Now, Therefore, Be It
20

21 RESOLVED, The Ramsey County Regional Railroad Authority approves a contract with In
22 Plain Sight, LLC, 681 17th Ave NE, Studio 121, Minneapolis, MN 55413, for commission of public
23 art at the Union Depot for the period of 8/7/2012 through 12/31/2013, in the amount of \$150,000;
24 And Be It Further
25

26 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to
27 execute the contract; And Be It Further
28

29 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Ramsey
30 County Manager to make all necessary budget adjustments including increasing estimated
31 revenues and appropriations.

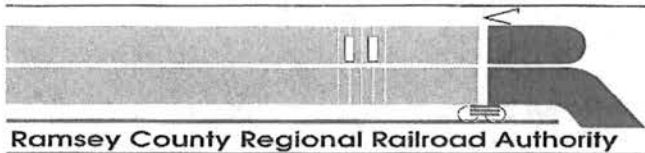
Attachment # 1

COMPETITIVE SOLICITATION SUMMARY

TITLE Call to Artists for Public Art Commissions at Union Depot (RFP) Commission #1: Carriageway Mural	Programs: Union Depot Multimodal Transportation Hub Goal: Engage talented public artists to create works for Union Depot that will enhance the enjoyment of those passing through the public spaces, while complementing the power of the existing architectural elements.
DATE SENT	April 9, 2012
DATE DUE	May 23, 2012
NUMBER SENT	126
RESPONSES Star (*) those Agencies invited for interviews	1. Anderson, Joanne Hinich 2. Andrews Lefevre Studios 3. Angers, Mary 4. Austin, Mercedes 5. Bader, Jared 6. Balma, Mark 7. Barnum, Robert 8. * Baur, Amy-Boldon, Brian/In Plain Sight Art Studio * 9. Bennett, Walldog Public Arts Team 10. Bersin, Carole 11. Birt, Arlene 12. Bliss, Pamela 13. Blodgett, David 14. Bollinger & Bollinger Atelier 15. Bryant, Sandra 16. Buckner, Robert R 17. Cohen, Michael 18. Cole Jr, Alex 19. Connelley, Mark 20. Conversation StARTrs-Udvig-Schmitt 21. Dahlgvist Art Studio 22. * David, Craig, Davidii Art Co * 23. Delgado, Robert 24. Droze, Augustina Mural Studio 25. Diaz, Donald Martin 26. Dupree, James 27. Edwards, Garth 28. * Farley, Stephen * 29. Fogarty, Terrence 30. Gabaldon 31. Galvez, Daniel 32. Garcia, David Ocelotl 33. Geyen, Peter 34. Gilbert, Ralph 35. Giugliano, Vincenzo 36. Gonzalez & Biaggi/Cero 37. Green, Phyllis 38. Greiman, April 39. Gunvaldson, Scott 40. Healy-East Los Streetscapers 41. Hoelscher, Giesla 42. Howdle, Bruce 43. Huether, Gordon 44. Janney, Christopher

	45. Jones-Aiken 46. Karlsen, Anne Marie 47. Kessler Studios Inc 48. Kirby, Michael William 49. Korlin, Gary 50. Lawler, Kimberly L 51. Litman, Adrian Susnea 52. Lueza, Cecilia 53. Mandel, Mike 54. McLain, Greta 55. Mersky, Deborah 56. MJ Heubach Fine Art & Design 57. Nair, Sreekishen 58. Najarak, Jason 59. Olson, Kerry 60. Oman, Paul K 61. Pearson, Erik 62. Preslicka, Greg 63. Pugh, John 64. Ross, Richard 65. Rostad, Larry 66. Sanchez, Jhennifer 67. Sarantitis, Josh 68. Schaller, Jeff 69. Schwartzman, Robin 70. SIR Creative Design 71. Steinman, Thomas G 72. Stewart, Brian 73. Stoller, Roger White 74. Strong and Dahl 75. Taylor, Judy 76. Thompson, Rod 77. Williams, Ken 78. Zoell, Bob
REVIEW COMMITTEE Include title and agencies	Mary Altman , public arts administrator, City of Minneapolis Katherine Stillings Barta and Kevin Barta , residents of the Union Depot condominiums and cofounders of LowertownLanding.org Jeff Heegaard , cofounder, COCO Co-working and Collaborative Space Jill Hentges , community outreach coordinator, Metro Transit Rich Laffin , chair, Saint Paul Heritage Preservation Commission; architect with offices in Lowertown Elsa Vega Perez , formerly of Otto Bremer Foundation; cofounder and director emeritus for El Arco Iris Center for the Performing Arts Nick Riley , intergovernmental relations coordinator, Ramsey County; artist Marcus Young , Saint Paul's City Artist in Residence, a program of Public Art Saint Paul
VENDORS RECOMMENDED	Amy Baur and Brian Boldon of In Plain Sight Art Studio, Minneapolis, Minn.
OTHER INFORMATION	Review Committee Rating from Criteria in RFP - The Union Depot Art Selection and Design Review Panel will review and evaluate applications based on the following criteria:

- | | |
|--|--|
| | <ul style="list-style-type: none">a. Aesthetic quality of previously completed art projects and commissions.b. Applicability and suitability of past work to specific Union Depot commission opportunities, including work that was installed in buildings within a historic site or district.c. Appropriateness of previously completed artworks to their sites, including safety and scale.d. Durability and suitability of materials used related to resistance to vandalism and minimization of maintenance requirements.e. Experience working with the public and neighborhood communities. |
|--|--|



REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date: 8/7/2012

Regional Railroad Authority Meeting Date: _____

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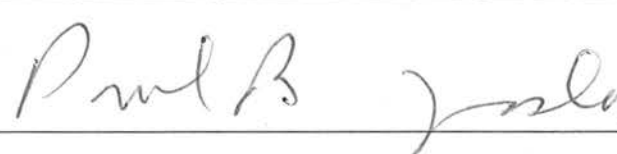
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	7/30/12

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Other – Authorized Signature	Date

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Draft Resolution

1 WHEREAS, The Ramsey County Regional Railroad Authority, along with the Federal
2 Transit Administration, recognizes the importance of public art to the overall success and viability
3 of the The Union Depot Multi-Modal Transportation and Transit Hub ("Depot"); and
4

5 WHEREAS, The Federal Transit Administration's recognition of importance is coupled with
6 a commitment of \$1 million in funding towards the public art program; and
7

8 WHEREAS, Public art provides a unique opportunity to recognize and celebrate the rich
9 histories of the Union Depot, St. Paul and the Lowertown neighborhood; and
10

11 WHEREAS, Public art at the Union Depot will complement the power of the existing
12 architectural elements, supporting the Union Depot as a destination community space, while
13 serving to enhance the enjoyment of those passing through the public spaces; and
14

15 WHEREAS, On November 22, 2011, by resolution R12-13 Ramsey County Regional
16 Railroad Authority authorizes the issuance of a Call to Artists (Request for Proposals) for Public Art
17 Commissions at the Union Depot in accordance with Ramsey County policies and procedures on
18 Requests for Proposals, with direction to staff to return to the Ramsey County Regional Railroad
19 Authority with a selection of artists for contracting authorization; Now, Therefore, Be It
20

21 RESOLVED, The Ramsey County Regional Railroad Authority approves a contract with In
22 Plain Sight, LLC, 681 17th Ave NE, Studio 121, Minneapolis, MN 55413, for commission of public
23 art at the Union Depot for the period of 8/7/2012 through 12/31/2013, in the amount of \$150,000;
24 And Be It Further
25

26 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to
27 execute the contract; And Be It Further
28

29 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Ramsey
30 County Manager to make all necessary budget adjustments including increasing estimated
31 revenues and appropriations.

Attachment # 1

COMPETITIVE SOLICITATION SUMMARY

TITLE Call to Artists for Public Art Commissions at Union Depot (RFP) Commission #1: Carriageway Mural	Programs: Union Depot Multimodal Transportation Hub <u>Goal:</u> Engage talented public artists to create works for Union Depot that will enhance the enjoyment of those passing through the public spaces, while complementing the power of the existing architectural elements.
DATE SENT	April 9, 2012
DATE DUE	May 23, 2012
NUMBER SENT	126
RESPONSES Star (*) those Agencies invited for interviews	1. Anderson, Joanne Hinich 2. Andrews Lefevre Studios 3. Angers, Mary 4. Austin, Mercedes 5. Bader, Jared 6. Balma, Mark 7. Barnum, Robert 8. * Baur, Amy-Boldon, Brian/In Plain Sight Art Studio * 9. Bennett, Walldog Public Arts Team 10. Bersin, Carole 11. Birt, Arlene 12. Bliss, Pamela 13. Blodgett, David 14. Bollinger & Bollinger Atelier 15. Bryant, Sandra 16. Buckner, Robert R 17. Cohen, Michael 18. Cole Jr, Alex 19. Connelley, Mark 20. Conversation StARTrs-Udvig-Schmitt 21. Dahlguist Art Studio 22. * David, Craig, Davidii Art Co * 23. Delgado, Robert 24. Droze, Augustina Mural Studio 25. Diaz, Donald Martin 26. Dupree, James 27. Edwards, Garth 28. * Farley, Stephen * 29. Fogarty, Terrence 30. Gabaldon 31. Galvez, Daniel 32. Garcia, David Ocelotl 33. Geyen, Peter 34. Gilbert, Ralph 35. Giugliano, Vincenzo 36. Gonzalez & Biaggi/Cero 37. Green, Phyllis 38. Greiman, April 39. Gunvaldson, Scott 40. Healy-East Los Streetscapers 41. Hoelscher, Giesla 42. Howdle, Bruce 43. Huether, Gordon 44. Janney, Christopher

	45. Jones-Aiken 46. Karlsen, Anne Marie 47. Kessler Studios Inc 48. Kirby, Michael William 49. Korlin, Gary 50. Lawler, Kimberly L 51. Litman, Adrian Susnea 52. Lueza, Cecilia 53. Mandel, Mike 54. McLain, Greta 55. Mersky, Deborah 56. MJ Heubach Fine Art & Design 57. Nair, Sreekishen 58. Najarak, Jason 59. Olson, Kerry 60. Oman, Paul K 61. Pearson, Erik 62. Preslicka, Greg 63. Pugh, John 64. Ross, Richard 65. Rostad, Larry 66. Sanchez, Jhennifer 67. Sarantitis, Josh 68. Schaller, Jeff 69. Schwartzman, Robin 70. SIR Creative Design 71. Steinman, Thomas G 72. Stewart, Brian 73. Stoller, Roger White 74. Strong and Dahl 75. Taylor, Judy 76. Thompson, Rod 77. Williams, Ken 78. Zoell, Bob
REVIEW COMMITTEE Include title and agencies	Mary Altman , public arts administrator, City of Minneapolis Katherine Stillings Barta and Kevin Barta , residents of the Union Depot condominiums and cofounders of LowertownLanding.org Jeff Heegaard , cofounder, COCO Co-working and Collaborative Space Jill Hentges , community outreach coordinator, Metro Transit Rich Laffin , chair, Saint Paul Heritage Preservation Commission; architect with offices in Lowertown Elsa Vega Perez , formerly of Otto Bremer Foundation; cofounder and director emeritus for El Arco Iris Center for the Performing Arts Nick Riley , intergovernmental relations coordinator, Ramsey County; artist Marcus Young , Saint Paul's City Artist in Residence, a program of Public Art Saint Paul
VENDORS RECOMMENDED	Amy Baur and Brian Boldon of In Plain Sight Art Studio, Minneapolis, Minn.
OTHER INFORMATION	Review Committee Rating from Criteria in RFP - The Union Depot Art Selection and Design Review Panel will review and evaluate applications based on the following criteria:

	a. Aesthetic quality of previously completed art projects and commissions. b. Applicability and suitability of past work to specific Union Depot commission opportunities, including work that was installed in buildings within a historic site or district. c. Appropriateness of previously completed artworks to their sites, including safety and scale. d. Durability and suitability of materials used related to resistance to vandalism and minimization of maintenance requirements. e. Experience working with the public and neighborhood communities.
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Attachment # 2

AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK

THIS AGREEMENT is entered into between the Ramsey County Regional Railroad Authority ("RCRRA"), a political subdivision of the State of Minnesota, with offices at Union Depot, 214 4th Street E., Suite 200, St. Paul, MN 55101 and In Plain Sight, LLC ("Artist") with offices at 681 17th Ave NE, Studio 121, Minneapolis, MN 55413.

WHEREAS, the RCRRA has included Artwork Funding for the establishment and display of Artwork as part of the renovation and restoration of the Union Depot ("Project"); and

WHEREAS, the RCRRA issued a Call to Artists for applications to design, execute, fabricate and/or install Artwork in the carriageway area of the Union Depot; and

WHEREAS, the Artist is a recognized artist whose work and reputation make the Artist uniquely qualified to create Artwork as part of the Project; and

WHEREAS, the Artist and the RCRRA wish to undertake the obligations expressed herein;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

Article 1 Scope of Services

1.1 Artist's Obligations

- 1.1.1 The Artist shall perform all services and furnish all supplies, material and/or equipment as necessary for the design, fabrication, and installation of the Artwork described in **Exhibit 1**, attached to and made a part of this Agreement, at the location described in **Exhibit 1** ("Site"). Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- 1.1.2 The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the RCRRA as set forth in this Agreement. To ensure that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site, the Artist's proposal shall be reviewed by the RCRRA and its Consultants, as necessary, for approval by the RCRRA to ensure compliance with these objectives.
- 1.1.3 The Artist shall prepare the Artwork design and corresponding budget as provided in Section 1.3 of this Agreement for the approved proposal.
- 1.1.4 Prior to submitting a Schematic Design, the Artist shall travel to the Site to gain an understanding of the Site's unique characteristics and to coordinate with RCRRA staff, as appropriate, to communicate about the Artwork and to ensure appropriate integration and/or installation of the Artwork.

- 1.1.5 Throughout the Project, the Artist shall provide RCRRA staff sufficient detail to permit the RCRRA to determine compliance with applicable local, state or federal laws, ordinances and/or regulations, and to obtain any necessary approvals with the State Historic Preservation Office ("SHPO"), and the City of Saint Paul's Heritage Preservation Commission ("HPC").
- 1.1.6 The Artist shall complete the fabrication of the Artwork by the scheduled installation start date as provided in Section 1.4.2 of this Agreement.
- 1.1.7 The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation of the Artwork at the Site.
- 1.1.8 The Artist shall arrange the transportation and installation of the Artwork in consultation with RCRRA staff. If the Artist does not personally install the Artwork, the Artist shall supervise and approve the installation.
- 1.1.9 The Artist shall provide required insurance as specified in Article 6 and **Exhibit 2**, attached hereto and made a part of this Agreement.
- 1.1.10 The Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
- 1.1.11 The Artist shall provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep involved.
- 1.1.12 The Artist shall provide photographic documentation of the Artwork.
- 1.1.13 The Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.

1.2 RCRRA's Obligations

- 1.2.1 The RCRRA shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- 1.2.2 The RCRRA shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, and reports; a list of required permits, licenses, and other authorizations; and other existing relevant data, if any, which is needed by the Artist in order to perform.
- 1.2.3 The RCRRA shall be responsible for compliance with applicable laws and regulations with the exception of required licenses, permits and similar authorizations required to be secured by the Artist under Section 1.1.6, and shall explain any limitations imposed by such laws and/or regulations to the Artist.

- 1.2.4 The RCRRA shall prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement. The Artist and RCRRA staff will cooperate to determine reasonable costs for those items that the RCRRA will be responsible for in order to prepare the Site for the timely transportation and installation of the Artwork. The RCRRA shall complete the Site preparations by the scheduled installation start date as provided in Section 1.4.2 of this Agreement or shall notify the Artist in writing of any delays.
- 1.2.5 The RCRRA shall provide and install a plaque on or near the Artwork containing a credit to the Artist substantially in the following form: [Artist's name, Artwork title, date of publication].
- 1.2.6 The RCRRA shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the RCRRA's control.
- 1.2.7 RCRRA staff shall be responsible for leading the Artist through the required review process. RCRRA staff shall be responsible for organizing and scheduling meetings with review entities such as the Union Depot Art Selection and Design Review Panel, the State Historic Preservation Office (SHPO) and the City of Saint Paul's Heritage Preservation Commission (HPC) and for providing the Artist written instructions for the materials required at such meetings should they be necessary.

1.3 Design

1.3.1. Concept/Schematic

- a. Within 100 days of the execution of this Agreement, the Artist shall submit to RCRRA staff the design concept (the "Schematic Design") in the form of detailed color drawings, models, and/or other documents as are required to present a meaningful representation of the Artwork. The Schematic Design will include: a description of the method by which the Artwork is to be fabricated and installed; a description of any operational, maintenance and conservation requirements for the Artwork; a description of the placement of the Artwork at the Site and any site preparations that may be required by the RCRRA including, but not limited to, any changes or modifications to any utility system or structure of the Site as necessary within a reasonable cost and as required by the RCRRA. The design concept shall include a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved. The Schematic Design of the Artwork shall be incorporated into and made a part of this Agreement by reference as **Exhibit 1**.
- b. The proposed Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and

equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense.

- c. Prior to submitting the Schematic Design, the Artist shall visit, examine, research and consider the Site and surrounding area. The Artist shall also discuss with RCRRA staff the most appropriate method to inform the content of the Schematic Design. If applicable, the Artist shall consult with representatives of the community and consider their input and concerns.
- d. The Schematic Design must include sufficient detail to permit the RCRRA, SHPO, and HPC to determine compliance with applicable local, state or federal laws, ordinances and/or regulations.
- e. When the Artist submits the Schematic Design to RCRRA staff for approval, the Artist shall also submit a detailed budget for approval for the design, fabrication and installation of the Artwork, including costs for Site preparation, as described in Section 1.4.1 of this Agreement.

1.3.2 Approval

- a. Within 15 days after the Artist submits the Schematic Design, the Union Depot Art Selection and Design Review Panel will convene and review the submitted Schematic Design. RCRRA staff shall notify the Artist whether it approves or disapproves of the Schematic Design. The RCRRA shall have discretion to approve outright, approve with conditions, or disapprove the Schematic Design.
- b. RCRRA staff shall notify the Artist of any revisions to the Schematic Design determined by the RCRRA to be necessary for the Artwork to comply with applicable laws, ordinances and/or regulations and other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the accepted Schematic Design.

1.3.3 Redesign

- a. If the Union Depot Art Selection and Design Review Panel disapproves of the Schematic Design, RCRRA staff will notify the Artist in writing of the reasons for such disapproval. In such event, the Artist will submit a Revised Design within 20 days after RCRRA staff has notified the Artist of its disapproval, addressing the identified reasons. This process shall continue until the Union Depot Art Selection and Design Review Panel approves the Revised Design. The Artist will not be paid additional fees for the Revised Design(s).
- b. The Revised Design will reflect changes made to address the stated reasons for disapproval, as well as any adjustments in the budget or

schedule that may be necessary. RCRRA staff shall notify the Artist in writing whether the Union Depot Art Selection and Design Review Panel approves or disapproves of the Revised Design within 30 days after the Artist submits the Revised Design.

- c. If the Artist refuses to revise the Schematic Design pursuant to Section 1.3.3. a., or if the Artist fails to adequately revise the Schematic Design in the judgment of the Union Depot Art Selection and Design Review Panel and RCRRA staff, this Agreement shall terminate and the parties shall be under no further obligation to each other as of the date of such termination. The effective date of termination shall be the date the RCRRA submits its written disapproval of the Revised Design to the Artist. The RCRRA shall submit to the Artist a written termination notice with the disapproval. The termination notice shall advise the Artist that this Agreement has been terminated pursuant to this Article. The termination notice shall notify the Artist that the Artist is entitled to retain the compensation paid prior to the termination date, and that the Parties are under no further obligation to each other. The termination notice shall confirm that the Artist shall retain ownership of all Schematic Designs, Revised Designs and renderings thereof submitted hereunder.

1.3.4 Final Design/Construction Documents

- a. The Artist shall prepare structural drawings for the approved design ("Final Design") detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings and supplementary documents shall indicate any issues involved in the construction, integration and maintenance of the Artwork, and shall identify any subcontractors needed to work on the project including the work to be performed by the subcontractors.
- b. Where appropriate, the Artist shall present such drawings to a qualified engineer, licensed by the State of Minnesota and paid by the Artist, for certification that the Artwork will be of adequate structural integrity, and the Artist shall provide the RCRRA with such certification, signed and stamped by the licensed engineer. The Artist shall present the Final Design to a qualified conservator, designated by RCRRA staff at no cost to the Artist, who will make recommendations on the maintenance of the Artwork. The Artist shall provide a written copy of the conservator's recommendations to RCRRA staff.
- c. The Artist shall provide a detailed narrative Description of the Artwork with explicit detail regarding the overall form or design, scale, dimensions, color, and surface treatment of the Artwork. The Description of the Artwork shall be incorporated into and made a part of this Agreement by reference as **Exhibit 3**.

1.4 Budget/Payment Schedule

1.4.1 Budget

- a. The budget to be prepared by the Artist pursuant to the provisions of this Section shall include all goods, services and materials, with such costs itemized. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date. The Artist shall include a contingency amount between 5% and 10% to be used towards unforeseen costs directly related to the fabrication and/or installation of the project.
- b. Upon approval by the RCRRA staff, the Budget shall be incorporated into and made a part of this Agreement by reference as **Exhibit 4**.
- c. The Artist shall keep a log of the Artist's Project hours as well as the hours of work performed by subcontractors, and shall retain all original receipts pertaining directly to the Project.
- d. The Artist shall notify the RCRRA, in writing, prior to the use of any contingency funds for any purpose.
- e. Upon completion of the Project, and prior to Transfer of Title of the Artwork from the Artist to the RCRRA, the Artist shall provide written notice of any unspent funds from the contingency funds. These unspent funds shall be retained by the Artist.
- f. If the Artist incurs costs in excess of the approved budget, the Artist shall pay such excess from the Artist's own funds unless the Artist had previously obtained written approval for a modified budget incorporating such costs from the RCRRA.

1.4.2 Payment Schedule

- a. A schedule for payment to the Artist is included in **Exhibit 4**.

1.5 Project Construction Schedule and Progress Reports

- 1.5.1 The Artist shall submit a proposed schedule for the fabrication and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any, to the RCRRA for approval. Upon approval, the schedule shall be incorporated into and made a part of this Agreement by reference as **Exhibit 5**.
- 1.5.2 The Schedule may be amended only by written agreement of the parties. Any approved revised schedule shall replace and supersede the original schedule as **Exhibit 5**.

1.6 Fabrication Stage

- 1.6.1 The Artist shall fabricate and install the Artwork in substantial conformity with the Final Design. The Artist may not deviate from the approved Final Design without written approval of RCRRA staff.
- 1.6.2 The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork such as the application of protective or anti-graffiti coatings, if applicable, unless the RCRRA disapproves. If the Artwork is being constructed on-site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. Prior to requesting authorization to transport and install the Artwork, the Artist shall be required to provide the RCRRA with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. All subcontractors must provide proof of insurance as described in **Exhibit 2** prior to entering the Site.
- 1.6.3 The Artist will inform RCRRA of the intent to enter into subcontracts for any part of the fabrication of the Artwork. Subcontracted work will be assigned a Disadvantaged Business Enterprise (DBE) goal that will be based on the proposed scope of the subcontracted work for the project. Applicable DBE policies and procedures are attached hereto and made a part of this Agreement as **Exhibit 7**.
- 1.6.4 RCRRA staff shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice. At the RCRRA's request, the Artist shall provide clear photographic documentation of the progress of fabrication of the Artwork.
- 1.6.5 If RCRRA staff, upon review of the Artwork, determines that the Artwork does not conform to the Final Design, the RCRRA reserves the right to notify the Artist in writing of the deviations and that the RCRRA intends to withhold the next payment.
- 1.6.6 The Artist will inform the RCRRA of the planned method for achieving conformance to the Final Design, will promptly cure the deviations and will notify the RCRRA in writing of completion of the cure. RCRRA staff or the RCRRA's Consultants, as necessary, shall promptly review the Artwork, and upon approval shall release the next payment. If the Artist disputes the RCRRA's determination of deviation, the Artist shall promptly submit reasons in writing to the RCRRA within 10 days of the RCRRA's notification. The RCRRA shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Agreement shall remain with the RCRRA.
- 1.6.7 The Artist shall notify the RCRRA in writing when fabrication of the Artwork has been completed, and when the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site. Artist shall also provide RCRRA staff with clear photographic documentation of the completed Artwork.

- 1.6.8 At the RCRRA's option, RCRRA staff or the RCRRA's Consultants, as necessary, shall inspect the Artwork within 10 days after receiving notification pursuant to paragraph 1.6.6, prior to installation, to determine that the Artwork conforms to the Final Design and to give final approval of the Artwork. The RCRRA shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the RCRRA does withhold final approval, the RCRRA shall submit the reasons for such disapproval in writing within 10 days of examining the fabricated Artwork. The Artist shall then have 30 days from the date of the RCRRA's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Artist has willfully and substantially deviated from the Final Design without the prior approval of the RCRRA. The Artist shall then be held responsible for any expenses incurred in correcting such deviation.
- 1.6.9 RCRRA staff shall promptly notify the Artist of any delays, if such delays are caused by the RCRRA, impacting installation of the Artwork. Any additional storage fees incurred as a result of such delays are the responsibility of the RCRRA.
- 1.6.10 The Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the RCRRA of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction.

1.7 Changes to Design

- 1.7.1 Changes to the approved design may not be executed prior to submission of the proposed changes in writing to the RCRRA for further review and approval. The Artist must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design.
- 1.7.2 If RCRRA staff approves the changes, the RCRRA shall promptly notify the Artist in writing. RCRRA staff will also make the required presentations to the approval bodies.
- 1.7.3 If RCRRA staff disapproves of the changes, the RCRRA shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design.

- 1.7.4 The Artist's fee shall be equitably adjusted for any increase or decrease in the Artist's cost of, or time required for, performance of any services under this Agreement as a result of revisions made to the Design under Section 1.7.1. Any claim of the Artist for adjustment under this paragraph must be asserted in writing within 20 days after the date of the approval of the revision by the RCRRA.

1.8 Installation

- 1.8.1 Upon the RCRRA's final approval of the fabricated Artwork as being in conformity with the Final Design, the Artist shall deliver and install the completed Artwork to the Site in accordance with the agreed-upon schedule.
- 1.8.2 The Artist will coordinate closely with RCRRA staff to ascertain that the Site is prepared to receive the Artwork. The Artist must notify the RCRRA of any adverse conditions at the Site that would affect or impede the installation of the Artwork.
- 1.8.3 The Artist is responsible for timely installation of the Artwork. The Artist will confer and coordinate with RCRRA staff to ensure timely coordination with the RCRRA's Project construction team. Site access procedures will be identified in coordination with the development of the Artwork design and installation schedule. The Artist may not install the Artwork until authorized to do so by RCRRA staff.
- 1.8.4 The Artist will inform RCRRA of the intent to enter into subcontracts for any part of the installation of the Artwork. Subcontracted work will be assigned a Disadvantaged Business Enterprise (DBE) goal that will be based on the proposed scope of the subcontracted work for the project. Applicable DBE policies and procedures are set forth in **Exhibit 7**.
- 1.8.5 The Artist and any assistants or installation subcontractors shall, at the discretion of the RCRRA, participate in safety training classes for the purpose of accessing construction zones or RCRRA rail rights-of-way.
- 1.8.6 The Artist shall supervise the installation of the Artwork.
- 1.8.7 Upon installation of the Artwork, the Artist shall provide the RCRRA with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used.
- 1.8.8 Upon written acceptance of the installation by the RCRRA in accordance with the provisions of Section 1.9 herein, the Artwork shall be deemed to be in the custody of the RCRRA for purposes of Article 4 and Article 6 of this Agreement.
- 1.8.9 The RCRRA is responsible for the proper care and maintenance of the Artwork after written acceptance of the installation

1.9 Approval and Acceptance

- 1.9.1 The Artist shall notify the RCRRA in writing when all services have been completed in substantial conformity with the requirements of this Agreement and that the Artwork is ready for approval and acceptance.
- 1.9.2 RCRRA staff shall promptly notify the Artist of its final acceptance of the Artwork within 10 days after the Artist submitted written notice pursuant to Section 1.9.1 above. The effective date of final acceptance shall be the date the RCRRA submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the RCRRA acknowledges completion of the Artwork in substantial conformity with the Final Design, and that the RCRRA confirms that all services as required of the Artist have been completed.
- 1.9.3 If the RCRRA disputes that all the services have been performed, the RCRRA shall notify the Artist in writing of those services the Artist has failed to perform within 10 days after the Artist submitted written notice pursuant to Section 1.9.1 above. The Artist shall promptly perform those services indicated by the RCRRA.
- 1.9.4 If the Artist disputes the RCRRA's determination that not all services have been performed, the Artist shall submit reasons in writing to the RCRRA within 30 days of the RCRRA's notification. The RCRRA shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the RCRRA.
- 1.9.5 Upon the resolution of any disputes that arise under this Section 1.9, RCRRA staff shall notify the Artist of its final acceptance of the Artwork.
- 1.9.6 After final acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by RCRRA staff and the Artist to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork. The RCRRA shall be solely responsible for coordinating public information materials and activities related to public presentations.

Article 2 Taxes

Any state or federal sales, use or excise taxes, or similar charges relating to the services and materials under this Agreement shall be paid by the Artist in a timely fashion and in accordance with all legal requirements. The RCRRA shall report payments made to the Artist annually to the Internal Revenue Department in a 1099 statement.

Article 3 Term of Agreement

3.1 Duration

This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to the provisions of this Agreement, shall extend until the completion of obligations by both parties. Provisions of this Agreement

that by their nature extend beyond the term of the Agreement shall survive the termination of this Agreement. Extension of time for performance hereunder may be granted upon the request of one Party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and shall replace the prior Project Schedule as describe in Section 1.5.2.

3.2 Force Majeure

The RCRRA shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

Article 4 Risk of Loss

The Artist shall bear the risk of loss or damage to the Artwork until the RCRRA's final acceptance of the Artwork under Section 1.9. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The RCRRA shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork, by written agreement of the RCRRA, is in the custody, control or supervision of the RCRRA or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

Article 5 Artist's Representations and Warranties

5.1 Warranties of Title

5.1.1 The Artist represents and warrants that:

- a. The Artwork is solely the result of the artistic effort of the Artist.
- b. Except as otherwise disclosed in writing to the RCRRA, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person.
- c. The Artwork (or duplicate thereof) has not been accepted for sale elsewhere.
- d. The Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement.
- e. The Artwork is free and clear of any liens from any source whatsoever.

- f. All Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party.
- g. The Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
- h. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.

5.1.2 These representations and warranties shall survive the termination or expiration of this Agreement.

5.2 Warranties of Quality and Condition

The Artist represents and warrants that:

- 5.2.1 All work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for two years after the date of final acceptance by the RCRRA under Section 1.9.
- 5.2.2 The Artwork and the materials used are not currently known to be harmful to public health and safety.
- 5.2.3 Reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.8.7.
- 5.2.4 If within two years after Final Acceptance the RCRRA observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the Artist shall, at the request of the RCRRA, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the RCRRA. The RCRRA shall give notice to the Artist of such breach with reasonable promptness.
- 5.2.5 If within two years after Final Acceptance the RCRRA observes a breach of warranty described in this Section 5.2 that is not curable by the Artist, the Artist is responsible for reimbursing the RCRRA for damages, expenses and loss incurred by the RCRRA as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the RCRRA accepted that it may occur, it shall not be deemed a breach for purposes of this Section 5.2 of this Agreement.

5.2.6 If after two years after Final Acceptance the RCRRA observes any breach of warranty described in this Section 5.2 that may be curable by the Artist, the RCRRA, at its discretion, has the option to either:

- a. Contact the Artist to make or supervise repairs or restorations at a reasonable fee; or
- b. Seek the services of a qualified restorative conservator and maintenance expert.

5.3 Acceptable Standard of Display

5.3.1 The Artist represents and warrants that:

- a. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
- b. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
- c. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
- d. To the extent the Artwork incorporates products covered by a manufacturer's warranty, the Artist shall provide copies of such warranties to the RCRRA.

5.3.2 The foregoing warranties are conditional, and shall be voided by the failure of the RCRRA to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the RCRRA fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

Article 6 Liability/Insurance

6.1 General

6.1.1 The Artist acknowledges that, except as otherwise provided herein, until final acceptance of the Artwork by the RCRRA under Section 1.9, any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.

6.1.2 Insurance requirements are set forth in **Exhibit 2**.

6.2 Indemnity

6.2.1 The Artist shall indemnify, defend and hold harmless the RCRRA and officials, employees and agents (each a "Covered Person") from and against all liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively "Losses") arising from, in connection with or caused by:

- a. Any personal injury or property damage caused, directly or indirectly, by any act or omission of the Artist; or
- b. Any infringement of patent, copyright, trademark, trade secret or other proprietary right caused by the Artist.

6.2.2 Notwithstanding the foregoing, Artist shall have no obligation under this Section with respect to any Losses that are caused solely by the active negligence or willful misconduct of the Covered Party and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by the Artist.

6.2.3 The Artist acknowledges and agrees that its obligation to defend in this Section:

- a. Is an immediate obligation, independent of its other obligations hereunder;
- b. Applies to any Losses which actually or potentially fall within the scope of this Section, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and
- c. Arises at and continues after the time the Losses are tendered to the Artist.

Article 7 Ownership and Intellectual Property Rights

7.1 Title

Title to the Artwork shall transfer to the RCRRA upon the RCRRA's written final acceptance and payment for the Artwork pursuant to Article 1 and **Exhibit 4**. The Artist shall provide the RCRRA with a Transfer of Title in substantially the form attached hereto and made a part of this Agreement as **Exhibit 6**.

7.2 Ownership of Documents

One set of presentation materials prepared and submitted under this Agreement shall be retained by the RCRRA for possible exhibition and to hold for permanent safekeeping.

7.3 Copyright Ownership

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright.

7.4 Reproduction Rights

- 7.4.1 In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate two or three-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the RCRRA. However, nothing shall prevent the Artist from creating future Artworks in the Artist's manner and style of artistic expression.
- 7.4.2 The Artist grants to the RCRRA and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.
- 7.4.3 All reproductions by the RCRRA shall contain a credit to the Artist in substantially the following form: [Artist's name, Artwork title, date of publication].
- 7.4.4 The Artist shall use the Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to the RCRRA in substantially the following form: "Artwork commissioned by the Ramsey County Regional Railroad Authority, St. Paul, MN."
- 7.4.5 The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- 7.4.6 If the RCRRA wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
- 7.4.7 Third Party Infringement. The RCRRA is not responsible for any third party infringement of the Artist's copyright and not responsible for protecting the intellectual property rights of the Artist.

Article 8 Artist's Rights

8.1 General

- 8.1.1 The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- 8.1.2 The RCRRA agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first consulting with the Artist.
- 8.1.3 If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist may have in law or equity under this contract. Upon written request, the RCRRA shall

remove the identification plaque and all attributive references to the Artist at its own expense within 30 days of receipt of the written request. No provision of this Agreement shall obligate the RCRRA to alter or remove any such attributive reference printed or published prior to the RCRRA's receipt of such written request. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

8.2 Alterations of Site or Removal of Artwork

8.2.1 The RCRRA shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork. The RCRRA shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. The RCRRA shall make a reasonable effort to maintain the integrity of the Artwork.

8.2.2 The RCRRA agrees not to arbitrarily remove or relocate the Artwork without first making a good faith effort to contact the Artist. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation, the Artist shall provide the RCRRA with written handling instructions. In the event that the Artist is deceased or unable to otherwise give the Artist's consent, the current owner of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist at the time of commission and fabrication.

8.2.3 This clause is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

Article 9 Permanent Record

The RCRRA shall maintain on permanent file a record of this agreement and of the location and disposition of the Artwork.

Article 10 Artist as an Independent Contractor

The Artist agrees to perform all Artwork under this Agreement as an independent contractor and not as an agent or employee of the RCRRA. The Artist acknowledges and agrees that the Artist shall not hold himself or herself out as an authorized agent of the RCRRA with the power to bind in any manner. The Artist shall provide the RCRRA with the Artist's Tax Identification Number and any proof of such number as requested by the RCRRA.

Article 11 Nondiscrimination

The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

Article 12 Assignment of Artwork

The Artwork and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the RCRRA. The RCRRA shall have the right to assign or transfer any and all of the RCRRA's rights and obligations under this Agreement if ownership of the Site is transferred.

Article 13 Suspension/Termination

- 13.1 Either Party may suspend this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operations; superior governmental regulation or control, public emergency or strike or other labor disturbance. Notice of suspension of this Agreement shall be given to the other Party in writing not less than 15 days prior to the effective date of the suspension. If the suspension continues for more than 90 days, either party may terminate this Agreement without cause. If this Agreement is terminated, the RCRRA shall pay the Artist for services performed and costs incurred that cannot be eliminated prior to the date of termination, consistent with the schedule of payments set forth in **Exhibit 4** of this Agreement.
- 13.2 The RCRRA may terminate this Agreement without cause upon 15 days written notice to the Artist. The RCRRA shall pay the Artist for services performed and costs incurred that cannot be eliminated prior to the date of termination, consistent with the schedule of payments set forth in **Exhibit 4** of this Agreement.
- 13.3 If the Artist willfully or negligently fails to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the RCRRA shall thereupon have the right to terminate this Agreement by giving written notice to the Artist of its intent to terminate, specifying the grounds for termination. The Artist shall have 30 days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate and the Artist shall return to the RCRRA all payments received from the RCRRA in excess of expenses already incurred. The Artist shall provide an accounting of such expenses along with the reimbursement payment. All finished and unfinished drawings, sketches, photographs and other Artwork products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. The RCRRA shall retain the right to have the Artwork completed, fabricated, executed, delivered and installed. However, the Artist shall retain the copyright in the Artwork and all rights under Article 7 and Article 8.
- 13.4 Upon notice of termination, the Artist and his or her subcontractors shall cease all activities under this Agreement.

Article 14 Death or Incapacity

If the Artist becomes unable to complete this Agreement due to death or incapacitation, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the

Artist for the purpose of Article 13. However, nothing in this Article shall obligate the RCRRA to accept the Artwork. In the event of death of the Artist, this Agreement shall terminate as of the date of death; in the event of incapacity, the Agreement shall terminate upon expiration of 90 days of incapacity. The RCRRA shall pay the Artist, the Artist's heirs, or the Artist's estate, as appropriate, for all services and work delivered in a satisfactory manner and in accordance with the provisions of this Agreement prior to the Artist's death or first day of incapacity.

Article 15 Compliance with Applicable Law

The Artist agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the Artist's performance of the provisions of this Agreement, including the provisions of the specific **Federal Requirements**, attached hereto and made a part of this Agreement as **Exhibit 8**. It shall be the obligation of the Artist to apply for, pay for and obtain all permits and/or licenses required by any governmental agency for the provision of those services contemplated herein.

Article 16 Notices and Documents

Notices required under this Agreement shall be delivered personally or through the [registered or certified mail, return receipt requested] mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party pursuant to the provisions of this Article:

For the RCRRA:	Josh Collins or successor Ramsey County Regional Railroad Authority Suite 6560 RCGC-West 50 W. Kellogg Blvd St. Paul, MN 55102
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For the Artist:	Amy Baur and Brian Boldon In Plain Sight, LLC 681 17th Ave NE, Studio 121 Minneapolis, MN 55413
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Notice shall be deemed effective on the date personally delivered or, if mailed, on the date the return receipt is signed.

Article 17 Waiver

The Parties agree that a waiver of any breach of violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term of condition.

Article 18 Audit

18.1 Until the expiration of six (6) years after the furnishing of services pursuant to this Agreement, the Artist, upon written request, shall make available to the RCRRA, the State Auditor or the RCRRA's ultimate funding sources, a copy of this Agreement and the books, documents, records and accounting procedures and practices of the Artist relating to this Agreement.

- 18.2 The Artist shall maintain all books, documents, records and accounting procedures and practices of the Artist relating to this Agreement for a period of six years from the date of transfer of title following acceptance and final payment is made. Those records subject to an audit shall be maintained until the audit is resolved, even if this period extends beyond the six years stated. All records shall be made available for inspection or audit, at any time during regular business hours, upon written request by the RCRRA's General Counsel or designated representative, the State Auditor or the County's ultimate funding sources.

Article 19 Data Practices

All data collected, created, received, maintained or disseminated for any purpose in the course of the Artist's performance of this Agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, or any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

Article 20 Conflict of Interest

The Artist and the RCRRA shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

Article 21 Arbitration

- 21.1 If, during the creation of the Artwork, its installation and subsequent existence, either Party breaches this Agreement, each Party agrees to submit to arbitration upon the request of the other, provided that the breach is not cured within a reasonable time under Section 13.3 of this Agreement.
- 21.2 If an ambiguity arises regarding this Agreement upon which the parties cannot agree or a dispute arises as to the completion of a provision, the Parties shall submit the matter to arbitration.
- 21.3 Each Party agrees to be responsible for its own attorney's fees and costs.

Article 22 Amendments

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto in the form of an amendment to this Agreement.

Article 23 Conflicts of Law

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel or mediation procedure to be in conflict with the laws, rules, and/or regulations of the United States or the State of Minnesota, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

Article 24 Interpretation of Agreement; Venue

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate state or federal district court in Ramsey County, Minnesota.

Article 25 Prompt Payment

Payment of interest on late payments and disputes regarding payments shall be governed by the provisions of Minn. Stat. Section 471.425.

Article 26 Contractor Certification Regarding Debarment, Suspension, and Responsibility (If applicable)

Federal Regulation 45 CFR 92.35 prohibits the RCRRRA from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government.

By signing this Agreement, the Artist certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state or local governmental department or agency; and
2. Have not within a three-year period preceding this Agreement:
 - a. been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract;
 - b. violated any federal or state antitrust statutes; or
 - c. committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
3. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for:
 - a. commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction;
 - b. violating any federal or state antitrust statutes; or
 - c. committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
4. Have not had one or more public transactions terminated with in the preceding three years for cause or default; and
5. Shall not knowingly enter into any transaction with a subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and that they will require any

- subcontractor that receives more than \$100,000 to make a similar certification as set forth herein; and
6. Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this Agreement are in violation of any of the certifications set forth above; and
 7. Shall immediately give written notice to the RCRRA should the Artist come under investigation for allegations of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local government) transaction; violating any federal or state antitrust statutes; or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

Article 27 Non-Conforming Services

The acceptance by the RCRRA of any non-conforming services under the terms of this Agreement or the foregoing by the RCRRA of any of the rights or remedies arising under the terms of this agreement shall not constitute a waiver of the RCRRA's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the RCRRA provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

Article 28 Unavailability of Funding

The purchase of goods or services from the Artist under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds from the RCRRA Board. The RCRRA may immediately terminate this Agreement if the funding for the Artwork is no longer available or is not appropriated by the RCRRA Board. Upon receipt of the RCRRA's notice of termination of the Agreement the Artist shall take all actions necessary to discontinue further commitments of funds to the Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the RCRRA.

Article 29 Prevailing Wage

The Artist and all subcontractors shall conform to the labor laws of the State of Minnesota, and all other laws, ordinances, and legal requirements affecting the work in Ramsey County and Minnesota. The minimum wage rate per hour to be paid for each classification of work shall be the union wage rate in the locality of the project for those classifications over which the unions have jurisdiction and the local prevailing rate for those classifications of work in the localities over which the unions do not have jurisdiction.

Article 30 Respectful Workplace and Violence Prevention

The Artist shall make all reasonable efforts to ensure that the Artist's employees, officials and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined in the Ramsey County Respectful Workplace and Violence Prevention Policy, means words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority where the impact is to cause pain, fear or injury.

Article 31 Subcontractor Payment

The Artist shall pay any subcontractor within ten days of the Artist's receipt of payment from the RCRRA for undisputed services provided by the subcontractor. The Artist shall pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Artist shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Artist must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

Article 32 Lobbying

For all contracts involving over \$100,000 in federal funds, the Artist must sign the Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements, attached hereto and made a part of this Agreement as **Exhibit 8**.

Article 33 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements, and conditions between the parties. No verbal agreements or conversations between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligations.

WHEREFORE, this Agreement is duly executed on the last date written below.

**RAMSEY COUNTY REGIONAL
RAIL AUTHORITY**

ARTISTS NAME

Jim McDonough, Chair
Ramsey County Regional Railroad Authority

Print Name: _____

Bonnie Jackelen, Chief Clerk
Board of County Commissioners

Print Name: _____

Date: _____

Date: _____

Approval recommended:

Timothy Mayasich, Director
Ramsey County Regional Rail Authority

Approved as to form and insurance:

Assistant County Attorney

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Exhibit 1

Concept/Schematic Design

(To be developed and incorporated into the contract as provided in Section 1.3.1 of the forgoing contract to which this exhibit is attached.)

Exhibit 2
Insurance Requirements

The Artist shall obtain and maintain for the duration of the contract, an insurance policy or policies for the protection of both the **Artist** and the **RCRRA**. The **RCRRA** requires certification of insurance coverage from all Artists/subArtists, Sub-contractors and suppliers before commencing work. All subcontractors used for the installation shall provide certificates of insurance evidencing General Liability, Workers Compensation, and automobile coverage prior to installation with the RCRRA and Ramsey County as property manager added as an additional insured with respect to installation of the artwork.

Please carefully review the requirements outlined.

IT IS HIGHLY RECOMMENDED THAT YOU CONFER WITH YOUR INSURANCE BROKER/AGENT OR OTHER INSURANCE COMPANY REPRESENTATIVE, BEFORE SUBMITTING YOUR BID, TO DETERMINE THE AVAILABILITY AND APPLICABLE COST, IF ANY, OF CERTIFICATES, ENDORSEMENTS, COVERAGES, AND LIMITS REQUIRED.

1. MINIMUM SCOPE AND EXTENT OF COVERAGE

A. GENERAL LIABILITY

Commercial General Liability, ISO coverage form number **CG 00 01** ("occurrence" basis).

\$ 1,000,000 limit per occurrence for bodily injury, personal injury, and property damage; **\$1,000,000** annual aggregate

The Ramsey County Regional Rail Authority, its commissioners, officers, officials, agents, and employees, shall be endorsed as **additional insureds** by ISO Form **CG 20 26 -- ADDITIONAL INSURED -- DESIGNATED PERSON OR ORGANIZATION** or equivalent. As additional insureds, they shall be covered as to work performed by or on behalf of the **Artist** or as to liability which arises out of **Artist's** activities or resulting from the performance of services or the delivery of goods called for by the **Contract**.

B. AUTOMOBILE LIABILITY

Business Auto or Personal Automobile Liability insurance

\$1,000,000 limit per occurrence covering bodily injury and property damage.

C. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

Statutory Workers' Compensation insurance for all states where Proposer has work locations and standard Employer's Liability insurance, *if required by state law*.

D. PROFESSIONAL LIABILITY – REGISTERED STRUCTURAL ENGINEER

D.1 Per Claim \$1,000,000
Aggregate Limit: \$2,000,000

D.2 Certificate of Insurance must indicate if the policy is issued on a claims-made or occurrence basis. If coverage is carried on a claims-made basis, then: 1) the retroactive date shall be noted on the Certificate and shall be prior to or the day of the inception of this Agreement; and 2) evidence of coverage shall be provided for three years beyond expiration of this Agreement.

E. PROPERTY

The Artist shall maintain property coverage on an all-risk basis and shall add the RCRRA as a loss payee as the RCRRA's interest in the Artwork may appear. This interest shall be based on the payments made according to **Exhibit 4** for the commissioned Artwork as defined in the contract between the Artist and the RCRRA. The Artist shall keep this policy in effect until the RCRRA's final acceptance of the Artwork under Article 4 Risk of Loss.

2. INSURER QUALIFICATIONS/ACCEPTABILITY

The insurance required hereunder shall be issued by an **A.M. Best "A-" rated, Class VI** insurance company licensed to conduct insurance business in the state of Minnesota.

3. VERIFICATION OF INSURANCE COVERAGE

Prior to commencing work, the **Artist** shall furnish the **RCRRA** with CERTIFICATE(S) OF INSURANCE (including a Professional Liability insurance certificate from Registered Structural Engineer) and with any applicable original endorsements evidencing the required insurance coverage. A person authorized by that insurer to bind coverage on its behalf must sign the insurance certificates and endorsements. All certificates and endorsements received by the **RCRRA** are subject to review and approval by the Ramsey County Attorney's Office. The **RCRRA** reserves the rights to require complete, certified copies of all required policies at any time. If the scope of this contract will exceed one (1) year—or, if any of **Artist's** applicable insurance coverage expire prior to completion of the work or services required under this contract—the **Artist** will provide a renewal or replacement certificate before continuing work or services hereunder.

4. NON-WAIVER

Nothing in this Agreement shall constitute a waiver by the **RCRRA** of any statutory or common law immunities, limits, or exceptions on liability.

Exhibit 3
Final Design

(To be developed and incorporated into the contract as provided in Section 1.3.4 of the forgoing contract to which this exhibit is attached)

[This exhibit will identify the location of the Artwork and will provide a detailed narrative describing the proposed artwork with explicit detail regarding the overall form or design, scale, dimensions, color and surface treatment of the Artwork.]

Exhibit 4
Artwork Budget

(To be developed and incorporated into the contract as provided in Section 1.4.1 of the forgoing contract to which this exhibit is attached.)

Fee and Payment Schedule

The RCRRA shall pay the Artist a fixed fee of one hundred and fifty thousand dollars (\$150,000), which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

- a. \$15,000 upon the execution of this Agreement, recognizing that the Artist will invest time and expense in preparing the Design as set forth in Section 1.3 of the Agreement;
- b. \$45,000 upon the RCRRA's notification to the Artist of its approval of the Final Design as set forth under Section 1.3 and issuance of a Notice to Proceed with Fabrication and Installation;
- c. \$30,000 within 30 days after the Artist notifies the RCRRA that the Artwork fabrication is 50% complete and provides photographic or other reasonable documentation as requested by the RCRRA;
- d. \$30,000 within 30 days after the Artist notifies the RCRRA that the Artwork is fabricated and ready for delivery and installation at the Site as set forth under Section 1.5(f);
- e. \$30,000 within 30 days after final acceptance of the Artwork by the RCRRA as set forth under Section 1.8(e).

Exhibit 5

Project Schedule

(To be developed and incorporated into the contract as provided in Section 1.5.1 of the forgoing contract to which this exhibit is attached.)

Exhibit 6
Transfer of Title

STATE OF MINNESOTA
COUNTY OF RAMSEY

TRANSFER OF TITLE

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned Artist located at the address noted below does hereby sell, transfer and convey to the RCRRA, located in St. Paul, Minn., its assigns and successors, all right, title and interest in the ownership of the Artwork commissioned by the Ramsey County Regional Railroad Authority and as described in the agreement between the parties.

Title: _____.

Location: _____.

IN WITNESS WHEREOF, the Artist has executed this written transfer of title on this
____ day of _____, 20____.

ARTIST

ADDRESS

WITNESS

Sworn to and subscribed
before me this ____ day
of _____, 20____.

NOTARY PUBLIC

My Commission Expires:
(NOTARY SEAL)

Exhibit 7

Federal DBE Requirements

1. **Artwork Disadvantaged Business Enterprise Requirements** (FTA Funding with DBE Goal – APPLICABLE TO SUBCONTRACTED WORK ONLY)

- A. General Requirement.** This contract is funded in part with a grant from the Federal Transit Administration (FTA), whose funds are administered locally by the Metropolitan Council ("Council"), and provided to the RCRRA through a sub-recipient grant agreement. For this project, the Disadvantaged Business Enterprise (DBE) requirements of the Transportation Equity Act for the 21st Century (TEA-21) and 49 CFR part 26 will apply only to subcontracted portions of the Artwork project. Under 49 CFR section 26.51, the Council will establish a goal for DBE participation for work that will be subcontracted by the Artist. The DBE goal will be based on the proposed scope of subcontracted work for the Artwork.

Selected artists who subcontract work will be required to make good faith efforts to meet the established DBE goal. Good faith efforts may be demonstrated by either:

- 1) documenting the participation of specific DBEs to meet the goal; or
- 2) documenting adequate good faith efforts to meet the goal, even if the efforts were not successful in obtaining sufficient DBE participation to meet the goal.

B. Documenting Good Faith Efforts

Participation of DBE. If the Artist will be using a DBE the Artist must list all firms, if any, whose participation is committed to be credited toward meeting the DBE goal. All DBE firms which are listed must, as of the date the information is provided by the Artist to the RCRRA, be:

- 1) certified by the Minnesota Unified Certification Program (MnUCP) as a DBE; or
- 2) certified by any other United States Department of Transportation (USDOT) recipient and then certified by the MnUCP; or
- 3) included on the MnUCP **Disadvantaged Business Enterprise (DBE) Directory**. All of the firms on this listing shall be considered "currently certified" for the purposes of proposal submittal. This listing is available from the Council and can also be found at the following website:
<http://www.dot.state.mn.us/civilrights/ucpdirectory.html>

Adequate Good Faith Efforts. If the Artist will not be using a DBE, the Artist must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if it was not fully successful.

The Council's DBE Liaison Officer will determine whether the Artist made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 CFR section 26.53, and Appendix A thereto.

Compliance will be determined based on a review of documentation of the following types of activities:

- 1) Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the subcontracted work related to the Artwork. The Artist must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Artist must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- 2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Artist might otherwise prefer to perform these work items with its own forces. The Artist is not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- 3) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal offices of minority/women business assistance; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation of DBEs.

Exhibit 8

Specific Federal Requirements

(continued on following eight pages)

40

SPECIFIC FEDERAL REQUIREMENTS

FTA-1 Fly America Requirements. The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

FTA-2 Energy Conservation. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.

FTA-3 Access to Records and Reports. The Contractor agrees to provide the Council, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor also agrees, pursuant to 49 C.F.R. § 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight (PMO) contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309, or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce such documents by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. In addition to any other requirements for maintenance of project records and documents in this contract, the Contractor agrees to maintain such records and documents until the Council, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all litigation, appeals, claims or exceptions arising from the performance of this contract.

FTA-4 Federal Changes. The Contractor shall at all times comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the Master Agreement between the Council and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

FTA-5 Recovered Materials. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 C.F.R. part 247.

FTA-6 No Obligation by the Federal Government. The Council and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of this contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Council, the Contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from this contract. The Contractor agrees to include the preceding clause in each subcontract under this contract and that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FTA-7 Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this contract. Upon execution of this contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, 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 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001, 49 U.S.C. § 5307(k)(1), 49 U.S.C. § 5323(l) or other applicable federal law on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above language in each subcontract under this contract and that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FTA-8 Civil Rights. The following requirements apply to this contract:

- 1. Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d *et seq.* and USDOT regulations "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of

Title VI of the Civil Rights Act," 49 C.F.R. part 21, 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 Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity. The following equal employment opportunity requirements apply to this contract:

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 Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract 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 this contract. The Contractor 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 Contractor 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 Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor 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 Contractor 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 Contractor agrees to comply with any implementing requirements FTA may issue.

3. Inclusion in Subcontracts. The Contractor agrees to include the requirements of this Section FTA-8 in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

FTA-9 Disadvantaged Business Enterprise ("DBE")

1. Nondiscrimination. Pursuant to 49 C.F.R. § 26.13, the Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Council deems appropriate. The Contractor shall include this requirement in all subcontracts pursuant to this contract.

2. Prompt Payment. The Contractor agrees to pay subcontractors within 10 calendar days of the Contractor's receipt of payment from the Council for undisputed services provided by the subcontractor. The Contractor agrees to pay subcontractors all undisputed retainage payments within 10 calendar days of the Contractor's receipt of payment of retainage from the Council. The Contractor shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the Council. The Contractor agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The Contractor will not be reimbursed for work performed by subcontractors unless and until the Contractor ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section may result in the Council finding the Contractor in noncompliance with the DBE provisions of this contract.

FTA-10 Incorporation of FTA Terms. Specific provisions in this contract include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in 49 C.F.R. § 18.36 and FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Council requests which would cause the Council to be in violation of the FTA terms and conditions.

FTA-10a National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit

Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.

FTA-11 Clean Water. The Contractor 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 Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FTA-12 Certification of Restrictions on Lobbying; Disclosure. The Contractor certifies that no federal appropriated funds have been paid or will be paid by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. The certification of this compliance ("Lobbying Restriction Certification") submitted by the Contractor in connection with this project is incorporated into, and made a part of, this agreement.

The Contractor further certifies that, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit to the Council, Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor certifies that it will require the language of this certification be included in the award documents for any subcontracts equal to or in excess of \$100,000.00 under this agreement, and that all subcontractors shall certify and disclose accordingly to the Contractor.

The certifications referred to in this section (including the "Lobbying Restriction Certification" submitted by the Contractor in connection with this project and incorporated in, and made a part of, this agreement) are material representations of fact upon which the Council relies when this contract is made.

FTA-13 Clean Air. The Contractor 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 Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FTA-14 Suspension and Debarment. This contract is a covered transaction for the purposes of 2 C.F.R. part 1200. By executing this contract, the Contractor certifies that none of the Contractor, its principals, as defined at 2 C.F.R. § 180.995, or affiliates, as defined at 2 C.F.R. § 180.905, are disqualified or excluded as defined at 2 C.F.R. §§ 180.935 and 180.940. The certification in this clause is a material representation of fact relied upon by the Council. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to Council, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R. part 180, subpart C throughout the term of this contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

FTA-15 [Reserved].

FTA-16 [Reserved].

FTA-17 Buy America. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

FTA-18 Cargo Preference. The Contractor agrees: (a) to use privately-owned United States-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill of lading in English for each shipment of cargo described in the preceding paragraph (a) to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Council (through the Contractor in the case of a lower-tier participating subcontractors bill of lading); and (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

FTA-19 [Reserved].

FTA-20 Contract Work Hours and Safety Standards Act.

(1) **Overtime Requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible for a violation shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for Unpaid Wages and Liquidated Damages.** The Council shall, upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(5) **Safety Standards.**

(i) **General Requirement.** The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3704, and applicable Department of Labor regulations, "Safety and Health Regulations for Construction" 29 C.F.R. part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

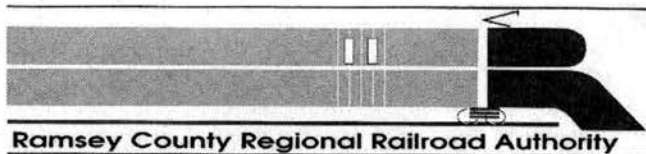
(ii) **Subcontracts.** The Contractor also agrees to include the requirements of this paragraph (5) in each subcontract. The term "subcontract" under this paragraph (5) is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this paragraph (5) if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this paragraph (5) do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

FTA-21 [Reserved]

FTA-22 Pre-Award and Post Delivery Audit Requirements. The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663 and to submit the following certifications:

1. Buy America Requirements. The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

2. Solicitation Specification Requirements. The Contractor shall submit evidence that it will be capable of meeting the bid specifications.



2

REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date: 8/7/2012

Regional Railroad Authority Meeting Date: _____

SUBJECT: Contract with Ray King Studios Ltd to design, fabricate and install public art at Union Depot

EXECUTIVE SUMMARY

The Federal Transit Administration (FTA) strongly recommends that its funded major construction projects include a public art program within the project capital costs. FTA guidelines state that the public art budget should at a minimum be one half of one percent of construction costs, but should not exceed five percent of construction costs. The proposed budget for public art at the Union Depot is \$1.25 million, which is slightly less than one percent of construction costs (0.84 percent).

Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, approved by the Ramsey County Regional Railroad Authority ("RCRRA") in December 2011, will provide \$1 million towards public art at the Union Depot. RCRRA funds in the amount of \$250,000 will provide the balance from the 2011 Union Depot project budget.

On February 2, 2012, RCRRA approved the release of a Call for Artists (Request for Proposals) seeking artists to participate in the Union Depot Public Art Program. FTA provides guidelines for the process by which artists should be selected. RCRRA followed the suggested FTA process, creating the Union Depot Art Selection and Design Review Panel, composed of artists, arts professionals, historians, project partners and community representatives. The panel reviewed more than 260 applications from 156 artists using best practices criteria, selected finalists for interviews, and recommended artists (or artist teams) for selection and contracting. The contracts arising from this Call to Artists represent \$1,050,000 of the budgeted \$1.25 million. Remaining funds not used for related costs will be part of a supplemental artist solicitation anticipated for next spring.

(The Executive Summary is continued on the following page)

ACTION REQUESTED

- 1) Approve a contract with Ray King Studios Ltd., 200 835 N. 3rd Street, Philadelphia, PA 19123, for commission of public art at the Union Depot for the period of 8/7/2012 through 12/31/2013, in the amount of \$200,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

(Executive Summary Continued)

Ray King is an experienced professional artist from Philadelphia, Pa., with more than three decades of experience in public art. The Union Depot Art Selection and Design Review Panel, following a fair and deliberative process, by consensus recommends his selection for creating a work of suspended sculpture in the Great Hall Atrium of Union Depot. The budget for this work is fixed at \$200,000, as stated in the Request for Proposals.

SUBJECT: Contract with Ray King Studios Ltd. to design, fabricate and install public art at Union Depot

ATTACHMENTS:

1. Competitive Solicitation Summary
2. Draft contract with Ray King Studios Ltd.

PREVIOUS ACTION:

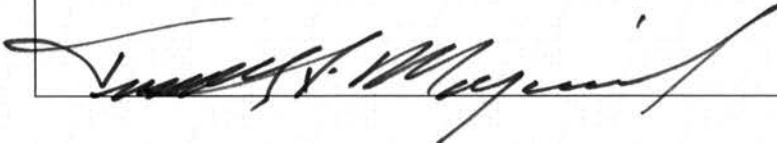
RCRRA previously approved Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, which will provide 80 percent of the funding towards public art at the Union Depot.

On February 7, 2012, Resolution R12-13 authorized the issuance of a Call to Artists (Request for Proposals) for Public Art Commissions at the Union Depot in accordance with Ramsey County policies and procedures on Requests for Proposals, with direction to staff to return to the Ramsey County Regional Railroad Authority with a selection of artists for contracting authorization.

COUNTY MANAGER'S COMMENTS:

The process followed by RCRRA staff, involving the formation of the Union Depot Art Selection and Design Review Panel, was recommended by FTA under best practices for commissioning public art. The process was consistent with the County's commitment to an open, fair and competitive solicitation process and included input from project stakeholders and the community.

SUBJECT: Contract with Ray King Studios Ltd. to design, fabricate and install public art at Union Depot

Regional Railroad Authority – Authorized Signature	Date
	8/2/12

Budgeting & Accounting – Authorized Signature	Date
Abby Gelman for Sue Kuss	8/1/12

County Attorney – Authorized Signature	Date
Paul B. Jester	7/30/12

Property Management – Authorized Signature	Date

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

SUBJECT: Contract with Ray King Studios Ltd. to design, fabricate and install public art at Union Depot

Draft Resolution

1 WHEREAS, The Ramsey County Regional Railroad Authority, along with the Federal
2 Transit Administration, recognizes the importance of public art to the overall success and viability
3 of the The Union Depot Multi-Modal Transportation and Transit Hub ("Depot"); and
4

5 WHEREAS, The Federal Transit Administration's recognition of importance is coupled with
6 a commitment of \$1 million in funding towards the public art program; and
7

8 WHEREAS, Public art provides a unique opportunity to recognize and celebrate the rich
9 histories of the Union Depot, St. Paul and the Lowertown neighborhood; and
10

11 WHEREAS, Public art at the Union Depot will complement the power of the existing
12 architectural elements, supporting the Union Depot as a destination community space, while
13 serving to enhance the enjoyment of those passing through the public spaces; and
14

15 WHEREAS, On November 22, 2011, by resolution R12-13 Ramsey County Regional
16 Railroad Authority authorizes the issuance of a Call to Artists (Request for Proposals) for Public Art
17 Commissions at the Union Depot in accordance with Ramsey County policies and procedures on
18 Requests for Proposals, with direction to staff to return to the Ramsey County Regional Railroad
19 Authority with a selection of artists for contracting authorization; Now, Therefore, Be It
20

21 RESOLVED, The Ramsey County Regional Railroad Authority approves a contract with Ray
22 King Studios Ltd., 200 835 N. 3rd Street, Philadelphia, PA 19123, for commission of public art at
23 the Union Depot for the period of 8/7/2012 through 12/31/2013, in the amount of \$200,000; And Be
24 It Further
25

26 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to
27 execute the contract; And Be It Further
28

29 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Ramsey
30 County Manager to make all necessary budget adjustments including increasing estimated
31 revenues and appropriations.

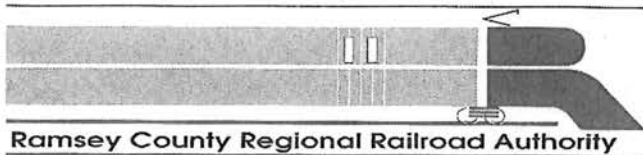
Attachment # 1

COMPETITIVE SOLICITATION SUMMARY

TITLE Call to Artists for Public Art Commissions at Union Depot (RFP) Commission #2: Great Hall Atrium	Programs: Union Depot Multimodal Transportation Hub Goal: Engage talented public artists to create works for Union Depot that will enhance the enjoyment of those passing through the public spaces, while complementing the power of the existing architectural elements.
DATE SENT	April 9, 2012
DATE DUE	May 23, 2012
NUMBER SENT	126
RESPONSES Star (*) those Agencies invited for interviews	1. Andrews Lefevre Studios 2. Angers, Mary 3. Averbuch, Ilan 4. * Ball, Benjamin & Nogues, Gaston; Ball-Nogues Studio * 5. Balma, Mark 6. Balmond Studio 7. Bollinger & Bollinger Atelier 8. Brager, Brent 9. Buckner, Robert R 10. Campbell, Craig 11. Carney, John 12. Carpenter, Ed 13. Cohen, Michael 14. Colab Studio LLC 15. Cridler/Bennie Studio 16. Curtis, Michael 17. Dahlguist Art Studio 18. David, Craig, Davidii Art Co 19. Delgado, Robert 20. Diaz, Donald Martin 21. Dobbe, Dr Kevin 22. Douwe Studios 23. Fogarty, Terrence 24. Form From Form 25. Frank Stone Studio 26. Garten, Cliff 27. Geyen, Peter 28. * Ginzal, Andrew & Jones, Kristin * 29. Gomez, Gregory 30. Haddad/Drugan 31. Healy-East Los Streetscapers 32. Hirschfield, Jim 33. Hoelscher, Giesla 34. Huether, Gordon 35. Hussey, Aaron P 36. Janney, Christopher 37. Jones, Katherine 38. Jones-Aiken 39. Kelliher, Dallas 40. * King, Ray * 41. Kobyashi, Kipp 42. Labuszewski, Judy 43. Lawler, Kimberly L 44. Lipski, Donald

	45. Litman, Adrian Susnea 46. Luedtke, Allison/Waterjet/Cheronis 47. Lueza, Cecilia 48. Mahady, Michaela 49. Mather, Dan 50. McDaniels, Gregory L 51. Morrel Studios Inc 52. Mudge, Anne 53. Najarak, Jason 54. Natzel, Wil 55. Nicholson, Joe C 56. Palencia, Joaquin Gasgonia 57. Park, Soo Sunny 58. Prentice, Tim 59. Sanchez, Jhennifer 60. Sato, Norie 61. Sheng, Shan Shan 62. Smith III, Phillip K 63. Stephan, Aaron 64. Thompson, Brett 65. Thompson, Rod 66. Tylevich, Alexander 67. Wagner, Catherine LLC 68. Warner, Susan E 69. Willey, Foster
REVIEW COMMITTEE Include title and agencies	Mary Altman , public arts administrator, City of Minneapolis Katherine Stillings Barta and Kevin Barta , residents of the Union Depot condominiums and cofounders of LowertownLanding.org Jeff Heegaard , cofounder, COCO Co-working and Collaborative Space Jill Hentges , community outreach coordinator, Metro Transit Rich Laffin , chair, Saint Paul Heritage Preservation Commission; architect with offices in Lowertown Elsa Vega Perez , formerly of Otto Bremer Foundation; co-founder and director emeritus for El Arco Iris Center for the Performing Arts Nick Riley , intergovernmental relations coordinator, Ramsey County; artist Marcus Young , Saint Paul's City Artist in Residence, a program of Public Art Saint Paul
VENDORS RECOMMENDED	Ray King of Ray King Studio Ltd., Philadelphia, Penn.
OTHER INFORMATION	Review Committee Rating from Criteria in RFP - The Union Depot Art Selection and Design Review Panel will review and evaluate applications based on the following criteria: a. Aesthetic quality of previously completed art projects and commissions. b. Applicability and suitability of past work to specific Union Depot commission opportunities, including work that was installed in buildings within a historic site or district. c. Appropriateness of previously completed artworks to their sites, including safety and scale.

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| | <ul style="list-style-type: none">d. Durability and suitability of materials used related to resistance to vandalism and minimization of maintenance requirements.e. Experience working with the public and neighborhood communities. |
|--|--|



2

REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date: 8/7/2012

Regional Railroad Authority Meeting Date: _____

SUBJECT: Contract with Ray King Studios Ltd to design, fabricate and install public art at Union Depot

EXECUTIVE SUMMARY

The Federal Transit Administration (FTA) strongly recommends that its funded major construction projects include a public art program within the project capital costs. FTA guidelines state that the public art budget should at a minimum be one half of one percent of construction costs, but should not exceed five percent of construction costs. The proposed budget for public art at the Union Depot is \$1.25 million, which is slightly less than one percent of construction costs (0.84 percent). Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, approved by the Ramsey County Regional Railroad Authority ("RCRRA") in December 2011, will provide \$1 million towards public art at the Union Depot. RCRRA funds in the amount of \$250,000 will provide the balance from the 2011 Union Depot project budget.

On February 2, 2012, RCRRA approved the release of a Call for Artists (Request for Proposals) seeking artists to participate in the Union Depot Public Art Program. FTA provides guidelines for the process by which artists should be selected. RCRRA followed the suggested FTA process, creating the Union Depot Art Selection and Design Review Panel, composed of artists, arts professionals, historians, project partners and community representatives. The panel reviewed more than 260 applications from 156 artists using best practices criteria, selected finalists for interviews, and recommended artists (or artist teams) for selection and contracting. The contracts arising from this Call to Artists represent \$1,050,000 of the budgeted \$1.25 million. Remaining funds not used for related costs will be part of a supplemental artist solicitation anticipated for next spring.

(The Executive Summary is continued on the following page)

ACTION REQUESTED

- 1) Approve a contract with Ray King Studios Ltd., 200 835 N. 3rd Street, Philadelphia, PA 19123, for commission of public art at the Union Depot for the period of 8/7/2012 through 12/31/2013, in the amount of \$200,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

(Executive Summary Continued)

Ray King is an experienced professional artist from Philadelphia, Pa., with more than three decades of experience in public art. The Union Depot Art Selection and Design Review Panel, following a fair and deliberative process, by consensus recommends his selection for creating a work of suspended sculpture in the Great Hall Atrium of Union Depot. The budget for this work is fixed at \$200,000, as stated in the Request for Proposals.

SUBJECT: Contract with Ray King Studios Ltd. to design, fabricate and install public art at Union Depot

ATTACHMENTS:

1. Competitive Solicitation Summary
2. Draft contract with Ray King Studios Ltd.

PREVIOUS ACTION:

RCRRA previously approved Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, which will provide 80 percent of the funding towards public art at the Union Depot.

On February 7, 2012, Resolution R12-13 authorized the issuance of a Call to Artists (Request for Proposals) for Public Art Commissions at the Union Depot in accordance with Ramsey County policies and procedures on Requests for Proposals, with direction to staff to return to the Ramsey County Regional Railroad Authority with a selection of artists for contracting authorization.

COUNTY MANAGER'S COMMENTS:

The process followed by RCRRA staff, involving the formation of the Union Depot Art Selection and Design Review Panel, was recommended by FTA under best practices for commissioning public art. The process was consistent with the County's commitment to an open, fair and competitive solicitation process and included input from project stakeholders and the community.

SUBJECT: Contract with Ray King Studios Ltd. to design, fabricate and install public art at Union Depot

Regional Railroad Authority – Authorized Signature	Date
	8/2/12

Budgeting & Accounting – Authorized Signature	Date
ally Gelman for Sue Kuss	8/1/12

County Attorney – Authorized Signature	Date
Paul B. Jester	7/30/12

Property Management – Authorized Signature	Date

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

SUBJECT: Contract with Ray King Studios Ltd. to design, fabricate and install public art at Union Depot

Draft Resolution

1 WHEREAS, The Ramsey County Regional Railroad Authority, along with the Federal
2 Transit Administration, recognizes the importance of public art to the overall success and viability
3 of the The Union Depot Multi-Modal Transportation and Transit Hub ("Depot"); and
4

5 WHEREAS, The Federal Transit Administration's recognition of importance is coupled with
6 a commitment of \$1 million in funding towards the public art program; and
7

8 WHEREAS, Public art provides a unique opportunity to recognize and celebrate the rich
9 histories of the Union Depot, St. Paul and the Lowertown neighborhood; and
10

11 WHEREAS, Public art at the Union Depot will complement the power of the existing
12 architectural elements, supporting the Union Depot as a destination community space, while
13 serving to enhance the enjoyment of those passing through the public spaces; and
14

15 WHEREAS, On November 22, 2011, by resolution R12-13 Ramsey County Regional
16 Railroad Authority authorizes the issuance of a Call to Artists (Request for Proposals) for Public Art
17 Commissions at the Union Depot in accordance with Ramsey County policies and procedures on
18 Requests for Proposals, with direction to staff to return to the Ramsey County Regional Railroad
19 Authority with a selection of artists for contracting authorization; Now, Therefore, Be It
20

21 RESOLVED, The Ramsey County Regional Railroad Authority approves a contract with Ray
22 King Studios Ltd., 200 835 N. 3rd Street, Philadelphia, PA 19123, for commission of public art at
23 the Union Depot for the period of 8/7/2012 through 12/31/2013, in the amount of \$200,000; And Be
24 It Further
25

26 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to
27 execute the contract; And Be It Further
28

29 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Ramsey
30 County Manager to make all necessary budget adjustments including increasing estimated
31 revenues and appropriations.

Attachment # 1

COMPETITIVE SOLICITATION SUMMARY

TITLE Call to Artists for Public Art Commissions at Union Depot (RFP) Commission #2: Great Hall Atrium	Programs: Union Depot Multimodal Transportation Hub Goal: Engage talented public artists to create works for Union Depot that will enhance the enjoyment of those passing through the public spaces, while complementing the power of the existing architectural elements.
DATE SENT	April 9, 2012
DATE DUE	May 23, 2012
NUMBER SENT	126
RESPONSES Star (*) those Agencies invited for interviews	1. Andrews Lefevre Studios 2. Angers, Mary 3. Averbuch, Ilan 4. * Ball, Benjamin & Nogues, Gaston; Ball-Nogues Studio * 5. Balma, Mark 6. Balmond Studio 7. Bollinger & Bollinger Atelier 8. Brager, Brent 9. Buckner, Robert R 10. Campbell, Craig 11. Carney, John 12. Carpenter, Ed 13. Cohen, Michael 14. Colab Studio LLC 15. Cridler/Bennie Studio 16. Curtis, Michael 17. Dahlgvist Art Studio 18. David, Craig, Davidii Art Co 19. Delgado, Robert 20. Diaz, Donald Martin 21. Dobbe, Dr Kevin 22. Douwe Studios 23. Fogarty, Terrence 24. Form From Form 25. Frank Stone Studio 26. Garten, Cliff 27. Geyen, Peter 28. * Ginzel, Andrew & Jones, Kristin * 29. Gomez, Gregory 30. Haddad/Drugan 31. Healy-East Los Streetscapers 32. Hirschfield, Jim 33. Hoelscher, Giesla 34. Huether, Gordon 35. Hussey, Aaron P 36. Janney, Christopher 37. Jones, Katherine 38. Jones-Aiken 39. Kelliher, Dallas 40. * King, Ray * 41. Kobyashi, Kipp 42. Labuszewski, Judy 43. Lawler, Kimberly L 44. Lipski, Donald

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REVIEW COMMITTEE Include title and agencies	Mary Altman , public arts administrator, City of Minneapolis Katherine Stillings Barta and Kevin Barta , residents of the Union Depot condominiums and cofounders of LowertownLanding.org Jeff Heegaard , cofounder, COCO Co-working and Collaborative Space Jill Hentges , community outreach coordinator, Metro Transit Rich Laffin , chair, Saint Paul Heritage Preservation Commission; architect with offices in Lowertown Elsa Vega Perez , formerly of Otto Bremer Foundation; co-founder and director emeritus for El Arco Iris Center for the Performing Arts Nick Riley , intergovernmental relations coordinator, Ramsey County; artist Marcus Young , Saint Paul's City Artist in Residence, a program of Public Art Saint Paul
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| | <ul style="list-style-type: none">d. Durability and suitability of materials used related to resistance to vandalism and minimization of maintenance requirements.e. Experience working with the public and neighborhood communities. |
|--|--|

AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK

THIS AGREEMENT is entered into between the Ramsey County Regional Railroad Authority ("RCRRA"), a political subdivision of the State of Minnesota, with offices at Union Depot, 214 4th Street East, Suite 200, St. Paul, MN 55101 and Ray King Studio Ltd. ("Artist") with offices at 835 N. 3rd Street, Philadelphia, PA 19123.

WHEREAS, the RCRRA has included Artwork Funding for the establishment and display of Artwork as part of the renovation and restoration of the Union Depot ("Project"); and

WHEREAS, the RCRRA issued a Call to Artists for applications to design, execute, fabricate and/or install Artwork in the Great Hall Atrium area of the Union Depot; and

WHEREAS, the Artist is a recognized artist whose work and reputation make the Artist uniquely qualified to create Artwork as part of the Project; and

WHEREAS, the Artist and the RCRRA wish to undertake the obligations expressed herein;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

Article 1 Scope of Services

1.1 Artist's Obligations

- 1.1.1 The Artist shall perform all services and furnish all supplies, material and/or equipment as necessary for the design, fabrication, and installation of the Artwork described in **Exhibit 1**, attached to and made a part of this Agreement, at the location described in **Exhibit 1** ("Site"). Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- 1.1.2 The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the RCRRA as set forth in this Agreement. To ensure that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site, the Artist's proposal shall be reviewed by the RCRRA and its Consultants, as necessary, for approval by the RCRRA to ensure compliance with these objectives.
- 1.1.3 The Artist shall prepare the Artwork design and corresponding budget as provided in Section 1.3 of this Agreement for the approved proposal.
- 1.1.4 Prior to submitting a Schematic Design, the Artist shall travel to the Site to gain an understanding of the Site's unique characteristics and to coordinate with RCRRA staff, as appropriate, to communicate about the Artwork and to ensure appropriate integration and/or installation of the Artwork.

- 1.1.5 Throughout the Project, the Artist shall provide RCRRA staff sufficient detail to permit the RCRRA to determine compliance with applicable local, state or federal laws, ordinances and/or regulations, and to obtain any necessary approvals with the State Historic Preservation Office ("SHPO"), and the City of Saint Paul's Heritage Preservation Commission ("HPC").
- 1.1.6 The Artist shall complete the fabrication of the Artwork by the scheduled installation start date as provided in Section 1.4.2 of this Agreement.
- 1.1.7 The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation of the Artwork at the Site.
- 1.1.8 The Artist shall arrange the transportation and installation of the Artwork in consultation with RCRRA staff. If the Artist does not personally install the Artwork, the Artist shall supervise and approve the installation.
- 1.1.9 The Artist shall provide required insurance as specified in Article 6 and **Exhibit 2**, attached hereto and made a part of this Agreement.
- 1.1.10 The Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
- 1.1.11 The Artist shall provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep involved.
- 1.1.12 The Artist shall provide photographic documentation of the Artwork.
- 1.1.13 The Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.

1.2 RCRRA's Obligations

- 1.2.1 The RCRRA shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- 1.2.2 The RCRRA shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, and reports; a list of required permits, licenses, and other authorizations; and other existing relevant data, if any, which is needed by the Artist in order to perform.
- 1.2.3 The RCRRA shall be responsible for compliance with applicable laws and regulations with the exception of required licenses, permits and similar authorizations required to be secured by the Artist under Section 1.1.6, and shall explain any limitations imposed by such laws and/or regulations to the Artist.

- 1.2.4 The RCRRA shall prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement. The Artist and RCRRA staff will cooperate to determine reasonable costs for those items that the RCRRA will be responsible for in order to prepare the Site for the timely transportation and installation of the Artwork. The RCRRA shall complete the Site preparations by the scheduled installation start date as provided in Section 1.4.2 of this Agreement or shall notify the Artist in writing of any delays.
- 1.2.5 The RCRRA shall provide and install a plaque on or near the Artwork containing a credit to the Artist substantially in the following form: [Artist's name, Artwork title, date of publication].
- 1.2.6 The RCRRA shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the RCRRA's control.
- 1.2.7 RCRRA staff shall be responsible for leading the Artist through the required review process. RCRRA staff shall be responsible for organizing and scheduling meetings with review entities such as the Union Depot Art Selection and Design Review Panel, the State Historic Preservation Office (SHPO) and the City of Saint Paul's Heritage Preservation Commission (HPC) and for providing the Artist written instructions for the materials required at such meetings should they be necessary.

1.3 Design

1.3.1. Concept/Schematic

- a. Within 70 days of the execution of this Agreement, the Artist shall submit to RCRRA staff the design concept (the "Schematic Design") in the form of detailed color drawings, models, and/or other documents as are required to present a meaningful representation of the Artwork. The Schematic Design will include: a description of the method by which the Artwork is to be fabricated and installed; a description of any operational, maintenance and conservation requirements for the Artwork; a description of the placement of the Artwork at the Site and any site preparations that may be required by the RCRRA including, but not limited to, any changes or modifications to any utility system or structure of the Site as necessary within a reasonable cost and as required by the RCRRA. The design concept shall include a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved. The Schematic Design of the Artwork shall be incorporated into and made a part of this Agreement by reference as **Exhibit 1**.
- b. The proposed Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and

equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense.

- c. Prior to submitting the Schematic Design, the Artist shall visit, examine, research and consider the Site and surrounding area. The Artist shall also discuss with RCRRA staff the most appropriate method to inform the content of the Schematic Design. If applicable, the Artist shall consult with representatives of the community and consider their input and concerns.
- d. The Schematic Design must include sufficient detail to permit the RCRRA, SHPO, and HPC to determine compliance with applicable local, state or federal laws, ordinances and/or regulations.
- e. When the Artist submits the Schematic Design to RCRRA staff for approval, the Artist shall also submit a detailed budget for approval for the design, fabrication and installation of the Artwork, including costs for Site preparation, as described in Section 1.4.1 of this Agreement.

1.3.2 Approval

- a. Within 15 days after the Artist submits the Schematic Design, the Union Depot Art Selection and Design Review Panel will convene and review the submitted Schematic Design. RCRRA staff shall notify the Artist whether it approves or disapproves of the Schematic Design. The RCRRA shall have discretion to approve outright, approve with conditions, or disapprove the Schematic Design.
- b. RCRRA staff shall notify the Artist of any revisions to the Schematic Design determined by the RCRRA to be necessary for the Artwork to comply with applicable laws, ordinances and/or regulations and other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the accepted Schematic Design.

1.3.3 Redesign

- a. If the Union Depot Art Selection and Design Review Panel disapproves of the Schematic Design, RCRRA staff will notify the Artist in writing of the reasons for such disapproval. In such event, the Artist will submit a Revised Design within 20 days after RCRRA staff has notified the Artist of its disapproval, addressing the identified reasons. This process shall continue until the Union Depot Art Selection and Design Review Panel approves the Revised Design. The Artist will not be paid additional fees for the Revised Design(s).
- b. The Revised Design will reflect changes made to address the stated reasons for disapproval, as well as any adjustments in the budget or

schedule that may be necessary. RCRRA staff shall notify the Artist in writing whether the Union Depot Art Selection and Design Review Panel approves or disapproves of the Revised Design within 30 days after the Artist submits the Revised Design.

- c. If the Artist refuses to revise the Schematic Design pursuant to Section 1.3.3. a., or if the Artist fails to adequately revise the Schematic Design in the judgment of the Union Depot Art Selection and Design Review Panel and RCRRA staff, this Agreement shall terminate and the parties shall be under no further obligation to each other as of the date of such termination. The effective date of termination shall be the date the RCRRA submits its written disapproval of the Revised Design to the Artist. The RCRRA shall submit to the Artist a written termination notice with the disapproval. The termination notice shall advise the Artist that this Agreement has been terminated pursuant to this Article. The termination notice shall notify the Artist that the Artist is entitled to retain the compensation paid prior to the termination date, and that the Parties are under no further obligation to each other. The termination notice shall confirm that the Artist shall retain ownership of all Schematic Designs, Revised Designs and renderings thereof submitted hereunder.

1.3.4 Final Design/Construction Documents

- a. The Artist shall prepare structural drawings for the approved design ("Final Design") detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings and supplementary documents shall indicate any issues involved in the construction, integration and maintenance of the Artwork, and shall identify any subcontractors needed to work on the project including the work to be performed by the subcontractors.
- b. Where appropriate, the Artist shall present such drawings to a qualified engineer, licensed by the State of Minnesota and paid by the Artist, for certification that the Artwork will be of adequate structural integrity, and the Artist shall provide the RCRRA with such certification, signed and stamped by the licensed engineer. The Artist shall present the Final Design to a qualified conservator, designated by RCRRA staff at no cost to the Artist, who will make recommendations on the maintenance of the Artwork. The Artist shall provide a written copy of the conservator's recommendations to RCRRA staff.
- c. The Artist shall provide a detailed narrative Description of the Artwork with explicit detail regarding the overall form or design, scale, dimensions, color, and surface treatment of the Artwork. The Description of the Artwork shall be incorporated into and made a part of this Agreement by reference as **Exhibit 3**.

1.4 Budget/Payment Schedule

1.4.1 Budget

- a. The budget to be prepared by the Artist pursuant to the provisions of this Section shall include all goods, services and materials, with such costs itemized. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date. The Artist shall include a contingency amount between 5% and 10% to be used towards unforeseen costs directly related to the fabrication and/or installation of the project.
- b. Upon approval by the RCRRA staff, the Budget shall be incorporated into and made a part of this Agreement by reference as **Exhibit 4**.
- c. The Artist shall keep a log of the Artist's Project hours as well as the hours of work performed by subcontractors, and shall retain all original receipts pertaining directly to the Project.
- d. The Artist shall notify the RCRRA, in writing, prior to the use of any contingency funds for any purpose.
- e. Upon completion of the Project, and prior to Transfer of Title of the Artwork from the Artist to the RCRRA, the Artist shall provide written notice of any unspent funds from the contingency funds. These unspent funds shall be retained by the Artist.
- f. If the Artist incurs costs in excess of the approved budget, the Artist shall pay such excess from the Artist's own funds unless the Artist had previously obtained written approval for a modified budget incorporating such costs from the RCRRA.

1.4.2 Payment Schedule

- a. A schedule for payment to the Artist is included in **Exhibit 4**.

1.5 Project Construction Schedule and Progress Reports

- 1.5.1 The Artist shall submit a proposed schedule for the fabrication and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any, to the RCRRA for approval. Upon approval, the schedule shall be incorporated into and made a part of this Agreement by reference as **Exhibit 5**.
- 1.5.2 The Schedule may be amended only by written agreement of the parties. Any approved revised schedule shall replace and supersede the original schedule as **Exhibit 5**.

1.6 Fabrication Stage

- 1.6.1 The Artist shall fabricate and install the Artwork in substantial conformity with the Final Design. The Artist may not deviate from the approved Final Design without written approval of RCRRA staff.
- 1.6.2 The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork such as the application of protective or anti-graffiti coatings, if applicable, unless the RCRRA disapproves. If the Artwork is being constructed on-site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. Prior to requesting authorization to transport and install the Artwork, the Artist shall be required to provide the RCRRA with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. All subcontractors must provide proof of insurance as described in **Exhibit 2** prior to entering the Site.
- 1.6.3 The Artist will inform RCRRA of the intent to enter into subcontracts for any part of the fabrication of the Artwork. Subcontracted work will be assigned a Disadvantaged Business Enterprise (DBE) goal that will be based on the proposed scope of the subcontracted work for the project. Applicable DBE policies and procedures are attached hereto and made a part of this Agreement as **Exhibit 7**.
- 1.6.4 RCRRA staff shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice. At the RCRRA's request, the Artist shall provide clear photographic documentation of the progress of fabrication of the Artwork.
- 1.6.5 If RCRRA staff, upon review of the Artwork, determines that the Artwork does not conform to the Final Design, the RCRRA reserves the right to notify the Artist in writing of the deviations and that the RCRRA intends to withhold the next payment.
- 1.6.6 The Artist will inform the RCRRA of the planned method for achieving conformance to the Final Design, will promptly cure the deviations and will notify the RCRRA in writing of completion of the cure. RCRRA staff or the RCRRA's Consultants, as necessary, shall promptly review the Artwork, and upon approval shall release the next payment. If the Artist disputes the RCRRA's determination of deviation, the Artist shall promptly submit reasons in writing to the RCRRA within 10 days of the RCRRA's notification. The RCRRA shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Agreement shall remain with the RCRRA.
- 1.6.7 The Artist shall notify the RCRRA in writing when fabrication of the Artwork has been completed, and when the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site. Artist shall also provide RCRRA staff with clear photographic documentation of the completed Artwork.

- 1.6.8 At the RCRRA's option, RCRRA staff or the RCRRA's Consultants, as necessary, shall inspect the Artwork within 10 days after receiving notification pursuant to paragraph 1.6.6, prior to installation, to determine that the Artwork conforms to the Final Design and to give final approval of the Artwork. The RCRRA shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the RCRRA does withhold final approval, the RCRRA shall submit the reasons for such disapproval in writing within 10 days of examining the fabricated Artwork. The Artist shall then have 30 days from the date of the RCRRA's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Artist has willfully and substantially deviated from the Final Design without the prior approval of the RCRRA. The Artist shall then be held responsible for any expenses incurred in correcting such deviation.
- 1.6.9 RCRRA staff shall promptly notify the Artist of any delays, if such delays are caused by the RCRRA, impacting installation of the Artwork. Any additional storage fees incurred as a result of such delays are the responsibility of the RCRRA.
- 1.6.10 The Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the RCRRA of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction.

1.7 Changes to Design

- 1.7.1 Changes to the approved design may not be executed prior to submission of the proposed changes in writing to the RCRRA for further review and approval. The Artist must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design.
- 1.7.2 If RCRRA staff approves the changes, the RCRRA shall promptly notify the Artist in writing. RCRRA staff will also make the required presentations to the approval bodies.
- 1.7.3 If RCRRA staff disapproves of the changes, the RCRRA shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design.

- 1.7.4 The Artist's fee shall be equitably adjusted for any increase or decrease in the Artist's cost of, or time required for, performance of any services under this Agreement as a result of revisions made to the Design under Section 1.7.1. Any claim of the Artist for adjustment under this paragraph must be asserted in writing within 20 days after the date of the approval of the revision by the RCRRA.

1.8 Installation

- 1.8.1 Upon the RCRRA's final approval of the fabricated Artwork as being in conformity with the Final Design, the Artist shall deliver and install the completed Artwork to the Site in accordance with the agreed-upon schedule.
- 1.8.2 The Artist will coordinate closely with RCRRA staff to ascertain that the Site is prepared to receive the Artwork. The Artist must notify the RCRRA of any adverse conditions at the Site that would affect or impede the installation of the Artwork.
- 1.8.3 The Artist is responsible for timely installation of the Artwork. The Artist will confer and coordinate with RCRRA staff to ensure timely coordination with the RCRRA's Project construction team. Site access procedures will be identified in coordination with the development of the Artwork design and installation schedule. The Artist may not install the Artwork until authorized to do so by RCRRA staff.
- 1.8.4 The Artist will inform RCRRA of the intent to enter into subcontracts for any part of the installation of the Artwork. Subcontracted work will be assigned a Disadvantaged Business Enterprise (DBE) goal that will be based on the proposed scope of the subcontracted work for the project. Applicable DBE policies and procedures are set forth in **Exhibit 7**.
- 1.8.5 The Artist and any assistants or installation subcontractors shall, at the discretion of the RCRRA, participate in safety training classes for the purpose of accessing construction zones or RCRRA rail rights-of-way.
- 1.8.6 The Artist shall supervise the installation of the Artwork.
- 1.8.7 Upon installation of the Artwork, the Artist shall provide the RCRRA with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used.
- 1.8.8 Upon written acceptance of the installation by the RCRRA in accordance with the provisions of Section 1.9 herein, the Artwork shall be deemed to be in the custody of the RCRRA for purposes of Article 4 and Article 6 of this Agreement.
- 1.8.9 The RCRRA is responsible for the proper care and maintenance of the Artwork after written acceptance of the installation

1.9 Approval and Acceptance

- 1.9.1 The Artist shall notify the RCRRA in writing when all services have been completed in substantial conformity with the requirements of this Agreement and that the Artwork is ready for approval and acceptance.
- 1.9.2 RCRRA staff shall promptly notify the Artist of its final acceptance of the Artwork within 10 days after the Artist submitted written notice pursuant to Section 1.9.1 above. The effective date of final acceptance shall be the date the RCRRA submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the RCRRA acknowledges completion of the Artwork in substantial conformity with the Final Design, and that the RCRRA confirms that all services as required of the Artist have been completed.
- 1.9.3 If the RCRRA disputes that all the services have been performed, the RCRRA shall notify the Artist in writing of those services the Artist has failed to perform within 10 days after the Artist submitted written notice pursuant to Section 1.9.1 above. The Artist shall promptly perform those services indicated by the RCRRA.
- 1.9.4 If the Artist disputes the RCRRA's determination that not all services have been performed, the Artist shall submit reasons in writing to the RCRRA within 30 days of the RCRRA's notification. The RCRRA shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the RCRRA.
- 1.9.5 Upon the resolution of any disputes that arise under this Section 1.9, RCRRA staff shall notify the Artist of its final acceptance of the Artwork.
- 1.9.6 After final acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by RCRRA staff and the Artist to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork. The RCRRA shall be solely responsible for coordinating public information materials and activities related to public presentations.

Article 2 Taxes

Any state or federal sales, use or excise taxes, or similar charges relating to the services and materials under this Agreement shall be paid by the Artist in a timely fashion and in accordance with all legal requirements. The RCRRA shall report payments made to the Artist annually to the Internal Revenue Department in a 1099 statement.

Article 3 Term of Agreement

3.1 Duration

This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to the provisions of this Agreement, shall extend until the completion of obligations by both parties. Provisions of this Agreement

that by their nature extend beyond the term of the Agreement shall survive the termination of this Agreement. Extension of time for performance hereunder may be granted upon the request of one Party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and shall replace the prior Project Schedule as describe in Section 1.5.2.

3.2 Force Majeure

The RCRRA shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

Article 4 Risk of Loss

The Artist shall bear the risk of loss or damage to the Artwork until the RCRRA's final acceptance of the Artwork under Section 1.9. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The RCRRA shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork, by written agreement of the RCRRA, is in the custody, control or supervision of the RCRRA or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

Article 5 Artist's Representations and Warranties

5.1 Warranties of Title

5.1.1 The Artist represents and warrants that:

- a. The Artwork is solely the result of the artistic effort of the Artist.
- b. Except as otherwise disclosed in writing to the RCRRA, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person.
- c. The Artwork (or duplicate thereof) has not been accepted for sale elsewhere.
- d. The Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement.
- e. The Artwork is free and clear of any liens from any source whatsoever.

- f. All Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party.
- g. The Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
- h. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.

5.1.2 These representations and warranties shall survive the termination or expiration of this Agreement.

5.2 Warranties of Quality and Condition

The Artist represents and warrants that:

- 5.2.1 All work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for two years after the date of final acceptance by the RCRRA under Section 1.9.
- 5.2.2 The Artwork and the materials used are not currently known to be harmful to public health and safety.
- 5.2.3 Reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.8.7.
- 5.2.4 If within two years after Final Acceptance the RCRRA observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the Artist shall, at the request of the RCRRA, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the RCRRA. The RCRRA shall give notice to the Artist of such breach with reasonable promptness.
- 5.2.5 If within two years after Final Acceptance the RCRRA observes a breach of warranty described in this Section 5.2 that is not curable by the Artist, the Artist is responsible for reimbursing the RCRRA for damages, expenses and loss incurred by the RCRRA as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the RCRRA accepted that it may occur, it shall not be deemed a breach for purposes of this Section 5.2 of this Agreement.

5.2.6 If after two years after Final Acceptance the RCRRA observes any breach of warranty described in this Section 5.2 that may be curable by the Artist, the RCRRA, at its discretion, has the option to either:

- a. Contact the Artist to make or supervise repairs or restorations at a reasonable fee; or
- b. Seek the services of a qualified restorative conservator and maintenance expert.

5.3 Acceptable Standard of Display

5.3.1 The Artist represents and warrants that:

- a. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
- b. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
- c. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
- d. To the extent the Artwork incorporates products covered by a manufacturer's warranty, the Artist shall provide copies of such warranties to the RCRRA.

5.3.2 The foregoing warranties are conditional, and shall be voided by the failure of the RCRRA to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the RCRRA fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

Article 6 Liability/Insurance

6.1 General

6.1.1 The Artist acknowledges that, except as otherwise provided herein, until final acceptance of the Artwork by the RCRRA under Section 1.9, any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.

6.1.2 Insurance requirements are set forth in **Exhibit 2**.

6.2 Indemnity

6.2.1 The Artist shall indemnify, defend and hold harmless the RCRRA and officials, employees and agents (each a "Covered Person") from and against all liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively "Losses") arising from, in connection with or caused by:

- a. Any personal injury or property damage caused, directly or indirectly, by any act or omission of the Artist; or
- b. Any infringement of patent, copyright, trademark, trade secret or other proprietary right caused by the Artist.

6.2.2 Notwithstanding the foregoing, Artist shall have no obligation under this Section with respect to any Losses that are caused solely by the active negligence or willful misconduct of the Covered Party and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by the Artist.

6.2.3 The Artist acknowledges and agrees that its obligation to defend in this Section:

- a. Is an immediate obligation, independent of its other obligations hereunder;
- b. Applies to any Losses which actually or potentially fall within the scope of this Section, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and
- c. Arises at and continues after the time the Losses are tendered to the Artist.

Article 7 Ownership and Intellectual Property Rights

7.1 Title

Title to the Artwork shall transfer to the RCRRA upon the RCRRA's written final acceptance and payment for the Artwork pursuant to Article 1 and **Exhibit 4**. The Artist shall provide the RCRRA with a Transfer of Title in substantially the form attached hereto and made a part of this Agreement as **Exhibit 6**.

7.2 Ownership of Documents

One set of presentation materials prepared and submitted under this Agreement shall be retained by the RCRRA for possible exhibition and to hold for permanent safekeeping.

7.3 Copyright Ownership

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright.

7.4 Reproduction Rights

- 7.4.1 In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate two or three-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the RCRRA. However, nothing shall prevent the Artist from creating future Artworks in the Artist's manner and style of artistic expression.
- 7.4.2 The Artist grants to the RCRRA and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.
- 7.4.3 All reproductions by the RCRRA shall contain a credit to the Artist in substantially the following form: [Artist's name, Artwork title, date of publication].
- 7.4.4 The Artist shall use the Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to the RCRRA in substantially the following form: "Artwork commissioned by the Ramsey County Regional Railroad Authority, St. Paul, MN."
- 7.4.5 The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- 7.4.6 If the RCRRA wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
- 7.4.7 Third Party Infringement. The RCRRA is not responsible for any third party infringement of the Artist's copyright and not responsible for protecting the intellectual property rights of the Artist.

Article 8 Artist's Rights

8.1 General

- 8.1.1 The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- 8.1.2 The RCRRA agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first consulting with the Artist.
- 8.1.3 If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist may have in law or equity under this contract. Upon written request, the RCRRA shall

remove the identification plaque and all attributive references to the Artist at its own expense within 30 days of receipt of the written request. No provision of this Agreement shall obligate the RCRRA to alter or remove any such attributive reference printed or published prior to the RCRRA's receipt of such written request. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

8.2 Alterations of Site or Removal of Artwork

8.2.1 The RCRRA shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork. The RCRRA shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. The RCRRA shall make a reasonable effort to maintain the integrity of the Artwork.

8.2.2 The RCRRA agrees not to arbitrarily remove or relocate the Artwork without first making a good faith effort to contact the Artist. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation, the Artist shall provide the RCRRA with written handling instructions. In the event that the Artist is deceased or unable to otherwise give the Artist's consent, the current owner of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist at the time of commission and fabrication.

8.2.3 This clause is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

Article 9 Permanent Record

The RCRRA shall maintain on permanent file a record of this agreement and of the location and disposition of the Artwork.

Article 10 Artist as an Independent Contractor

The Artist agrees to perform all Artwork under this Agreement as an independent contractor and not as an agent or employee of the RCRRA. The Artist acknowledges and agrees that the Artist shall not hold himself or herself out as an authorized agent of the RCRRA with the power to bind in any manner. The Artist shall provide the RCRRA with the Artist's Tax Identification Number and any proof of such number as requested by the RCRRA.

Article 11 Nondiscrimination

The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

Article 12 Assignment of Artwork

The Artwork and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the RCRRA. The RCRRA shall have the right to assign or transfer any and all of the RCRRA's rights and obligations under this Agreement if ownership of the Site is transferred.

Article 13 Suspension/Termination

- 13.1 Either Party may suspend this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operations; superior governmental regulation or control, public emergency or strike or other labor disturbance. Notice of suspension of this Agreement shall be given to the other Party in writing not less than 15 days prior to the effective date of the suspension. If the suspension continues for more than 90 days, either party may terminate this Agreement without cause. If this Agreement is terminated, the RCRRA shall pay the Artist for services performed and costs incurred that cannot be eliminated prior to the date of termination, consistent with the schedule of payments set forth in **Exhibit 4** of this Agreement.
- 13.2 The RCRRA may terminate this Agreement without cause upon 15 days written notice to the Artist. The RCRRA shall pay the Artist for services performed and costs incurred that cannot be eliminated prior to the date of termination, consistent with the schedule of payments set forth in **Exhibit 4** of this Agreement.
- 13.3 If the Artist willfully or negligently fails to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the RCRRA shall thereupon have the right to terminate this Agreement by giving written notice to the Artist of its intent to terminate, specifying the grounds for termination. The Artist shall have 30 days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate and the Artist shall return to the RCRRA all payments received from the RCRRA in excess of expenses already incurred. The Artist shall provide an accounting of such expenses along with the reimbursement payment. All finished and unfinished drawings, sketches, photographs and other Artwork products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. The RCRRA shall retain the right to have the Artwork completed, fabricated, executed, delivered and installed. However, the Artist shall retain the copyright in the Artwork and all rights under Article 7 and Article 8.
- 13.4 Upon notice of termination, the Artist and his or her subcontractors shall cease all activities under this Agreement.

Article 14 Death or Incapacity

If the Artist becomes unable to complete this Agreement due to death or incapacitation, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the

Artist for the purpose of Article 13. However, nothing in this Article shall obligate the RCRRA to accept the Artwork. In the event of death of the Artist, this Agreement shall terminate as of the date of death; in the event of incapacity, the Agreement shall terminate upon expiration of 90 days of incapacity. The RCRRA shall pay the Artist, the Artist's heirs, or the Artist's estate, as appropriate, for all services and work delivered in a satisfactory manner and in accordance with the provisions of this Agreement prior to the Artist's death or first day of incapacity.

Article 15 Compliance with Applicable Law

The Artist agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the Artist's performance of the provisions of this Agreement, including the provisions of the specific **Federal Requirements**, attached hereto and made a part of this Agreement as **Exhibit 8**. It shall be the obligation of the Artist to apply for, pay for and obtain all permits and/or licenses required by any governmental agency for the provision of those services contemplated herein.

Article 16 Notices and Documents

Notices required under this Agreement shall be delivered personally or through the [registered or certified mail, return receipt requested] mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party pursuant to the provisions of this Article:

For the RCRRA:	Josh Collins or successor Ramsey County Regional Railroad Authority Suite 6560 RCGC-West 50 W. Kellogg Blvd St. Paul, MN 55102
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For the Artist:	Ray King Ray King Studio Ltd. 835 N. 3rd Street Philadelphia, PA 19123
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Notice shall be deemed effective on the date personally delivered or, if mailed, on the date the return receipt is signed.

Article 17 Waiver

The Parties agree that a waiver of any breach of violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term of condition.

Article 18 Audit

18.1 Until the expiration of six (6) years after the furnishing of services pursuant to this Agreement, the Artist, upon written request, shall make available to the RCRRA, the State Auditor or the RCRRA's ultimate funding sources, a copy of this Agreement and the books, documents, records and accounting procedures and practices of the Artist relating to this Agreement.

- 18.2 The Artist shall maintain all books, documents, records and accounting procedures and practices of the Artist relating to this Agreement for a period of six years from the date of transfer of title following acceptance and final payment is made. Those records subject to an audit shall be maintained until the audit is resolved, even if this period extends beyond the six years stated. All records shall be made available for inspection or audit, at any time during regular business hours, upon written request by the RCRRA's General Counsel or designated representative, the State Auditor or the County's ultimate funding sources.

Article 19 Data Practices

All data collected, created, received, maintained or disseminated for any purpose in the course of the Artist's performance of this Agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, or any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

Article 20 Conflict of Interest

The Artist and the RCRRA shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

Article 21 Arbitration

- 21.1 If, during the creation of the Artwork, its installation and subsequent existence, either Party breaches this Agreement, each Party agrees to submit to arbitration upon the request of the other, provided that the breach is not cured within a reasonable time under Section 13.3 of this Agreement.
- 21.2 If an ambiguity arises regarding this Agreement upon which the parties cannot agree or a dispute arises as to the completion of a provision, the Parties shall submit the matter to arbitration.
- 21.3 Each Party agrees to be responsible for its own attorney's fees and costs.

Article 22 Amendments

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto in the form of an amendment to this Agreement.

Article 23 Conflicts of Law

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel or mediation procedure to be in conflict with the laws, rules, and/or regulations of the United States or the State of Minnesota, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

Article 24 Interpretation of Agreement; Venue

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate state or federal district court in Ramsey County, Minnesota.

Article 25 Prompt Payment

Payment of interest on late payments and disputes regarding payments shall be governed by the provisions of Minn. Stat. Section 471.425.

Article 26 Contractor Certification Regarding Debarment, Suspension, and Responsibility (If applicable)

Federal Regulation 45 CFR 92.35 prohibits the RCRRA from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government.

By signing this Agreement, the Artist certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state or local governmental department or agency; and
2. Have not within a three-year period preceding this Agreement:
 - a. been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract;
 - b. violated any federal or state antitrust statutes; or
 - c. committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
3. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for:
 - a. commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction;
 - b. violating any federal or state antitrust statutes; or
 - c. committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
4. Have not had one or more public transactions terminated with in the preceding three years for cause or default; and
5. Shall not knowingly enter into any transaction with a subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and that they will require any

- subcontractor that receives more than \$100,000 to make a similar certification as set forth herein; and
6. Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this Agreement are in violation of any of the certifications set forth above; and
 7. Shall immediately give written notice to the RCRRA should the Artist come under investigation for allegations of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local government) transaction; violating any federal or state antitrust statutes; or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

Article 27 Non-Conforming Services

The acceptance by the RCRRA of any non-conforming services under the terms of this Agreement or the foregoing by the RCRRA of any of the rights or remedies arising under the terms of this agreement shall not constitute a waiver of the RCRRA's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the RCRRA provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

Article 28 Unavailability of Funding

The purchase of goods or services from the Artist under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds from the RCRRA Board. The RCRRA may immediately terminate this Agreement if the funding for the Artwork is no longer available or is not appropriated by the RCRRA Board. Upon receipt of the RCRRA's notice of termination of the Agreement the Artist shall take all actions necessary to discontinue further commitments of funds to the Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the RCRRA.

Article 29 Prevailing Wage

The Artist and all subcontractors shall conform to the labor laws of the State of Minnesota, and all other laws, ordinances, and legal requirements affecting the work in Ramsey County and Minnesota. The minimum wage rate per hour to be paid for each classification of work shall be the union wage rate in the locality of the project for those classifications over which the unions have jurisdiction and the local prevailing rate for those classifications of work in the localities over which the unions do not have jurisdiction.

Article 30 Respectful Workplace and Violence Prevention

The Artist shall make all reasonable efforts to ensure that the Artist's employees, officials and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined in the Ramsey County Respectful Workplace and Violence Prevention Policy, means words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority where the impact is to cause pain, fear or injury.

Article 31 Subcontractor Payment

The Artist shall pay any subcontractor within ten days of the Artist's receipt of payment from the RCRRA for undisputed services provided by the subcontractor. The Artist shall pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Artist shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Artist must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

Article 32 Lobbying

For all contracts involving over \$100,000 in federal funds, the Artist must sign the Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements, attached hereto and made a part of this Agreement as **Exhibit 8**.

Article 33 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements, and conditions between the parties. No verbal agreements or conversations between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligations.

WHEREFORE, this Agreement is duly executed on the last date written below.

**RAMSEY COUNTY REGIONAL
RAIL AUTHORITY**

ARTIST NAME

Jim McDonough, Chair
Ramsey County Regional Railroad Authority

Print Name: _____

Bonnie Jackelen, Chief Clerk
Board of County Commissioners

Date: _____

Date: _____

Approval recommended:

Timothy Mayasich, Director
Ramsey County Regional Rail Authority

Approved as to form and insurance:

Assistant County Attorney

Exhibit 1
Concept/Schematic Design

(To be developed and incorporated into the contract as provided in Section 1.3.1 of the forgoing contract to which this exhibit is attached.)

Exhibit 2
Insurance Requirements

The Artist shall obtain and maintain for the duration of the contract, an insurance policy or policies for the protection of both the **Artist** and the **RCRRA**. The **RCRRA** requires certification of insurance coverage from all Artists/subArtists, Sub-contractors and suppliers before commencing work. All subcontractors used for the installation shall provide certificates of insurance evidencing General Liability, Workers Compensation, and automobile coverage prior to installation with the RCRRA and Ramsey County as property manager added as an additional insured with respect to installation of the artwork.

Please carefully review the requirements outlined.

IT IS HIGHLY RECOMMENDED THAT YOU CONFER WITH YOUR INSURANCE BROKER/AGENT OR OTHER INSURANCE COMPANY REPRESENTATIVE, BEFORE SUBMITTING YOUR BID, TO DETERMINE THE AVAILABILITY AND APPLICABLE COST, IF ANY, OF CERTIFICATES, ENDORSEMENTS, COVERAGES, AND LIMITS REQUIRED.

1. MINIMUM SCOPE AND EXTENT OF COVERAGE

A. GENERAL LIABILITY

Commercial General Liability, ISO coverage form number **CG 00 01** ("occurrence" basis).

\$ 1,000,000 limit per occurrence for bodily injury, personal injury, and property damage; **\$1,000,000** annual aggregate

The Ramsey County Regional Rail Authority, its commissioners, officers, officials, agents, and employees, shall be endorsed as **additional insureds** by ISO Form **CG 20 26 -- ADDITIONAL INSURED -- DESIGNATED PERSON OR ORGANIZATION** or equivalent. As additional insureds, they shall be covered as to work performed by or on behalf of the **Artist** or as to liability which arises out of **Artist's** activities or resulting from the performance of services or the delivery of goods called for by the **Contract**.

B. AUTOMOBILE LIABILITY

Business Auto or Personal Automobile Liability insurance
\$1,000,000 limit per occurrence covering bodily injury and property damage.

C. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

Statutory Workers' Compensation insurance for all states where Proposer has work locations and standard Employer's Liability insurance, *if required by state law*.

D. PROFESSIONAL LIABILITY – REGISTERED STRUCTURAL ENGINEER

D.1 Per Claim \$1,000,000
Aggregate Limit: \$2,000,000

D.2 Certificate of Insurance must indicate if the policy is issued on a claims-made or occurrence basis. If coverage is carried on a claims-made basis, then: 1) the retroactive date shall be noted on the Certificate and shall be prior to or the day of the inception of this Agreement; and 2) evidence of coverage shall be provided for three years beyond expiration of this Agreement.

E. PROPERTY

The Artist shall maintain property coverage on an all-risk basis and shall add the RCRRA as a loss payee as the RCRRA's interest in the Artwork may appear. This interest shall be based on the payments made according to **Exhibit 4** for the commissioned Artwork as defined in the contract between the Artist and the RCRRA. The Artist shall keep this policy in effect until the RCRRA's final acceptance of the Artwork under Article 4 Risk of Loss.

2. INSURER QUALIFICATIONS/ACCEPTABILITY

The insurance required hereunder shall be issued by an **A.M. Best "A-" rated, Class VI** insurance company licensed to conduct insurance business in the state of Minnesota.

3. VERIFICATION OF INSURANCE COVERAGE

Prior to commencing work, the **Artist** shall furnish the **RCRRA** with CERTIFICATE(S) OF INSURANCE (including a Professional Liability insurance certificate from Registered Structural Engineer) and with any applicable original endorsements evidencing the required insurance coverage. A person authorized by that insurer to bind coverage on its behalf must sign the insurance certificates and endorsements. All certificates and endorsements received by the **RCRRA** are subject to review and approval by the Ramsey County Attorney's Office. The **RCRRA** reserves the rights to require complete, certified copies of all required policies at any time. If the scope of this contract will exceed one (1) year—or, if any of **Artist's** applicable insurance coverage expire prior to completion of the work or services required under this contract—the **Artist** will provide a renewal or replacement certificate before continuing work or services hereunder.

4. NON-WAIVER

Nothing in this Agreement shall constitute a waiver by the **RCRRA** of any statutory or common law immunities, limits, or exceptions on liability.

Exhibit 3
Final Design

**(To be developed and incorporated into the contract as provided in Section 1.3.4 of the
forgoing contract to which this exhibit is attached)**

[This exhibit will identify the location of the Artwork and will provide a detailed narrative describing the proposed artwork with explicit detail regarding the overall form or design, scale, dimensions, color and surface treatment of the Artwork.]

Exhibit 4
Artwork Budget

(To be developed and incorporated into the contract as provided in Section 1.4.1 of the forgoing contract to which this exhibit is attached.)

Fee and Payment Schedule

The RCRRA shall pay the Artist a fixed fee of two hundred thousand dollars (\$200,000), which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

- a. \$30,000 upon the execution of this Agreement, recognizing that the Artist will invest time and expense in preparing the Design as set forth in Section 1.3 of the Agreement;
- b. \$50,000 upon the RCRRA's notification to the Artist of its approval of the Final Design as set forth under Section 1.3 and issuance of a Notice to Proceed with Fabrication and Installation;
- c. \$50,000 within 30 days after the Artist notifies the RCRRA that the Artwork fabrication is 50% complete and provides photographic or other reasonable documentation as requested by the RCRRA;
- d. \$50,000 within 30 days after the Artist notifies the RCRRA that the Artwork is fabricated and ready for delivery and installation at the Site as set forth under Section 1.5(f);
- e. \$20,000 within 30 days after final acceptance of the Artwork by the RCRRA as set forth under Section 1.8(e).

Exhibit 5

Project Schedule

(To be developed and incorporated into the contract as provided in Section 1.5.1 of the forgoing contract to which this exhibit is attached.)

Exhibit 6
Transfer of Title

STATE OF MINNESOTA
COUNTY OF RAMSEY

TRANSFER OF TITLE

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned Artist located at the address noted below does hereby sell, transfer and convey to the RCRRA, located in St. Paul, Minn., its assigns and successors, all right, title and interest in the ownership of the Artwork commissioned by the Ramsey County Regional Railroad Authority and as described in the agreement between the parties.

Title: _____
Location: _____

IN WITNESS WHEREOF, the Artist has executed this written transfer of title on this
____ day of _____, 20__.

ARTIST

ADDRESS

WITNESS

Sworn to and subscribed
before me this ____ day
of _____, 20__.

NOTARY PUBLIC

My Commission Expires:
(NOTARY SEAL)

Exhibit 7

Federal DBE Requirements

1. **Artwork Disadvantaged Business Enterprise Requirements** (FTA Funding with DBE Goal – APPLICABLE TO SUBCONTRACTED WORK ONLY)

A. General Requirement. This contract is funded in part with a grant from the Federal Transit Administration (FTA), whose funds are administered locally by the Metropolitan Council ("Council"), and provided to the RCRRA through a sub-recipient grant agreement. For this project, the Disadvantaged Business Enterprise (DBE) requirements of the Transportation Equity Act for the 21st Century (TEA-21) and 49 CFR part 26 will apply only to subcontracted portions of the Artwork project. Under 49 CFR section 26.51, the Council will establish a goal for DBE participation for work that will be subcontracted by the Artist. The DBE goal will be based on the proposed scope of subcontracted work for the Artwork.

Selected artists who subcontract work will be required to make good faith efforts to meet the established DBE goal. Good faith efforts may be demonstrated by either:

- 1) documenting the participation of specific DBEs to meet the goal; or
- 2) documenting adequate good faith efforts to meet the goal, even if the efforts were not successful in obtaining sufficient DBE participation to meet the goal.

B. Documenting Good Faith Efforts

Participation of DBE. If the Artist will be using a DBE the Artist must list all firms, if any, whose participation is committed to be credited toward meeting the DBE goal. All DBE firms which are listed must, as of the date the information is provided by the Artist to the RCRRA, be:

- 1) certified by the Minnesota Unified Certification Program (MnUCP) as a DBE; or
- 2) certified by any other United States Department of Transportation (USDOT) recipient and then certified by the MnUCP; or
- 3) included on the MnUCP **Disadvantaged Business Enterprise (DBE) Directory**. All of the firms on this listing shall be considered "currently certified" for the purposes of proposal submittal. This listing is available from the Council and can also be found at the following website:
<http://www.dot.state.mn.us/civilrights/ucpdirectory.html>

Adequate Good Faith Efforts. If the Artist will not be using a DBE, the Artist must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if it was not fully successful.

The Council's DBE Liaison Officer will determine whether the Artist made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 CFR section 26.53, and Appendix A thereto.

Compliance will be determined based on a review of documentation of the following types of activities:

- 1) Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the subcontracted work related to the Artwork. The Artist must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Artist must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- 2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Artist might otherwise prefer to perform these work items with its own forces. The Artist is not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- 3) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal offices of minority/women business assistance; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation of DBEs.

Exhibit 8

Specific Federal Requirements

(continued on following eight pages)

SPECIFIC FEDERAL REQUIREMENTS

FTA-1 Fly America Requirements. The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

FTA-2 Energy Conservation. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.

FTA-3 Access to Records and Reports. The Contractor agrees to provide the Council, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor also agrees, pursuant to 49 C.F.R. § 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight (PMO) contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309, or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce such documents by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. In addition to any other requirements for maintenance of project records and documents in this contract, the Contractor agrees to maintain such records and documents until the Council, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all litigation, appeals, claims or exceptions arising from the performance of this contract.

FTA-4 Federal Changes. The Contractor shall at all times comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the Master Agreement between the Council and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

FTA-5 Recovered Materials. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 C.F.R. part 247.

FTA-6 No Obligation by the Federal Government. The Council and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of this contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Council, the Contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from this contract. The Contractor agrees to include the preceding clause in each subcontract under this contract and that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FTA-7 Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this contract. Upon execution of this contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, 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 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001, 49 U.S.C. § 5307(k)(1), 49 U.S.C. § 5323(l) or other applicable federal law on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above language in each subcontract under this contract and that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FTA-8 Civil Rights. The following requirements apply to this contract:

- 1. Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d *et seq.* and USDOT regulations "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of

Title VI of the Civil Rights Act," 49 C.F.R. part 21, 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 Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity. The following equal employment opportunity requirements apply to this contract:

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 Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract 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 this contract. The Contractor 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 Contractor 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 Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor 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 Contractor 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 Contractor agrees to comply with any implementing requirements FTA may issue.

3. Inclusion in Subcontracts. The Contractor agrees to include the requirements of this Section FTA-8 in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

FTA-9 Disadvantaged Business Enterprise ("DBE")

1. Nondiscrimination. Pursuant to 49 C.F.R. § 26.13, the Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Council deems appropriate. The Contractor shall include this requirement in all subcontracts pursuant to this contract.

2. Prompt Payment. The Contractor agrees to pay subcontractors within 10 calendar days of the Contractor's receipt of payment from the Council for undisputed services provided by the subcontractor. The Contractor agrees to pay subcontractors all undisputed retainage payments within 10 calendar days of the Contractor's receipt of payment of retainage from the Council. The Contractor shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the Council. The Contractor agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The Contractor will not be reimbursed for work performed by subcontractors unless and until the Contractor ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section may result in the Council finding the Contractor in noncompliance with the DBE provisions of this contract.

FTA-10 Incorporation of FTA Terms. Specific provisions in this contract include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in 49 C.F.R. § 18.36 and FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Council requests which would cause the Council to be in violation of the FTA terms and conditions.

FTA-10a National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit

Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.

FTA-11 Clean Water. The Contractor 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 Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FTA-12 Certification of Restrictions on Lobbying; Disclosure. The Contractor certifies that no federal appropriated funds have been paid or will be paid by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. The certification of this compliance ("Lobbying Restriction Certification") submitted by the Contractor in connection with this project is incorporated into, and made a part of, this agreement.

The Contractor further certifies that, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit to the Council, Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor certifies that it will require the language of this certification be included in the award documents for any subcontracts equal to or in excess of \$100,000.00 under this agreement, and that all subcontractors shall certify and disclose accordingly to the Contractor.

The certifications referred to in this section (including the "Lobbying Restriction Certification" submitted by the Contractor in connection with this project and incorporated in, and made a part of, this agreement) are material representations of fact upon which the Council relies when this contract is made.

FTA-13 Clean Air. The Contractor 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 Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FTA-14 Suspension and Debarment. This contract is a covered transaction for the purposes of 2 C.F.R. part 1200. By executing this contract, the Contractor certifies that none of the Contractor, its principals, as defined at 2 C.F.R. § 180.995, or affiliates, as defined at 2 C.F.R. § 180.905, are disqualified or excluded as defined at 2 C.F.R. §§ 180.935 and 180.940. The certification in this clause is a material representation of fact relied upon by the Council. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to Council, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R. part 180, subpart C throughout the term of this contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

FTA-15 [Reserved].

FTA-16 [Reserved].

FTA-17 Buy America. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

FTA-18 Cargo Preference. The Contractor agrees: (a) to use privately-owned United States-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill of lading in English for each shipment of cargo described in the preceding paragraph (a) to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Council (through the Contractor in the case of a lower-tier participating subcontractors bill of lading); and (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

FTA-19 [Reserved].

FTA-20 Contract Work Hours and Safety Standards Act.

(1) **Overtime Requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible for a violation shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for Unpaid Wages and Liquidated Damages.** The Council shall, upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(5) **Safety Standards.**

(i) **General Requirement.** The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3704, and applicable Department of Labor regulations, "Safety and Health Regulations for Construction" 29 C.F.R. part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

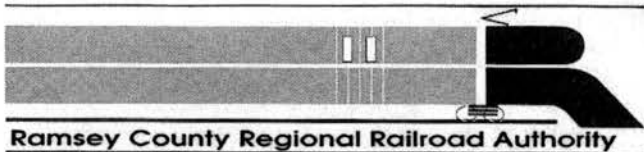
(ii) **Subcontracts.** The Contractor also agrees to include the requirements of this paragraph (5) in each subcontract. The term "subcontract" under this paragraph (5) is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this paragraph (5) if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this paragraph (5) do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

FTA-21 [Reserved]

FTA-22 Pre-Award and Post Delivery Audit Requirements. The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663 and to submit the following certifications:

1. Buy America Requirements. The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

2. Solicitation Specification Requirements. The Contractor shall submit evidence that it will be capable of meeting the bid specifications.



3

REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date: 8/7/2012

Regional Railroad Authority Meeting Date: _____

SUBJECT: Contract with Prentice Colbert, Inc. to design, fabricate and install public art at Union Depot

EXECUTIVE SUMMARY

The Federal Transit Administration (FTA) strongly recommends that its funded major construction projects include a public art program within the project capital costs. FTA guidelines state that the public art budget should at a minimum be one half of one percent of construction costs, but should not exceed five percent of construction costs. The proposed budget for public art at the Union Depot is \$1.25 million, which is slightly less than one percent of construction costs (0.84 percent).

Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, approved by the Ramsey County Regional Railroad Authority ("RCRRA") in December 2011, will provide \$1 million towards public art at the Union Depot. RCRRA funds in the amount of \$250,000 will provide the balance from the 2011 Union Depot project budget.

On February 2, 2012, RCRRA approved the release of a Call for Artists (Request for Proposals) seeking artists to participate in the Union Depot Public Art Program. FTA provides guidelines for the process by which artists should be selected. RCRRA followed the suggested FTA process, creating the Union Depot Art Selection and Design Review Panel, composed of artists, arts professionals, historians, project partners and community representatives. The panel reviewed more than 260 applications from 156 artists using best practices criteria, selected finalists for interviews, and recommended artists (or artist teams) for selection and contracting. The contracts arising from this Call to Artists represent \$1,050,000 of the budgeted \$1.25 million. Remaining funds not used for related costs will be part of a supplemental artist solicitation anticipated for next spring.

(The Executive Summary is continued on the following page)

ACTION REQUESTED

- 1) Approve a contract with Prentice Colbert, Inc., 129 Lake Road, West Cornwall, CT 06796, for commission of public art at the Union Depot for the period of 8/7/2012 through 12/31/2013 in the amount of \$200,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

1

(Executive Summary Continued)

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SUBJECT: Contract with Prentice Colbert, Inc. to design, fabricate and install public art at Union Depot

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1. Competitive Solicitation Summary
2. Draft contract with Prentice Colbert, Inc.

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The process followed by RCRRA staff, involving the formation of the Union Depot Art Selection and Design Review Panel, was recommended by FTA under best practices for commissioning public art. The process was consistent with the County's commitment to an open, fair and competitive solicitation process and included input from project stakeholders and the community.

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Regional Railroad Authority – Authorized Signature	Date
	8/2/12

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addy gelboim for Sue Kuss	8/1/12

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Draft Resolution

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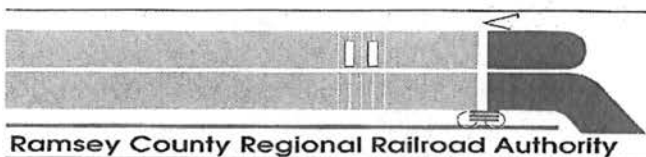
Attachment # 1

COMPETITIVE SOLICITATION SUMMARY

TITLE Call to Artists for Public Art Commissions at Union Depot (RFP) Commission #3: Kellogg Entry	Programs: Union Depot Multimodal Transportation Hub Goal: Engage talented public artists to create works for Union Depot that will enhance the enjoyment of those passing through the public spaces, while complementing the power of the existing architectural elements.
DATE SENT	April 9, 2012
DATE DUE	May 23, 2012
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REVIEW COMMITTEE Include title and agencies	Mary Altman , public arts administrator, City of Minneapolis Katherine Stillings Barta and Kevin Barta , residents of the Union Depot condominiums and cofounders of LowertownLanding.org Jeff Heegaard , cofounder, COCO Co-working and Collaborative Space Jill Hentges , community outreach coordinator, Metro Transit Rich Laffin , chair, Saint Paul Heritage Preservation Commission; architect with offices in Lowertown Elsa Vega Perez , formerly of Otto Bremer Foundation; cofounder and director emeritus for El Arco Iris Center for the Performing Arts Nick Riley , intergovernmental relations coordinator, Ramsey County; artist Marcus Young , Saint Paul's City Artist in Residence, a program

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VENDORS RECOMMENDED	Tim Prentice of Prentice Colbert Inc., West Cornwall, Conn.
OTHER INFORMATION	Review Committee Rating from Criteria in RFP - The Union Depot Art Selection and Design Review Panel will review and evaluate applications based on the following criteria: a. Aesthetic quality of previously completed art projects and commissions. b. Applicability and suitability of past work to specific Union Depot commission opportunities, including work that was installed in buildings within a historic site or district. c. Appropriateness of previously completed artworks to their sites, including safety and scale. d. Durability and suitability of materials used related to resistance to vandalism and minimization of maintenance requirements. e. Experience working with the public and neighborhood communities.



3

REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date: 8/7/2012

Regional Railroad Authority Meeting Date: _____

SUBJECT: Contract with Prentice Colbert, Inc. to design, fabricate and install public art at Union Depot

EXECUTIVE SUMMARY

The Federal Transit Administration (FTA) strongly recommends that its funded major construction projects include a public art program within the project capital costs. FTA guidelines state that the public art budget should at a minimum be one half of one percent of construction costs, but should not exceed five percent of construction costs. The proposed budget for public art at the Union Depot is \$1.25 million, which is slightly less than one percent of construction costs (0.84 percent).

Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, approved by the Ramsey County Regional Railroad Authority ("RCRRA") in December 2011, will provide \$1 million towards public art at the Union Depot. RCRRA funds in the amount of \$250,000 will provide the balance from the 2011 Union Depot project budget.

On February 2, 2012, RCRRA approved the release of a Call for Artists (Request for Proposals) seeking artists to participate in the Union Depot Public Art Program. FTA provides guidelines for the process by which artists should be selected. RCRRA followed the suggested FTA process, creating the Union Depot Art Selection and Design Review Panel, composed of artists, arts professionals, historians, project partners and community representatives. The panel reviewed more than 260 applications from 156 artists using best practices criteria, selected finalists for interviews, and recommended artists (or artist teams) for selection and contracting. The contracts arising from this Call to Artists represent \$1,050,000 of the budgeted \$1.25 million. Remaining funds not used for related costs will be part of a supplemental artist solicitation anticipated for next spring.

(The Executive Summary is continued on the following page)

ACTION REQUESTED

- 1) Approve a contract with Prentice Colbert, Inc., 129 Lake Road, West Cornwall, CT 06796, for commission of public art at the Union Depot for the period of 8/7/2012 through 12/31/2013 in the amount of \$200,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

(Executive Summary Continued)

Tim Prentice of Prentice Colbert, Inc. is a professional artist from West Cornwall Conn., with more than thirty years of experience in public art. The Union Depot Art Selection and Design Review Panel, following a fair and deliberative process, by consensus recommends his selection for creating a work of suspended kinetic sculpture in the Kellogg Entrance. The budget established for this work is fixed at \$200,000, as stated in the Request for Proposals.

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AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK

THIS AGREEMENT is entered into between the Ramsey County Regional Railroad Authority ("RCRRA"), a political subdivision of the State of Minnesota, with offices at Union Depot, 214 4th Street East, St. Paul, MN 55101 and Prentice Colbert, Inc. ("Artist") with offices at 129 Lake Road, West Cornwall, CT 06796.

WHEREAS, the RCRRA has included Artwork Funding for the establishment and display of Artwork as part of the renovation and restoration of the Union Depot ("Project"); and

WHEREAS, the RCRRA issued a Call to Artists for applications to design, execute, fabricate and/or install Artwork in the Kellogg Entrance area of the Union Depot; and

WHEREAS, the Artist is a recognized artist whose work and reputation make the Artist uniquely qualified to create Artwork as part of the Project; and

WHEREAS, the Artist and the RCRRA wish to undertake the obligations expressed herein;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

Article 1 Scope of Services

1.1 Artist's Obligations

- 1.1.1 The Artist shall perform all services and furnish all supplies, material and/or equipment as necessary for the design, fabrication, and installation of the Artwork described in **Exhibit 1**, attached to and made a part of this Agreement, at the location described in **Exhibit 1** ("Site"). Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- 1.1.2 The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the RCRRA as set forth in this Agreement. To ensure that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site, the Artist's proposal shall be reviewed by the RCRRA and its Consultants, as necessary, for approval by the RCRRA to ensure compliance with these objectives.
- 1.1.3 The Artist shall prepare the Artwork design and corresponding budget as provided in Section 1.3 of this Agreement for the approved proposal.
- 1.1.4 Prior to submitting a Schematic Design, the Artist shall travel to the Site to gain an understanding of the Site's unique characteristics and to coordinate with RCRRA staff, as appropriate, to communicate about the Artwork and to ensure appropriate integration and/or installation of the Artwork.

- 1.1.5 Throughout the Project, the Artist shall provide RCRRA staff sufficient detail to permit the RCRRA to determine compliance with applicable local, state or federal laws, ordinances and/or regulations, and to obtain any necessary approvals with the State Historic Preservation Office ("SHPO"), and the City of Saint Paul's Heritage Preservation Commission ("HPC").
- 1.1.6 The Artist shall complete the fabrication of the Artwork by the scheduled installation start date as provided in Section 1.4.2 of this Agreement.
- 1.1.7 The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation of the Artwork at the Site.
- 1.1.8 The Artist shall arrange the transportation and installation of the Artwork in consultation with RCRRA staff. If the Artist does not personally install the Artwork, the Artist shall supervise and approve the installation.
- 1.1.9 The Artist shall provide required insurance as specified in Article 6 and **Exhibit 2**, attached hereto and made a part of this Agreement.
- 1.1.10 The Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
- 1.1.11 The Artist shall provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep involved.
- 1.1.12 The Artist shall provide photographic documentation of the Artwork.
- 1.1.13 The Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.

1.2 RCRRA's Obligations

- 1.2.1 The RCRRA shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- 1.2.2 The RCRRA shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, and reports; a list of required permits, licenses, and other authorizations; and other existing relevant data, if any, which is needed by the Artist in order to perform.
- 1.2.3 The RCRRA shall be responsible for compliance with applicable laws and regulations with the exception of required licenses, permits and similar authorizations required to be secured by the Artist under Section 1.1.6, and shall explain any limitations imposed by such laws and/or regulations to the Artist.

- 1.2.4 The RCRRA shall prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement. The Artist and RCRRA staff will cooperate to determine reasonable costs for those items that the RCRRA will be responsible for in order to prepare the Site for the timely transportation and installation of the Artwork. The RCRRA shall complete the Site preparations by the scheduled installation start date as provided in Section 1.4.2 of this Agreement or shall notify the Artist in writing of any delays.
- 1.2.5 The RCRRA shall provide and install a plaque on or near the Artwork containing a credit to the Artist substantially in the following form: [Artist's name, Artwork title, date of publication].
- 1.2.6 The RCRRA shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the RCRRA's control.
- 1.2.7 RCRRA staff shall be responsible for leading the Artist through the required review process. RCRRA staff shall be responsible for organizing and scheduling meetings with review entities such as the Union Depot Art Selection and Design Review Panel, the State Historic Preservation Office (SHPO) and the City of Saint Paul's Heritage Preservation Commission (HPC) and for providing the Artist written instructions for the materials required at such meetings should they be necessary.

1.3 Design

1.3.1. Concept/Schematic

- a. Within 60 days of the execution of this Agreement and receipt of Payment "a." as in **Exhibit 4**, the Artist shall submit to RCRRA staff the design concept (the "Schematic Design") in the form of detailed color drawings, models, and/or other documents as are required to present a meaningful representation of the Artwork. The Schematic Design will include: a description of the method by which the Artwork is to be fabricated and installed; a description of any operational, maintenance and conservation requirements for the Artwork; a description of the placement of the Artwork at the Site and any site preparations that may be required by the RCRRA including, but not limited to, any changes or modifications to any utility system or structure of the Site as necessary within a reasonable cost and as required by the RCRRA. The design concept shall include a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved. The Schematic Design of the Artwork shall be incorporated into and made a part of this Agreement by reference as **Exhibit 1**.
- b. The proposed Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as

weather, temperature variation, and considerable movement of people and equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense.

- c. Prior to submitting the Schematic Design, the Artist shall visit, examine, research and consider the Site and surrounding area. The Artist shall also discuss with RCRRA staff the most appropriate method to inform the content of the Schematic Design. If applicable, the Artist shall consult with representatives of the community and consider their input and concerns. The Artist shall meet with members of the Union Depot Art Selection and Design Review Panel during the visit to the Site and discuss with them any preliminary design proposals he might have.
- d. The Schematic Design must include sufficient detail to permit the RCRRA, SHPO, and HPC to determine compliance with applicable local, state or federal laws, ordinances and/or regulations.
- e. When the Artist submits the Schematic Design to RCRRA staff for approval, the Artist shall also submit a detailed budget for approval for the design, fabrication and installation of the Artwork, including costs for Site preparation, as described in Section 1.4.1 of this Agreement.

1.3.2 Approval

- a. Within 15 days after the Artist submits the Schematic Design, the Union Depot Art Selection and Design Review Panel will convene and review the submitted Schematic Design. RCRRA staff shall notify the Artist whether it approves or disapproves of the Schematic Design. The RCRRA shall have discretion to approve outright, approve with conditions, or disapprove the Schematic Design.
- b. RCRRA staff shall notify the Artist of any revisions to the Schematic Design determined by the RCRRA to be necessary for the Artwork to comply with applicable laws, ordinances and/or regulations and other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the accepted Schematic Design.

1.3.3 Redesign

- a. If the Union Depot Art Selection and Design Review Panel disapproves of the Schematic Design, RCRRA staff will notify the Artist in writing of the reasons for such disapproval. In such event, the Artist will submit a Revised Design within 20 days after RCRRA staff has notified the Artist of its disapproval, addressing the identified reasons. This process shall continue until the Union Depot Art Selection and Design Review Panel approves the Revised Design. The Artist will not be paid additional fees for the Revised Design(s).

- b. The Revised Design will reflect changes made to address the stated reasons for disapproval, as well as any adjustments in the budget or schedule that may be necessary. RCRRA staff shall notify the Artist in writing whether the Union Depot Art Selection and Design Review Panel approves or disapproves of the Revised Design within 30 days after the Artist submits the Revised Design.
- c. If the Artist refuses to revise the Schematic Design pursuant to Section 1.3.3. a., or if the Artist fails to adequately revise the Schematic Design in the judgment of the Union Depot Art Selection and Design Review Panel and RCRRA staff, this Agreement shall terminate and the parties shall be under no further obligation to each other as of the date of such termination. The effective date of termination shall be the date the RCRRA submits its written disapproval of the Revised Design to the Artist. The RCRRA shall submit to the Artist a written termination notice with the disapproval. The termination notice shall advise the Artist that this Agreement has been terminated pursuant to this Article. The termination notice shall notify the Artist that the Artist is entitled to retain the compensation paid prior to the termination date, and that the Parties are under no further obligation to each other. The termination notice shall confirm that the Artist shall retain ownership of all Schematic Designs, Revised Designs and renderings thereof submitted hereunder.

1.3.4 Final Design/Construction Documents

- a. The Artist shall prepare structural drawings for the approved design ("Final Design") detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings and supplementary documents shall indicate any issues involved in the construction, integration and maintenance of the Artwork, and shall identify any subcontractors needed to work on the project including the work to be performed by the subcontractors.
- b. Where appropriate, the Artist shall present such drawings to a qualified engineer, licensed by the State of Minnesota and paid by the Artist, for certification that the Artwork will be of adequate structural integrity, and the Artist shall provide the RCRRA with such certification, signed and stamped by the licensed engineer. The Artist shall present the Final Design to a qualified conservator, designated by RCRRA staff at no cost to the Artist, who will make recommendations on the maintenance of the Artwork. The Artist shall provide a written copy of the conservator's recommendations to RCRRA staff.
- c. The Artist shall provide a detailed narrative Description of the Artwork with explicit detail regarding the overall form or design, scale, dimensions, color, and surface treatment of the Artwork. The Description

of the Artwork shall be incorporated into and made a part of this Agreement by reference as **Exhibit 3**.

1.4 Budget/Payment Schedule

1.4.1 Budget

- a. The budget to be prepared by the Artist pursuant to the provisions of this Section shall include all goods, services and materials, with such costs itemized. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date. The Artist shall include a contingency amount between 5% and 10% to be used towards unforeseen costs directly related to the fabrication and/or installation of the project.
- b. Upon approval by the RCRRA staff, the Budget shall be incorporated into and made a part of this Agreement by reference as **Exhibit 4**.
- c. The Artist shall keep a log of the Artist's Project hours as well as the hours of work performed by subcontractors, and shall retain all original receipts pertaining directly to the Project.
- d. The Artist shall notify the RCRRA, in writing, prior to the use of any contingency funds for any purpose.
- e. Upon completion of the Project, and prior to Transfer of Title of the Artwork from the Artist to the RCRRA, the Artist shall provide written notice of any unspent funds from the contingency funds. These unspent funds shall be retained by the Artist.
- f. If the Artist incurs costs in excess of the approved budget, the Artist shall pay such excess from the Artist's own funds unless the Artist had previously obtained written approval for a modified budget incorporating such costs from the RCRRA.

1.4.2 Payment Schedule

- a. A schedule for payment to the Artist is included in **Exhibit 4**.

1.5 Project Construction Schedule and Progress Reports

- 1.5.1 The Artist shall submit a proposed schedule for the fabrication and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any, to the RCRRA for approval. Upon approval, the schedule shall be incorporated into and made a part of this Agreement by reference as **Exhibit 5**.
- 1.5.2 The Schedule may be amended only by written agreement of the parties. Any approved revised schedule shall replace and supersede the original schedule as **Exhibit 5**.

1.6 Fabrication Stage

- 1.6.1 The Artist shall fabricate and install the Artwork in substantial conformity with the Final Design. The Artist may not deviate from the approved Final Design without written approval of RCRRA staff.
- 1.6.2 The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork such as the application of protective or anti-graffiti coatings, if applicable, unless the RCRRA disapproves. If the Artwork is being constructed on-site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. Prior to requesting authorization to transport and install the Artwork, the Artist shall be required to provide the RCRRA with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. All subcontractors must provide proof of insurance as described in **Exhibit 2** prior to entering the Site.
- 1.6.3 The Artist will inform RCRRA of the intent to enter into subcontracts for any part of the fabrication of the Artwork. Subcontracted work will be assigned a Disadvantaged Business Enterprise (DBE) goal that will be based on the proposed scope of the subcontracted work for the project. Applicable DBE policies and procedures are attached hereto and made a part of this Agreement as **Exhibit 7**.
- 1.6.4 RCRRA staff shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice. At the RCRRA's request, the Artist shall provide clear photographic documentation of the progress of fabrication of the Artwork.
- 1.6.5 If RCRRA staff, upon review of the Artwork, determines that the Artwork does not conform to the Final Design, the RCRRA reserves the right to notify the Artist in writing of the deviations and that the RCRRA intends to withhold the next payment.
- 1.6.6 The Artist will inform the RCRRA of the planned method for achieving conformance to the Final Design, will promptly cure the deviations and will notify the RCRRA in writing of completion of the cure. RCRRA staff or the RCRRA's Consultants, as necessary, shall promptly review the Artwork, and upon approval shall release the next payment. If the Artist disputes the RCRRA's determination of deviation, the Artist shall promptly submit reasons in writing to the RCRRA within 10 days of the RCRRA's notification. The RCRRA shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Agreement shall remain with the RCRRA.
- 1.6.7 The Artist shall notify the RCRRA in writing when fabrication of the Artwork has been completed, and when the Artwork is ready for delivery and installation at the

Site if the Artwork was fabricated off-site. Artist shall also provide RCRRA staff with clear photographic documentation of the completed Artwork.

- 1.6.8 At the RCRRA's option, RCRRA staff or the RCRRA's Consultants, as necessary, shall inspect the Artwork within 10 days after receiving notification pursuant to paragraph 1.6.6, prior to installation, to determine that the Artwork conforms to the Final Design and to give final approval of the Artwork. The RCRRA shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the RCRRA does withhold final approval, the RCRRA shall submit the reasons for such disapproval in writing within 10 days of examining the fabricated Artwork. The Artist shall then have 30 days from the date of the RCRRA's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Artist has willfully and substantially deviated from the Final Design without the prior approval of the RCRRA. The Artist shall then be held responsible for any expenses incurred in correcting such deviation.
- 1.6.9 RCRRA staff shall promptly notify the Artist of any delays, if such delays are caused by the RCRRA, impacting installation of the Artwork. Any additional storage fees incurred as a result of such delays are the responsibility of the RCRRA.
- 1.6.10 The Artist shall inspect the Site during the Site visit and review design drawings and photographs provided by RCRRA and shall notify the RCRRA of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction.

1.7 Changes to Design

- 1.7.1 Changes to the approved design may not be executed prior to submission of the proposed changes in writing to the RCRRA for further review and approval. The Artist must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design.
- 1.7.2 If RCRRA staff approves the changes, the RCRRA shall promptly notify the Artist in writing. RCRRA staff will also make the required presentations to the approval bodies.
- 1.7.3 If RCRRA staff disapproves of the changes, the RCRRA shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design.

- 1.7.4 The Artist's fee shall be equitably adjusted for any increase or decrease in the Artist's cost of, or time required for, performance of any services under this Agreement as a result of revisions made to the Design under Section 1.7.1. Any claim of the Artist for adjustment under this paragraph must be asserted in writing within 20 days after the date of the approval of the revision by the RCRRA.

1.8 Installation

- 1.8.1 Upon the RCRRA's final approval of the fabricated Artwork as being in conformity with the Final Design, the Artist shall deliver and install the completed Artwork to the Site in accordance with the agreed-upon schedule.
- 1.8.2 The Artist will coordinate closely with RCRRA staff to ascertain that the Site is prepared to receive the Artwork. The Artist must notify the RCRRA of any adverse conditions at the Site that would affect or impede the installation of the Artwork.
- 1.8.3 The Artist is responsible for timely installation of the Artwork. The Artist will confer and coordinate with RCRRA staff to ensure timely coordination with the RCRRA's Project construction team. Site access procedures will be identified in coordination with the development of the Artwork design and installation schedule. The Artist may not install the Artwork until authorized to do so by RCRRA staff.
- 1.8.4 The Artist will inform RCRRA of the intent to enter into subcontracts for any part of the installation of the Artwork. Subcontracted work will be assigned a Disadvantaged Business Enterprise (DBE) goal that will be based on the proposed scope of the subcontracted work for the project. Applicable DBE policies and procedures are set forth in **Exhibit 7**.
- 1.8.5 The Artist shall supervise the installation of the Artwork.
- 1.8.6 Upon installation of the Artwork, the Artist shall provide the RCRRA with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used.
- 1.8.7 Upon written acceptance of the installation by the RCRRA in accordance with the provisions of Section 1.9 herein, the Artwork shall be deemed to be in the custody of the RCRRA for purposes of Article 4 and Article 6 of this Agreement.
- 1.8.8 The RCRRA is responsible for the proper care and maintenance of the Artwork after written acceptance of the installation

1.9 Approval and Acceptance

- 1.9.1 The Artist shall notify the RCRRA in writing when all services have been completed in substantial conformity with the requirements of this Agreement and that the Artwork is ready for approval and acceptance.
- 1.9.2 RCRRA staff shall promptly notify the Artist of its final acceptance of the Artwork within 10 days after the Artist submitted written notice pursuant to Section 1.9.1 above. The effective date of final acceptance shall be the date the RCRRA submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the RCRRA acknowledges completion of the Artwork in substantial conformity with the Final Design, and that the RCRRA confirms that all services as required of the Artist have been completed.
- 1.9.3 If the RCRRA disputes that all the services have been performed, the RCRRA shall notify the Artist in writing of those services the Artist has failed to perform within 10 days after the Artist submitted written notice pursuant to Section 1.9.1 above. The Artist shall promptly perform those services indicated by the RCRRA.
- 1.9.4 If the Artist disputes the RCRRA's determination that not all services have been performed, the Artist shall submit reasons in writing to the RCRRA within 30 days of the RCRRA's notification. The RCRRA shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the RCRRA.
- 1.9.5 Upon the resolution of any disputes that arise under this Section 1.9, RCRRA staff shall notify the Artist of its final acceptance of the Artwork.
- 1.9.6 After final acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by RCRRA staff and the Artist to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork. The RCRRA shall be solely responsible for coordinating public information materials and activities related to public presentations.

Article 2 Taxes

Any state or federal sales, use or excise taxes, or similar charges relating to the services and materials under this Agreement shall be paid by the Artist in a timely fashion and in accordance with all legal requirements. The RCRRA shall report payments made to the Artist annually to the Internal Revenue Department in a 1099 statement.

Article 3 Term of Agreement

3.1 Duration

This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to the provisions of this Agreement, shall extend until the completion of obligations by both parties. Provisions of this Agreement that by their nature extend beyond the term of the Agreement shall survive the

termination of this Agreement. Extension of time for performance hereunder may be granted upon the request of one Party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and shall replace the prior Project Schedule as describe in Section 1.5.2.

3.2 Force Majeure

The RCRRA shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

Article 4 Risk of Loss

The Artist shall bear the risk of loss or damage to the Artwork until the RCRRA's final acceptance of the Artwork under Section 1.9. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The RCRRA shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork, by written agreement of the RCRRA, is in the custody, control or supervision of the RCRRA or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

Article 5 Artist's Representations and Warranties

5.1 Warranties of Title

5.1.1 The Artist represents and warrants that:

- a. The Artwork is solely the result of the artistic effort of the Artist.
- b. Except as otherwise disclosed in writing to the RCRRA, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person.
- c. The Artwork (or duplicate thereof) has not been accepted for sale elsewhere.
- d. The Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement.
- e. The Artwork is free and clear of any liens from any source whatsoever.
- f. All Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original

with the Artist and shall not infringe upon or violate the rights of any third party.

- g. The Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
- h. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.

5.1.2 These representations and warranties shall survive the termination or expiration of this Agreement.

5.2 Warranties of Quality and Condition

The Artist represents and warrants that:

- 5.2.1 All work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for two years after the date of final acceptance by the RCRRA under Section 1.9.
- 5.2.2 The Artwork and the materials used are not currently known to be harmful to public health and safety.
- 5.2.3 Reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.8.7.
- 5.2.4 If within two years after Final Acceptance the RCRRA observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the Artist shall, at the request of the RCRRA, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the RCRRA. The RCRRA shall give notice to the Artist of such breach with reasonable promptness.
- 5.2.5 If within two years after Final Acceptance the RCRRA observes a breach of warranty described in this Section 5.2 that is not curable by the Artist, the Artist is responsible for reimbursing the RCRRA for damages, expenses and loss incurred by the RCRRA as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the RCRRA accepted that it may occur, it shall not be deemed a breach for purposes of this Section 5.2 of this Agreement.
- 5.2.6 If after two years after Final Acceptance the RCRRA observes any breach of warranty described in this Section 5.2 that may be curable by the Artist, the RCRRA, at its discretion, has the option to either:

- a. Contact the Artist to make or supervise repairs or restorations at a reasonable fee; or
- b. Seek the services of a qualified restorative conservator and maintenance expert.

5.3 Acceptable Standard of Display

5.3.1 The Artist represents and warrants that:

- a. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
- b. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
- c. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
- d. To the extent the Artwork incorporates products covered by a manufacturer's warranty, the Artist shall provide copies of such warranties to the RCRRA.

5.3.2 The foregoing warranties are conditional, and shall be voided by the failure of the RCRRA to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the RCRRA fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

Article 6 Liability/Insurance

6.1 General

6.1.1 The Artist acknowledges that, except as otherwise provided herein, until final acceptance of the Artwork by the RCRRA under Section 1.9, any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.

6.1.2 Insurance requirements are set forth in **Exhibit 2**.

6.2 Indemnity

6.2.1 The Artist shall indemnify, defend and hold harmless the RCRRA and officials, employees and agents (each a "Covered Person") from and against all liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively "Losses") arising from, in connection with or caused by:

- a. Any personal injury or property damage caused, directly or indirectly, by any act or omission of the Artist; or
- b. Any infringement of patent, copyright, trademark, trade secret or other proprietary right caused by the Artist.

6.2.2 Notwithstanding the foregoing, Artist shall have no obligation under this Section with respect to any Losses that are caused solely by the active negligence or willful misconduct of the Covered Party and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by the Artist.

6.2.3 The Artist acknowledges and agrees that its obligation to defend in this Section:

- a. Is an immediate obligation, independent of its other obligations hereunder;
- b. Applies to any Losses which actually or potentially fall within the scope of this Section, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and
- c. Arises at and continues after the time the Losses are tendered to the Artist.

Article 7 Ownership and Intellectual Property Rights

7.1 Title

Title to the Artwork shall transfer to the RCRRA upon the RCRRA's written final acceptance and payment for the Artwork pursuant to Article 1 and **Exhibit 4**. The Artist shall provide the RCRRA with a Transfer of Title in substantially the form attached hereto and made a part of this Agreement as **Exhibit 6**.

7.2 Ownership of Documents

One set of presentation materials prepared and submitted under this Agreement shall be retained by the RCRRA for possible exhibition and to hold for permanent safekeeping.

7.3 Copyright Ownership

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright.

7.4 Reproduction Rights

7.4.1 In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate two or three-dimensional reproductions of the

final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the RCRRA. However, nothing shall prevent the Artist from creating future Artworks in the Artist's manner and style of artistic expression.

- 7.4.2 The Artist grants to the RCRRA and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.
- 7.4.3 All reproductions by the RCRRA shall contain a credit to the Artist in substantially the following form: [Artist's name, Artwork title, date of publication].
- 7.4.4 The Artist shall use the Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to the RCRRA in substantially the following form: "Artwork commissioned by the Ramsey County Regional Railroad Authority, St. Paul, MN."
- 7.4.5 The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- 7.4.6 If the RCRRA wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
- 7.4.7 Third Party Infringement. The RCRRA is not responsible for any third party infringement of the Artist's copyright and not responsible for protecting the intellectual property rights of the Artist.

Article 8 Artist's Rights

8.1 General

- 8.1.1 The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- 8.1.2 The RCRRA agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first consulting with the Artist.
- 8.1.3 If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist may have in law or equity under this contract. Upon written request, the RCRRA shall remove the identification plaque and all attributive references to the Artist at its own expense within 30 days of receipt of the written request. No provision of this Agreement shall obligate the RCRRA to alter or remove any such attributive

reference printed or published prior to the RCRRA's receipt of such written request. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

8.2 Alterations of Site or Removal of Artwork

8.2.1 The RCRRA shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork. The RCRRA shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. The RCRRA shall make a reasonable effort to maintain the integrity of the Artwork.

8.2.2 The RCRRA agrees not to arbitrarily remove or relocate the Artwork without first making a good faith effort to contact the Artist. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation, the Artist shall provide the RCRRA with written handling instructions. In the event that the Artist is deceased or unable to otherwise give the Artist's consent, the current owner of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist at the time of commission and fabrication.

8.2.3 This clause is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

Article 9 Permanent Record

The RCRRA shall maintain on permanent file a record of this agreement and of the location and disposition of the Artwork.

Article 10 Artist as an Independent Contractor

The Artist agrees to perform all Artwork under this Agreement as an independent contractor and not as an agent or employee of the RCRRA. The Artist acknowledges and agrees that the Artist shall not hold himself or herself out as an authorized agent of the RCRRA with the power to bind in any manner. The Artist shall provide the RCRRA with the Artist's Tax Identification Number and any proof of such number as requested by the RCRRA.

Article 11 Nondiscrimination

The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

Article 12 Assignment of Artwork

The Artwork and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given

by the RCRRA. The RCRRA shall have the right to assign or transfer any and all of the RCRRA's rights and obligations under this Agreement if ownership of the Site is transferred.

Article 13 Suspension/Termination

- 13.1 Either Party may suspend this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operations; superior governmental regulation or control, public emergency or strike or other labor disturbance. Notice of suspension of this Agreement shall be given to the other Party in writing not less than 15 days prior to the effective date of the suspension. If the suspension continues for more than 90 days, either party may terminate this Agreement without cause. If this Agreement is terminated, the RCRRA shall pay the Artist for services performed and costs incurred that cannot be eliminated prior to the date of termination, consistent with the schedule of payments set forth in **Exhibit 4** of this Agreement.
- 13.2 The RCRRA may terminate this Agreement without cause upon 15 days written notice to the Artist. The RCRRA shall pay the Artist for services performed and costs incurred that cannot be eliminated prior to the date of termination, consistent with the schedule of payments set forth in **Exhibit 4** of this Agreement.
- 13.3 If the Artist willfully or negligently fails to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the RCRRA shall thereupon have the right to terminate this Agreement by giving written notice to the Artist of its intent to terminate, specifying the grounds for termination. The Artist shall have 30 days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate and the Artist shall return to the RCRRA all payments received from the RCRRA in excess of expenses already incurred. The Artist shall provide an accounting of such expenses along with the reimbursement payment. All finished and unfinished drawings, sketches, photographs and other Artwork products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. The RCRRA shall retain the right to have the Artwork completed, fabricated, executed, delivered and installed. However, the Artist shall retain the copyright in the Artwork and all rights under Article 7 and Article 8.
- 13.4 Upon notice of termination, the Artist and his or her subcontractors shall cease all activities under this Agreement.

Article 14 Death or Incapacity

If the Artist becomes unable to complete this Agreement due to death or incapacitation, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for the purpose of Article 13. However, nothing in this Article shall obligate the RCRRA to accept the Artwork. In the event of death of the Artist, this Agreement shall terminate as of the date of death; in the event of incapacity, the Agreement shall terminate upon expiration of 90 days of incapacity. The RCRRA shall pay the Artist, the Artist's heirs, or the Artist's estate, as

appropriate, for all services and work delivered in a satisfactory manner and in accordance with the provisions of this Agreement prior to the Artist's death or first day of incapacity.

Article 15 Compliance with Applicable Law

The Artist agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the Artist's performance of the provisions of this Agreement, including the provisions of the specific **Federal Requirements**, attached hereto and made a part of this Agreement as **Exhibit 8**. It shall be the obligation of the Artist to apply for, pay for and obtain all permits and/or licenses required by any governmental agency for the provision of those services contemplated herein.

Article 16 Notices and Documents

Notices required under this Agreement shall be delivered personally or through the [registered or certified mail, return receipt requested] mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party pursuant to the provisions of this Article:

For the RCRRA: Josh Collins or successor
Ramsey County Regional Railroad Authority
Suite 6560 RCGC-West
50 W. Kellogg Blvd
St. Paul, MN 55102

For the Artist: Tim Prentice
Prentice Colbert, Inc.
129 Lake Road
West Cornwall, CT 06796

Notice shall be deemed effective on the date personally delivered or, if mailed, on the date the return receipt is signed.

Article 17 Waiver

The Parties agree that a waiver of any breach of violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term of condition.

Article 18 Audit

- 18.1 Until the expiration of six (6) years after the furnishing of services pursuant to this Agreement, the Artist, upon written request, shall make available to the RCRRA, the State Auditor or the RCRRA's ultimate funding sources, a copy of this Agreement and the books, documents, records and accounting procedures and practices of the Artist relating to this Agreement.
- 18.2 The Artist shall maintain all books, documents, records and accounting procedures and practices of the Artist relating to this Agreement for a period of six years from the date of transfer of title following acceptance and final payment is made. Those records subject to

an audit shall be maintained until the audit is resolved, even if this period extends beyond the six years stated. All records shall be made available for inspection or audit, at any time during regular business hours, upon written request by the RCRRA's General Counsel or designated representative, the State Auditor or the County's ultimate funding sources.

Article 19 Data Practices

All data collected, created, received, maintained or disseminated for any purpose in the course of the Artist's performance of this Agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, or any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

Article 20 Conflict of Interest

The Artist and the RCRRA shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

Article 21 Arbitration

21.1 If, during the creation of the Artwork, its installation and subsequent existence, either Party breaches this Agreement, each Party agrees to submit to arbitration upon the request of the other, provided that the breach is not cured within a reasonable time under Section 13.3 of this Agreement.

21.2 If an ambiguity arises regarding this Agreement upon which the parties cannot agree or a dispute arises as to the completion of a provision, the Parties shall submit the matter to arbitration.

21.3 Each Party agrees to be responsible for its own attorney's fees and costs.

Article 22 Amendments

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto in the form of an amendment to this Agreement.

Article 23 Conflicts of Law

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel or mediation procedure to be in conflict with the laws, rules, and/or regulations of the United States or the State of Minnesota, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

Article 24 Interpretation of Agreement; Venue

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate state or federal district court in Ramsey County, Minnesota.

Article 25 Prompt Payment

Payment of interest on late payments and disputes regarding payments shall be governed by the provisions of Minn. Stat. Section 471.425.

Article 26 Contractor Certification Regarding Debarment, Suspension, and Responsibility (If applicable)

Federal Regulation 45 CFR 92.35 prohibits the RCRRA from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government.

By signing this Agreement, the Artist certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state or local governmental department or agency; and
2. Have not within a three-year period preceding this Agreement:
 - a. been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract;
 - b. violated any federal or state antitrust statutes; or
 - c. committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
3. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for:
 - a. commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction;
 - b. violating any federal or state antitrust statutes; or
 - c. committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
4. Have not had one or more public transactions terminated with in the preceding three years for cause or default; and
5. Shall not knowingly enter into any transaction with a subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and that they will require any subcontractor that receives more than \$100,000 to make a similar certification as set forth herein; and
6. Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this Agreement are in violation of any of the certifications set forth above; and

7. Shall immediately give written notice to the RCRRA should the Artist come under investigation for allegations of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local government) transaction; violating any federal or state antitrust statutes; or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

Article 27 Non-Conforming Services

The acceptance by the RCRRA of any non-conforming services under the terms of this Agreement or the foregoing by the RCRRA of any of the rights or remedies arising under the terms of this agreement shall not constitute a waiver of the RCRRA's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the RCRRA provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

Article 28 Unavailability of Funding

The purchase of goods or services from the Artist under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds from the RCRRA Board. The RCRRA may immediately terminate this Agreement if the funding for the Artwork is no longer available or is not appropriated by the RCRRA Board. Upon receipt of the RCRRA's notice of termination of the Agreement the Artist shall take all actions necessary to discontinue further commitments of funds to the Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the RCRRA.

Article 29 Prevailing Wage

The Artist and all subcontractors shall conform to the labor laws of the State of Minnesota, and all other laws, ordinances, and legal requirements affecting the work in Ramsey County and Minnesota. The minimum wage rate per hour to be paid for each classification of work shall be the union wage rate in the locality of the project for those classifications over which the unions have jurisdiction and the local prevailing rate for those classifications of work in the localities over which the unions do not have jurisdiction.

Article 30 Respectful Workplace and Violence Prevention

The Artist shall make all reasonable efforts to ensure that the Artist's employees, officials and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined in the Ramsey County Respectful Workplace and Violence Prevention Policy, means words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority where the impact is to cause pain, fear or injury.

Article 31 Subcontractor Payment

The Artist shall pay any subcontractor within ten days of the Artist's receipt of payment from the RCRRA for undisputed services provided by the subcontractor. The Artist shall pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not

paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Artist shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Artist must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

Article 32 Lobbying

For all contracts involving over \$100,000 in federal funds, the Artist must sign the Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements, attached hereto and made a part of this Agreement as **Exhibit 8**.

Article 33 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements, and conditions between the parties. No verbal agreements or conversations between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligations.

WHEREFORE, this Agreement is duly executed on the last date written below.

**RAMSEY COUNTY REGIONAL
RAIL AUTHORITY**

ARTIST NAME

Jim McDonough, Chair
Ramsey County Regional Railroad Authority

Print Name: _____

Bonnie Jackelen, Chief Clerk
Board of County Commissioners

Date: _____

Date: _____

Approval recommended:

Timothy Mayasich, Director
Ramsey County Regional Rail Authority

Approved as to form and insurance:

Assistant County Attorney

Exhibit 1

Concept/Schematic Design

(To be developed and incorporated into the contract as provided in Section 1.3.1 of the forgoing contract to which this exhibit is attached.)

Exhibit 2
Insurance Requirements

The Artist shall obtain and maintain for the duration of the contract, an insurance policy or policies for the protection of both the **Artist** and the **RCRRA**. The **RCRRA** requires certification of insurance coverage from all Artists/subArtists, Sub-contractors and suppliers before commencing work. All subcontractors used for the installation shall provide certificates of insurance evidencing General Liability, Workers Compensation, and automobile coverage prior to installation with the RCRRA and Ramsey County as property manager added as an additional insured with respect to installation of the artwork.

Please carefully review the requirements outlined.

IT IS HIGHLY RECOMMENDED THAT YOU CONFER WITH YOUR INSURANCE BROKER/AGENT OR OTHER INSURANCE COMPANY REPRESENTATIVE, BEFORE SUBMITTING YOUR BID, TO DETERMINE THE AVAILABILITY AND APPLICABLE COST, IF ANY, OF CERTIFICATES, ENDORSEMENTS, COVERAGES, AND LIMITS REQUIRED.

1. MINIMUM SCOPE AND EXTENT OF COVERAGE

A. GENERAL LIABILITY

Commercial General Liability, ISO coverage form number **CG 00 01** ("occurrence" basis).

\$ 1,000,000 limit per occurrence for bodily injury, personal injury, and property damage; **\$1,000,000** annual aggregate

The Ramsey County Regional Rail Authority, its commissioners, officers, officials, agents, and employees, shall be endorsed as **additional insureds** by ISO Form **CG 20 26 -- ADDITIONAL INSURED -- DESIGNATED PERSON OR ORGANIZATION** or equivalent. As additional insureds, they shall be covered as to work performed by or on behalf of the **Artist** or as to liability which arises out of **Artist's** activities or resulting from the performance of services or the delivery of goods called for by the **Contract**.

B. AUTOMOBILE LIABILITY

Business Auto or Personal Automobile Liability insurance
\$1,000,000 limit per occurrence covering bodily injury and property damage.

C. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY

Statutory Workers' Compensation insurance for all states where Proposer has work locations and standard Employer's Liability insurance, *if required by state law*.

D. PROFESSIONAL LIABILITY – REGISTERED STRUCTURAL ENGINEER

D.1 Per Claim \$1,000,000
Aggregate Limit: \$2,000,000

D.2 Certificate of Insurance must indicate if the policy is issued on a claims-made or occurrence basis. If coverage is carried on a claims-made basis, then: 1) the retroactive date shall be noted on the Certificate and shall be prior to or the day of the inception of this Agreement; and 2) evidence of coverage shall be provided for three years beyond expiration of this Agreement.

E. PROPERTY

The Artist shall maintain property coverage on an all-risk basis and shall add the RCRRA as a loss payee as the RCRRA's interest in the Artwork may appear. This interest shall be based on the payments made according to **Exhibit 4** for the commissioned Artwork as defined in the contract between the Artist and the RCRRA. The Artist shall keep this policy in effect until the RCRRA's final acceptance of the Artwork under Article 4 Risk of Loss.

2. INSURER QUALIFICATIONS/ACCEPTABILITY

The insurance required hereunder shall be issued by an **A.M. Best "A-" rated, Class VI** insurance company licensed to conduct insurance business in the state of Minnesota.

3. VERIFICATION OF INSURANCE COVERAGE

Prior to commencing work, the **Artist** shall furnish the **RCRRA** with CERTIFICATE(S) OF INSURANCE (including a Professional Liability insurance certificate from Registered Structural Engineer) and with any applicable original endorsements evidencing the required insurance coverage. A person authorized by that insurer to bind coverage on its behalf must sign the insurance certificates and endorsements. All certificates and endorsements received by the **RCRRA** are subject to review and approval by the Ramsey County Attorney's Office. The **RCRRA** reserves the rights to require complete, certified copies of all required policies at any time. If the scope of this contract will exceed one (1) year—or, if any of **Artist's** applicable insurance coverage expire prior to completion of the work or services required under this contract—the **Artist** will provide a renewal or replacement certificate before continuing work or services hereunder.

4. NON-WAIVER

Nothing in this Agreement shall constitute a waiver by the **RCRRA** of any statutory or common law immunities, limits, or exceptions on liability.

Exhibit 3
Final Design

(To be developed and incorporated into the contract as provided in Section 1.3.4 of the
forgoing contract to which this exhibit is attached)

[This exhibit will identify the location of the Artwork and will provide a detailed narrative describing the proposed artwork with explicit detail regarding the overall form or design, scale, dimensions, color and surface treatment of the Artwork.]

Exhibit 4
Artwork Budget

(To be developed and incorporated into the contract as provided in Section 1.4.1 of the forgoing contract to which this exhibit is attached.)

Fee and Payment Schedule

The RCRRA shall pay the Artist a fixed fee of two hundred thousand dollars (\$200,000), which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

- a. \$30,000 upon the execution of this Agreement, recognizing that the Artist will invest time and expense in preparing the Design as set forth in Section 1.3 of the Agreement;
- b. \$50,000 upon the RCRRA's notification to the Artist of its approval of the Final Design as set forth under Section 1.3 and issuance of a Notice to Proceed with Fabrication and Installation;
- c. \$50,000 within 30 days after the Artist notifies the RCRRA that the Artwork fabrication is 50% complete and provides photographic or other reasonable documentation as requested by the RCRRA;
- d. \$50,000 within 30 days after the Artist notifies the RCRRA that the Artwork is fabricated and ready for delivery and installation at the Site as set forth under Section 1.5(f);
- e. \$20,000 within 30 days after final acceptance of the Artwork by the RCRRA as set forth under Section 1.8(e).

Exhibit 5

Project Schedule

(To be developed and incorporated into the contract as provided in Section 1.5.1 of the forgoing contract to which this exhibit is attached.)

Exhibit 6
Transfer of Title

STATE OF MINNESOTA
COUNTY OF RAMSEY

TRANSFER OF TITLE

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned Artist located at the address noted below does hereby sell, transfer and convey to the RCRRA, located in St. Paul, Minn., its assigns and successors, all right, title and interest in the ownership of the Artwork commissioned by the Ramsey County Regional Railroad Authority and as described in the agreement between the parties.

Title: _____
Location: _____

IN WITNESS WHEREOF, the Artist has executed this written transfer of title on this
____ day of _____, 20____.

ARTIST

ADDRESS

WITNESS

Sworn to and subscribed
before me this ____ day
of _____, 20____.

NOTARY PUBLIC

My Commission Expires:
(NOTARY SEAL)

Exhibit 7

Federal DBE Requirements

1. **Artwork Disadvantaged Business Enterprise Requirements** (FTA Funding with DBE Goal – APPLICABLE TO SUBCONTRACTED WORK ONLY)

A. General Requirement. This contract is funded in part with a grant from the Federal Transit Administration (FTA), whose funds are administered locally by the Metropolitan Council ("Council"), and provided to the RCRRA through a sub-recipient grant agreement. For this project, the Disadvantaged Business Enterprise (DBE) requirements of the Transportation Equity Act for the 21st Century (TEA-21) and 49 CFR part 26 will apply only to subcontracted portions of the Artwork project. Under 49 CFR section 26.51, the Council will establish a goal for DBE participation for work that will be subcontracted by the Artist. The DBE goal will be based on the proposed scope of subcontracted work for the Artwork.

Selected artists who subcontract work will be required to make good faith efforts to meet the established DBE goal. Good faith efforts may be demonstrated by either:

- 1) documenting the participation of specific DBEs to meet the goal; or
- 2) documenting adequate good faith efforts to meet the goal, even if the efforts were not successful in obtaining sufficient DBE participation to meet the goal.

B. Documenting Good Faith Efforts

Participation of DBE. If the Artist will be using a DBE the Artist must list all firms, if any, whose participation is committed to be credited toward meeting the DBE goal. All DBE firms which are listed must, as of the date the information is provided by the Artist to the RCRRA, be:

- 1) certified by the Minnesota Unified Certification Program (MnUCP) as a DBE; or
- 2) certified by any other United States Department of Transportation (USDOT) recipient and then certified by the MnUCP; or
- 3) included on the MnUCP **Disadvantaged Business Enterprise (DBE) Directory**. All of the firms on this listing shall be considered "currently certified" for the purposes of proposal submittal. This listing is available from the Council and can also be found at the following website:
<http://www.dot.state.mn.us/civilrights/ucpdirectory.html>

Adequate Good Faith Efforts. If the Artist will not be using a DBE, the Artist must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if it was not fully successful.

The Council's DBE Liaison Officer will determine whether the Artist made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 CFR section 26.53, and Appendix A thereto.

Compliance will be determined based on a review of documentation of the following types of activities:

- 1) Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the subcontracted work related to the Artwork. The Artist must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Artist must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- 2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Artist might otherwise prefer to perform these work items with its own forces. The Artist is not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- 3) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal offices of minority/women business assistance; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation of DBEs.

Exhibit 8

Specific Federal Requirements

(continued on following eight pages)

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SPECIFIC FEDERAL REQUIREMENTS

FTA-1 Fly America Requirements. The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

FTA-2 Energy Conservation. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.

FTA-3 Access to Records and Reports. The Contractor agrees to provide the Council, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor also agrees, pursuant to 49 C.F.R. § 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight (PMO) contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309, or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce such documents by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. In addition to any other requirements for maintenance of project records and documents in this contract, the Contractor agrees to maintain such records and documents until the Council, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all litigation, appeals, claims or exceptions arising from the performance of this contract

FTA-4 Federal Changes. The Contractor shall at all times comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the Master Agreement between the Council and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

FTA-5 Recovered Materials. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 C.F.R. part 247.

FTA-6 No Obligation by the Federal Government. The Council and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of this contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Council, the Contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from this contract. The Contractor agrees to include the preceding clause in each subcontract under this contract and that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FTA-7 Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this contract. Upon execution of this contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, 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 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001, 49 U.S.C. § 5307(k)(1), 49 U.S.C. § 5323(l) or other applicable federal law on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above language in each subcontract under this contract and that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FTA-8 Civil Rights. The following requirements apply to this contract:

- 1. Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d *et seq.* and USDOT regulations "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of

Title VI of the Civil Rights Act," 49 C.F.R. part 21, 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 Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity. The following equal employment opportunity requirements apply to this contract:

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 Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract 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 this contract. The Contractor 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 Contractor 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 Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor 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 Contractor 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 Contractor agrees to comply with any implementing requirements FTA may issue.

3. Inclusion in Subcontracts. The Contractor agrees to include the requirements of this Section FTA-8 in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

FTA-9 Disadvantaged Business Enterprise ("DBE")

1. Nondiscrimination. Pursuant to 49 C.F.R. § 26.13, the Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Council deems appropriate. The Contractor shall include this requirement in all subcontracts pursuant to this contract.

2. Prompt Payment. The Contractor agrees to pay subcontractors within 10 calendar days of the Contractor's receipt of payment from the Council for undisputed services provided by the subcontractor. The Contractor agrees to pay subcontractors all undisputed retainage payments within 10 calendar days of the Contractor's receipt of payment of retainage from the Council. The Contractor shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the Council. The Contractor agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The Contractor will not be reimbursed for work performed by subcontractors unless and until the Contractor ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section may result in the Council finding the Contractor in noncompliance with the DBE provisions of this contract.

FTA-10 Incorporation of FTA Terms. Specific provisions in this contract include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in 49 C.F.R. § 18.36 and FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Council requests which would cause the Council to be in violation of the FTA terms and conditions.

FTA-10a National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit

Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.

FTA-11 Clean Water. The Contractor 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 Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FTA-12 Certification of Restrictions on Lobbying; Disclosure. The Contractor certifies that no federal appropriated funds have been paid or will be paid by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. The certification of this compliance ("Lobbying Restriction Certification") submitted by the Contractor in connection with this project is incorporated into, and made a part of, this agreement.

The Contractor further certifies that, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit to the Council, Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor certifies that it will require the language of this certification be included in the award documents for any subcontracts equal to or in excess of \$100,000.00 under this agreement, and that all subcontractors shall certify and disclose accordingly to the Contractor.

The certifications referred to in this section (including the "Lobbying Restriction Certification" submitted by the Contractor in connection with this project and incorporated in, and made a part of, this agreement) are material representations of fact upon which the Council relies when this contract is made.

FTA-13 Clean Air. The Contractor 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 Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FTA-14 Suspension and Debarment. This contract is a covered transaction for the purposes of 2 C.F.R. part 1200. By executing this contract, the Contractor certifies that none of the Contractor, its principals, as defined at 2 C.F.R. § 180.995, or affiliates, as defined at 2 C.F.R. § 180.905, are disqualified or excluded as defined at 2 C.F.R. §§ 180.935 and 180.940. The certification in this clause is a material representation of fact relied upon by the Council. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to Council, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R. part 180, subpart C throughout the term of this contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

FTA-15 [Reserved].

FTA-16 [Reserved].

FTA-17 Buy America. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

FTA-18 Cargo Preference. The Contractor agrees: (a) to use privately-owned United States-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill of lading in English for each shipment of cargo described in the preceding paragraph (a) to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Council (through the Contractor in the case of a lower-tier participating subcontractors bill of lading); and (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

FTA-19 [Reserved].

FTA-20 Contract Work Hours and Safety Standards Act.

(1) **Overtime Requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible for a violation shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for Unpaid Wages and Liquidated Damages.** The Council shall, upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(5) **Safety Standards.**

(i) **General Requirement.** The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3704, and applicable Department of Labor regulations, "Safety and Health Regulations for Construction" 29 C.F.R. part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

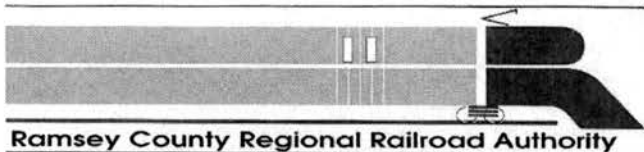
(ii) **Subcontracts.** The Contractor also agrees to include the requirements of this paragraph (5) in each subcontract. The term "subcontract" under this paragraph (5) is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this paragraph (5) if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this paragraph (5) do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

FTA-21 [Reserved]

FTA-22 Pre-Award and Post Delivery Audit Requirements. The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663 and to submit the following certifications:

1. Buy America Requirements. The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.

2. Solicitation Specification Requirements. The Contractor shall submit evidence that it will be capable of meeting the bid specifications.



4

REQUEST FOR ACTION

Type of Agenda: ☐ Policy ☐ Discussion
☒ Administrative ☐ Information

Regional Railroad Authority Meeting Date: 8/7/2012

Regional Railroad Authority Meeting Date: _____

SUBJECT: Contract with Northern Lights.mn to design, fabricate and install public art at Union Depot

EXECUTIVE SUMMARY

The Federal Transit Administration (FTA) strongly recommends that its funded major construction projects include a public art program within the project capital costs. FTA guidelines state that the public art budget should at a minimum be one half of one percent of construction costs, but should not exceed five percent of construction costs. The proposed budget for public art at the Union Depot is \$1.25 million, which is slightly less than one percent of construction costs (0.84 percent).

Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, approved by the Ramsey County Regional Railroad Authority ("RCRRA") in December 2011, will provide \$1 million towards public art at the Union Depot. RCRRA funds in the amount of \$250,000 will provide the balance from the 2011 Union Depot project budget.

On February 2, 2012, RCRRA approved the release of a Call for Artists (Request for Proposals) seeking artists to participate in the Union Depot Public Art Program. FTA provides guidelines for the process by which artists should be selected. RCRRA followed the suggested FTA process, creating the Union Depot Art Selection and Design Review Panel, composed of artists, arts professionals, historians, project partners and community representatives. The panel reviewed more than 260 applications from 156 artists using best practices criteria, selected finalists for interviews, and recommended artists (or artist teams) for selection and contracting. The contracts arising from this Call to Artists represent \$1,050,000 of the budgeted \$1.25 million. Remaining funds not used for related costs will be part of a supplemental artist solicitation anticipated for next spring.

(The Executive Summary is continued on the following page)

ACTION REQUESTED

- 1) Approve a contract with Northern Lights.mn, 2751 Hennepin Ave. S. #231, Minneapolis, MN 55408, for commission of public art at the Union Depot for the period of 8/7/2012 through 12/31/2013 in the amount of \$500,000.
- 2) Authorize the Chair to execute the contract.
- 3) Authorize the Ramsey County Manager to make all necessary budget adjustments including increasing estimated revenues and appropriations.

1

(Executive Summary Continued)

The Northern Lights.mn team, under the direction of Steve Dietz, is comprised of local, national and international artists. The Union Depot Art Selection and Design Review Panel, following a fair and deliberative process, by consensus recommends their selection for creating a multimedia interactive artwork platform at Union Depot. The budget established for this work is fixed at \$500,000, as stated in the Request for Proposals.

SUBJECT: Contract with Northern Lights.mn to design, fabricate and install public art at Union Depot

ATTACHMENTS:

1. Competitive Solicitation Summary
2. Draft contract with Northern Lights.mn.

PREVIOUS ACTION:

RCRRA previously approved Subrecipient Grant Agreement MN-04-0031 with the Metropolitan Council, which will provide 80 percent of the funding towards public art at the Union Depot.

On February 7, 2012, Resolution R12-13 authorized the issuance of a Call to Artists (Request for Proposals) for Public Art Commissions at the Union Depot in accordance with Ramsey County policies and procedures on Requests for Proposals, with direction to staff to return to the Ramsey County Regional Railroad Authority with a selection of artists for contracting authorization.

COUNTY MANAGER'S COMMENTS:

The process followed by RCRRA staff, involving the formation of the Union Depot Art Selection and Design Review Panel, was recommended by FTA under best practices for commissioning public art. The process was consistent with the County's commitment to an open, fair and competitive solicitation process and included input from project stakeholders and the community.

SUBJECT: Contract with Northern Lights to design, fabricate and install public art at Union Depot

Regional Railroad Authority – Authorized Signature	Date
	8/2/12

Budgeting & Accounting – Authorized Signature	Date
 for Sue Kuss	8/1/12

County Attorney – Authorized Signature	Date
	7/30/12

Property Management – Authorized Signature	Date

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

SUBJECT: Contract with Northern Lights.mn to design, fabricate and install public art at Union Depot

Draft Resolution

1 WHEREAS, The Ramsey County Regional Railroad Authority, along with the Federal
2 Transit Administration, recognizes the importance of public art to the overall success and viability
3 of the The Union Depot Multi-Modal Transportation and Transit Hub ("Depot"); and
4

5 WHEREAS, The Federal Transit Administration's recognition of importance is coupled with
6 a commitment of \$1 million in funding towards the public art program; and
7

8 WHEREAS, Public art provides a unique opportunity to recognize and celebrate the rich
9 histories of the Union Depot, St. Paul and the Lowertown neighborhood; and
10

11 WHEREAS, Public art at the Union Depot will complement the power of the existing
12 architectural elements, supporting the Union Depot as a destination community space, while
13 serving to enhance the enjoyment of those passing through the public spaces; and
14

15 WHEREAS, On November 22, 2011, by resolution R12-13 Ramsey County Regional
16 Railroad Authority authorizes the issuance of a Call to Artists (Request for Proposals) for Public Art
17 Commissions at the Union Depot in accordance with Ramsey County policies and procedures on
18 Requests for Proposals, with direction to staff to return to the Ramsey County Regional Railroad
19 Authority with a selection of artists for contracting authorization; Now, Therefore, Be It
20

21 RESOLVED, The Ramsey County Regional Railroad Authority approves a contract with
22 Northern Lights.mn, 2751 Hennepin Ave. S. #231, Minneapolis, MN 55408, for commission of
23 public art at the Union Depot for the period of 8/7/2012 through 12/31/2013 in the amount of
24 \$500,000; And Be It Further
25

26 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Chair to
27 execute the contract; And Be It Further
28

29 RESOLVED, The Ramsey County Regional Railroad Authority authorizes the Ramsey
30 County Manager to make all necessary budget adjustments including increasing estimated
31 revenues and appropriations.

Attachment #1

COMPETITIVE SOLICITATION SUMMARY

TITLE Call to Artists for Public Art Commissions at Union Depot (RFP) Commission #4: Interactive Multimedia Artwork Platform	Programs: Union Depot Multimodal Transportation Hub Goal: Engage talented public artists to create works for Union Depot that will enhance the enjoyment of those passing through the public spaces, while complementing the power of the existing architectural elements.
DATE SENT	April 9, 2012
DATE DUE	May 23, 2012
NUMBER SENT	126
RESPONSES Star (*) those Agencies invited for interviews	1. 4RM+ULA 2. Angers, Mary 3. Balmond Studio 4. Barker, James 5. Buckner, Robert R 6. Calpaa Inc 7. Carlson, Erik J/So So Limited 8. Carney, John 9. Cohen, Michael 10. Colab Studio LLC 11. Dabeau, Linda 12. Dahlgvist Art Studio 13. Delgado-Warnock 14. Dobbe, Dr Kevin 15. Drugan/Haddad 16. Fogarty, Terrence 17. Form From Form 18. Garten, Cliff 19. Ginzel, Andrew 20. Green, Phyllis 21. * Harries, Mags & Heder, Lajos * 22. * Janney, Christopher * 23. Kim, Mikyoung 24. Klotz, Werner/Duncan McCalley 25. Lee, Norman 26. LeTron - Toys With A Twist 27. Lipski, Donald 28. Lucking, Mary 29. Najarak, Jason 30. Nelson, Roger 31. Nicholson, Joe C 32. * Northern Lights MN * 33. Sanchez, Jhennifer 34. Tylevich, Alexander
REVIEW COMMITTEE Include title and agencies	Mary Altman, public arts administrator, City of Minneapolis Katherine Stillings Barta and Kevin Barta, residents of the Union Depot condominiums and cofounders of LowertownLanding.org Jeff Heegaard, cofounder, COCO Co-working and Collaborative Space Jill Hentges, community outreach coordinator, Metro Transit Rich Laffin, chair, Saint Paul Heritage Preservation Commission; architect with offices in Lowertown

	Elsa Vega Perez, formerly of Otto Bremer Foundation; co-founder and director emeritus for El Arco Iris Center for the Performing Arts Nick Riley, intergovernmental relations coordinator, Ramsey County; artist Marcus Young, Saint Paul's City Artist in Residence, a program of Public Art Saint Paul
VENDORS RECOMMENDED	Steve Dietz and the team of Northern Lights MN, Minneapolis, Minn.
OTHER INFORMATION	Review Committee Rating from Criteria in RFP - The Union Depot Art Selection and Design Review Panel will review and evaluate applications based on the following criteria: a. Aesthetic quality of previously completed art projects and commissions. b. Applicability and suitability of past work to specific Union Depot commission opportunities, including work that was installed in buildings within a historic site or district. c. Appropriateness of previously completed artworks to their sites, including safety and scale. d. Durability and suitability of materials used related to resistance to vandalism and minimization of maintenance requirements. e. Experience working with the public and neighborhood communities.

AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK

THIS AGREEMENT is entered into between the Ramsey County Regional Railroad Authority ("RCRRA"), a political subdivision of the State of Minnesota, with offices at Union Depot, Suite 200, 214 4th Street E., St. Paul, MN 55101 and Northern Lights.mn, Inc., a Minnesota nonprofit corporation ("Artist") with offices at 2751 Hennepin Ave. S. #231, Minneapolis, MN 55408.

WHEREAS, the RCRRA has included Artwork Funding for the establishment and display of Artwork as part of the renovation and restoration of the Union Depot ("Project"); and

WHEREAS, the RCRRA issued a Call to Artists seeking applications for an artist team to design, execute, fabricate and/or install artistic elements and a system of conveyance for visual, auditory and/or experiential artistic content ("Artwork") in the Union Depot; and

WHEREAS, the responding team of artists ("Artist") is a recognized artist whose work and reputation make the Artist uniquely qualified to create Artwork as part of the Project; and

WHEREAS, the Artist and the RCRRA wish to undertake the obligations expressed herein;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

Article 1 Scope of Services

1.1 Artist's Obligations

- 1.1.1 The Artist shall perform all services and furnish all supplies, material and/or equipment as necessary for the design, fabrication, and installation of the Artwork described in **Exhibit 1**, attached to and made a part of this Agreement, at the location described in **Exhibit 1** ("Site"). Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- 1.1.2 The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the RCRRA as set forth in this Agreement. To ensure that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site, the Artist's proposal shall be reviewed by the RCRRA and its Consultants, as necessary, for approval by the RCRRA to ensure compliance with these objectives.
- 1.1.3 The Artist shall prepare the Artwork design and corresponding budget as provided in Section 1.3 of this Agreement for the approved proposal.
- 1.1.4 Prior to submitting a Schematic Design, the Artist shall travel to the Site to gain an understanding of the Site's unique characteristics and to coordinate with

RCRRA staff, as appropriate, to communicate about the Artwork and to ensure appropriate integration and/or installation of the Artwork.

- 1.1.5 Throughout the Project, the Artist shall provide RCRRA staff sufficient detail to permit the RCRRA to determine compliance with applicable local, state or federal laws, ordinances and/or regulations, and to obtain any necessary approvals with the State Historic Preservation Office ("SHPO"), and the City of Saint Paul's Heritage Preservation Commission ("HPC"). The Artist shall not be held responsible for delays caused by the review and approval processes of SHPO or HPC.
- 1.1.6 The Artist shall complete the fabrication of the Artwork by the scheduled installation start date as provided in Section 1.4.2 of this Agreement.
- 1.1.7 The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation of the Artwork at the Site.
- 1.1.8 The Artist shall arrange the transportation and installation of the Artwork in consultation with RCRRA staff. If the Artist does not personally install the Artwork, the Artist shall supervise and approve the installation.
- 1.1.9 The Artist shall provide required insurance as specified in Article 6 and **Exhibit 2**, attached hereto and made a part of this Agreement.
- 1.1.10 The Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
- 1.1.11 The Artist shall provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep involved.
- 1.1.12 The Artist shall provide reasonable photographic documentation of the Artwork.
- 1.1.13 The Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.

1.2 RCRRA's Obligations

- 1.2.1 The RCRRA shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- 1.2.2 The RCRRA shall communicate to the Artist the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site in advance of the Artist submitting the Concept/Schematic Design as provided in Section 1.3.1.

- 1.2.3 The RCRRA shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, and reports in electronic form when feasible. As soon as practically available, RCRRA will provide the Artist a list of required permits, licenses, and other authorizations; and other existing relevant data, if any, which is needed by the Artist in order to perform.
- 1.2.4 The RCRRA shall be responsible for compliance with applicable laws and regulations with the exception of required licenses, permits and similar authorizations required to be secured by the Artist under Section 1.1.6, and, as soon as practically available, shall explain any limitations imposed by such laws and/or regulations to the Artist.
- 1.2.5 The RCRRA shall prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement. The Artist and RCRRA staff will cooperate to determine reasonable costs for those items that the RCRRA will be responsible for in order to prepare the Site for the timely transportation and installation of the Artwork. The RCRRA shall complete the Site preparations by the scheduled installation start date as provided in Section 1.4.2 of this Agreement or shall notify the Artist in writing of any delays.
- 1.2.6 The RCRRA shall provide and install a plaque on or near the Artwork containing a credit to the Artist substantially in the following form, or in a manner to be mutually agreed upon in writing: [Individual contributing artist's name(s), Artwork title, date of publication, produced by Northern Lights.mn]. This credit will be used in any presentation of the Artwork including but not limited to in print, online and as part of public presentations.
- 1.2.7 The RCRRA shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the RCRRA's control.
- 1.2.8 RCRRA staff shall be responsible for leading the Artist through the required review process. RCRRA staff shall be responsible for organizing and scheduling meetings with review entities such as the Union Depot Art Selection and Design Review Panel, the State Historic Preservation Office (SHPO) and the City of Saint Paul's Heritage Preservation Commission (HPC) and for providing the Artist written instructions for the materials required at such meetings, in advance of the meetings, should they be necessary.

1.3 Design

1.3.1. Concept/Schematic

- a. Within 150 days of the execution of this Agreement, the Artist shall submit to RCRRA staff the design concept (the "Schematic Design") in the form of detailed color drawings, models, and/or other documents as are required to present a meaningful representation of the Artwork. The

Schematic Design will include: a description of the method by which the Artwork is to be fabricated and installed; a description of any operational, maintenance and conservation requirements for the Artwork; a description of the placement of the Artwork at the Site and any site preparations that may be required by the RCRRA including, but not limited to, any changes or modifications to any utility system or structure of the Site as necessary within a reasonable cost and as required by the RCRRA. The design concept shall include a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved. The Schematic Design of the Artwork shall be incorporated into and made a part of this Agreement by reference as **Exhibit 1**.

- b. The proposed Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense. The Artist will not be held responsible for damage resulting from lack of maintenance or vandalism.
- c. Prior to submitting the Schematic Design, the Artist shall visit, examine, research and consider the Site and surrounding area. The Artist shall also discuss with RCRRA staff the most appropriate method to inform the content of the Schematic Design. If applicable by mutual agreement, the Artist shall consult with representatives of the community and consider their input and concerns.
- d. The Schematic Design must include sufficient detail to permit the RCRRA, SHPO, and HPC to determine compliance with applicable local, state or federal laws, ordinances and/or regulations.
- e. When the Artist submits the Schematic Design to RCRRA staff for approval, the Artist shall also submit a detailed budget for approval for the design, fabrication and installation of the Artwork, including costs for Site preparation, as described in Section 1.4.1 of this Agreement.

1.3.2 Approval

- a. Within 15 days after the Artist submits the Schematic Design, the Union Depot Art Selection and Design Review Panel will convene and review the submitted Schematic Design. RCRRA staff shall notify the Artist whether it approves or disapproves of the Schematic Design. The RCRRA shall have discretion to approve outright, approve with conditions, or disapprove the Schematic Design.
- b. RCRRA staff shall notify the Artist of any revisions to the Schematic Design determined by the RCRRA to be necessary for the Artwork to comply with applicable laws, ordinances and/or regulations and other

reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the accepted Schematic Design.

1.3.3 Redesign

- a. If the Union Depot Art Selection and Design Review Panel disapproves of the Schematic Design, RCRRA staff will notify the Artist in writing of the reasons for such disapproval. In such event, the Artist will submit a Revised Design within 30 days after RCRRA staff has notified the Artist of its disapproval, addressing the identified reasons. This process shall continue until the Union Depot Art Selection and Design Review Panel approves the Revised Design. The Artist will not be paid additional fees for the Revised Design(s).
- b. The Revised Design will reflect changes made to address the stated reasons for disapproval, as well as any adjustments in the budget or schedule that may be necessary. RCRRA staff shall notify the Artist in writing whether the Union Depot Art Selection and Design Review Panel approves or disapproves of the Revised Design within 30 days after the Artist submits the Revised Design.
- c. If the Artist refuses to revise the Schematic Design pursuant to Section 1.3.3. a., or if the Artist fails to adequately revise the Schematic Design in the judgment of the Union Depot Art Selection and Design Review Panel and RCRRA staff, this Agreement shall terminate and the parties shall be under no further obligation to each other as of the date of such termination. The effective date of termination shall be the date the RCRRA submits its written disapproval of the Revised Design to the Artist. The RCRRA shall submit to the Artist a written termination notice with the disapproval. The termination notice shall advise the Artist that this Agreement has been terminated pursuant to this Article. The termination notice shall notify the Artist that the Artist is entitled to retain the compensation paid prior to the termination date, and that the Parties are under no further obligation to each other. The termination notice shall confirm that the Artist shall retain ownership of all Schematic Designs, Revised Designs and renderings thereof submitted hereunder.

1.3.4 Final Design/Construction Documents

- a. The Artist shall prepare structural drawings for the approved design ("Final Design") detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings and supplementary documents shall indicate any issues involved in the construction, integration and maintenance of the Artwork, and shall identify any subcontractors needed to work on the project including the work to be performed by the subcontractors.

- b. Where appropriate, the Artist shall present such drawings to a qualified engineer, licensed by the State of Minnesota and paid by the Artist, for certification that the Artwork will be of adequate structural integrity, and the Artist shall provide the RCRRA with such certification, signed and stamped by the licensed engineer. The Artist shall present the Final Design to a qualified conservator, designated by RCRRA staff at no cost to the Artist, who will make recommendations on the maintenance of the Artwork. The Artist shall provide a written copy of the conservator's recommendations to RCRRA staff.
- c. The Artist shall provide a detailed narrative Description of the Artwork with explicit detail regarding the overall form or design, scale, dimensions, color, and surface treatment of the Artwork. The Description of the Artwork shall be incorporated into and made a part of this Agreement by reference as **Exhibit 3**.

1.4 Budget/Payment Schedule

1.4.1 Budget

- a. The budget to be prepared by the Artist pursuant to the provisions of this Section shall include all goods, services and materials, with such costs itemized. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date. The Artist shall include a contingency amount between 5% and 10% to be used towards unforeseen costs directly related to the fabrication and/or installation of the project.
- b. Upon approval by the RCRRA staff, the Budget shall be incorporated into and made a part of this Agreement by reference as **Exhibit 4**.
- c. The Artist shall keep a log of the Artist's Project hours as well as the hours of work performed by subcontractors, and shall retain all original receipts pertaining directly to the Project.
- d. The Artist shall notify the RCRRA, in writing, prior to the use of any contingency funds for any purpose.
- e. Upon completion of the Project, and prior to Transfer of Title of the Artwork from the Artist to the RCRRA, the Artist shall provide written notice of any unspent funds from the contingency funds. These unspent funds shall be retained by the Artist.
- f. If the Artist incurs costs in excess of the approved budget, the Artist shall pay such excess from the Artist's own funds unless the Artist had previously obtained written approval for a modified budget incorporating such costs from the RCRRA.

1.4.2 Payment Schedule

- a. A schedule for payment to the Artist is included in **Exhibit 4**.

1.5 Project Construction Schedule and Progress Reports

1.5.1 The Artist shall submit a proposed schedule for the fabrication and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any, to the RCRRA for approval. Upon approval, the schedule shall be incorporated into and made a part of this Agreement by reference as **Exhibit 5**.

1.5.2 The Schedule may be amended only by written agreement of the parties. Any approved revised schedule shall replace and supersede the original schedule as **Exhibit 5**.

1.6 Fabrication Stage

1.6.1 The Artist shall fabricate and install the Artwork in substantial conformity with the Final Design. The Artist may not deviate from the approved Final Design without written approval of RCRRA staff.

1.6.2 The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork such as the application of protective or anti-graffiti coatings, if applicable, unless the RCRRA disapproves. If the Artwork is being constructed on-site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. Prior to requesting authorization to transport and install the Artwork, the Artist shall be required to provide the RCRRA with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. All subcontractors must provide proof of insurance as described in **Exhibit 2** prior to entering the Site.

1.6.3 The Artist will inform RCRRA of the intent to enter into subcontracts for any part of the fabrication of the Artwork. Subcontracted work will be assigned a Disadvantaged Business Enterprise (DBE) goal that will be based on the proposed scope of the subcontracted work for the project. Applicable DBE policies and procedures are attached hereto and made a part of this Agreement as **Exhibit 7**.

1.6.4 RCRRA staff shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice. At the RCRRA's request, the Artist shall provide clear photographic documentation of the progress of fabrication of the Artwork.

1.6.5 If RCRRA staff, upon review of the Artwork, determines that the Artwork does not conform to the Final Design, the RCRRA reserves the right to notify the Artist in writing of the deviations and that the RCRRA intends to withhold the next payment.

- 1.6.6 The Artist will inform the RCRRA of the planned method for achieving conformance to the Final Design, will promptly cure the deviations and will notify the RCRRA in writing of completion of the cure. RCRRA staff or the RCRRA's Consultants, as necessary, shall promptly review the Artwork, and upon approval shall release the next payment. If the Artist disputes the RCRRA's determination of deviation, the Artist shall promptly submit reasons in writing to the RCRRA within 10 days of the RCRRA's notification. The RCRRA shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Agreement shall remain with the RCRRA.
- 1.6.7 The Artist shall notify the RCRRA in writing when fabrication of the Artwork has been completed, and when the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site. Artist shall also provide RCRRA staff with clear photographic documentation of the completed Artwork.
- 1.6.8 At the RCRRA's option, RCRRA staff or the RCRRA's Consultants, as necessary, shall inspect the Artwork within 10 days after receiving notification pursuant to paragraph 1.6.6, prior to installation, to determine that the Artwork conforms to the Final Design and to give final approval of the Artwork. The RCRRA shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the RCRRA does withhold final approval, the RCRRA shall submit the reasons for such disapproval in writing within 10 days of examining the fabricated Artwork. The Artist shall then have 30 days from the date of the RCRRA's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Artist has willfully and substantially deviated from the Final Design without the prior approval of the RCRRA. The Artist shall then be held responsible for any expenses incurred in correcting such deviation.
- 1.6.9 RCRRA staff shall promptly notify the Artist of any delays, if such delays are caused by the RCRRA, impacting installation of the Artwork. Any additional storage fees or mutually agreed upon direct costs incurred as a result of such delays are the responsibility of the RCRRA.
- 1.6.10 The Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the RCRRA of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction.

1.7 Changes to Design

- 1.7.1 Changes to the approved design may not be executed prior to submission of the proposed changes in writing to the RCRRA for further review and approval. The Artist must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not permitted

by nor in substantial conformity with the already approved design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design.

- 1.7.2 If RCRRA staff approves the changes, the RCRRA shall promptly notify the Artist in writing. RCRRA staff will also make the required presentations to the approval bodies.
- 1.7.3 If RCRRA staff disapproves of the changes, the RCRRA shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design.
- 1.7.4 The Artist's fee shall be equitably adjusted for any increase or decrease in the Artist's cost of, or time required for, performance of any services under this Agreement as a result of revisions made to the Design under Section 1.7.1. Any claim of the Artist for adjustment under this paragraph must be asserted in writing within 20 days after the date of the approval of the revision by the RCRRA.

1.8 Installation

- 1.8.1 Upon the RCRRA's final approval of the fabricated Artwork as being in conformity with the Final Design, the Artist shall deliver and install the completed Artwork to the Site in accordance with the agreed-upon schedule.
- 1.8.2 The Artist will coordinate closely with RCRRA staff to ascertain that the Site is prepared to receive the Artwork. The Artist must notify the RCRRA of any adverse conditions at the Site that would affect or impede the installation of the Artwork.
- 1.8.3 The Artist is responsible for timely installation of the Artwork. The Artist will confer and coordinate with RCRRA staff to ensure timely coordination with the RCRRA's Project construction team. Site access procedures will be identified in coordination with the development of the Artwork design and installation schedule. The Artist may not install the Artwork until authorized to do so by RCRRA staff.
- 1.8.4 The Artist will inform RCRRA of the intent to enter into subcontracts for any part of the installation of the Artwork. Subcontracted work will be assigned a Disadvantaged Business Enterprise (DBE) goal that will be based on the proposed scope of the subcontracted work for the project. Applicable DBE policies and procedures are set forth in **Exhibit 7**.
- 1.8.5 The Artist and any assistants or installation subcontractors shall, at the discretion of the RCRRA, participate in safety training classes for the purpose of accessing construction zones or RCRRA rail rights-of-way.

- 1.8.6 The Artist shall supervise the installation of the Artwork.
- 1.8.7 Upon installation of the Artwork, the Artist shall provide the RCRRA with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used.
- 1.8.8 Upon written acceptance of the installation by the RCRRA in accordance with the provisions of Section 1.9 herein, the Artwork shall be deemed to be in the custody of the RCRRA for purposes of Article 4 and Article 6 of this Agreement.
- 1.8.9 The RCRRA is responsible for the proper care and maintenance of the Artwork after written acceptance of the installation

1.9 Approval and Acceptance

- 1.9.1 The Artist shall notify the RCRRA in writing when all services have been completed in substantial conformity with the requirements of this Agreement and that the Artwork is ready for approval and acceptance.
- 1.9.2 RCRRA staff shall promptly notify the Artist of its final acceptance of the Artwork within 10 days after the Artist submitted written notice pursuant to Section 1.9.1 above. The effective date of final acceptance shall be the date the RCRRA submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the RCRRA acknowledges completion of the Artwork in substantial conformity with the Final Design, and that the RCRRA confirms that all services as required of the Artist have been completed.
- 1.9.3 If the RCRRA disputes that all the services have been performed, the RCRRA shall notify the Artist in writing of those services the Artist has failed to perform within 10 days after the Artist submitted written notice pursuant to Section 1.9.1 above. The Artist shall promptly perform those services indicated by the RCRRA.
- 1.9.4 If the Artist disputes the RCRRA's determination that not all services have been performed, the Artist shall submit reasons in writing to the RCRRA within 30 days of the RCRRA's notification. The RCRRA shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the RCRRA.
- 1.9.5 Upon the resolution of any disputes that arise under this Section 1.9, RCRRA staff shall notify the Artist of its final acceptance of the Artwork.
- 1.9.6 If the Artwork involves multiple, distinct elements, the RCRRA may develop a plan for recognizing acceptance of those discrete elements, which may constitute partial acceptance of the Artwork.

- 1.9.7 After final acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by RCRRA staff and the Artist to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork. The RCRRA shall be solely responsible for coordinating official public information materials and activities related to public presentations.

Article 2 Taxes

Any state or federal sales, use or excise taxes, or similar charges relating to the services and materials under this Agreement shall be paid by the Artist in a timely fashion and in accordance with all legal requirements. The RCRRA shall report payments made to the Artist annually to the Internal Revenue Department in a 1099 statement.

Article 3 Term of Agreement

3.1 Duration

This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to the provisions of this Agreement, shall extend until the completion of obligations by both parties. Provisions of this Agreement that by their nature extend beyond the term of the Agreement shall survive the termination of this Agreement. Extension of time for performance hereunder may be granted upon the request of one Party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and shall replace the prior Project Schedule as describe in Section 1.5.2.

3.2 Force Majeure

The RCRRA shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

Article 4 Risk of Loss

The Artist shall bear the risk of loss or damage to the Artwork until the RCRRA's final acceptance of the Artwork under Section 1.9. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The RCRRA shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork, by written agreement of the RCRRA, is in the custody, control or supervision of the RCRRA or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

Article 5 Artist's Representations and Warranties

5.1 Warranties of Title

5.1.1 The Artist represents and warrants that:

- a. The Artwork is solely the result of the artistic effort of the Artist.
- b. Except as otherwise disclosed in writing to the RCRRA, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person.
- c. The Artwork (or duplicate thereof) has not been accepted for sale elsewhere.
- d. The Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement.
- e. The Artwork is free and clear of any liens from any source whatsoever.
- f. All Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party.
- g. The Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
- h. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.

5.1.2 These representations and warranties shall survive the termination or expiration of this Agreement.

5.2 Warranties of Quality and Condition

The Artist represents and warrants that:

5.2.1 All work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for two years after the date of final acceptance by the RCRRA under Section 1.9.

5.2.2 The Artwork and the materials used are not currently known to be harmful to public health and safety.

- 5.2.3 Reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.8.7.
- 5.2.4 If within two years after Final Acceptance the RCRRA observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the Artist shall, at the request of the RCRRA, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the RCRRA. The RCRRA shall give notice to the Artist of such breach with reasonable promptness.
- 5.2.5 If within two years after Final Acceptance the RCRRA observes a breach of warranty described in this Section 5.2 that is not curable by the Artist, the Artist is responsible for reimbursing the RCRRA for damages, expenses and loss incurred by the RCRRA as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the RCRRA accepted that it may occur, it shall not be deemed a breach for purposes of this Section 5.2 of this Agreement.
- 5.2.6 If after two years after Final Acceptance the RCRRA observes any breach of warranty described in this Section 5.2 that may be curable by the Artist, the RCRRA, at its discretion, has the option to either:
 - a. Contact the Artist to make or supervise repairs or restorations at a reasonable fee; or
 - b. Seek the services of a qualified restorative conservator and maintenance expert.

5.3 Acceptable Standard of Display

- 5.3.1 The Artist represents and warrants that:
 - a. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
 - b. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
 - c. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
 - d. To the extent the Artwork incorporates products covered by a manufacturer's warranty, the Artist shall provide copies of such warranties to the RCRRA.

- 5.3.2 The foregoing warranties are conditional, and shall be voided by the failure of the RCRRA to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the RCRRA fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

Article 6 Liability/Insurance

6.1 General

- 6.1.1 The Artist acknowledges that, except as otherwise provided herein, until final acceptance of the Artwork by the RCRRA under Section 1.9, any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.

- 6.1.2 Insurance requirements are set forth in **Exhibit 2**.

6.2 Indemnity

- 6.2.1 The Artist shall indemnify, defend and hold harmless the RCRRA and officials, employees and agents (each a "Covered Person") from and against all liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) (collectively "Claims") arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the Artist, its subcontractors, agents or employees.
- 6.2.2 The RCRRA shall indemnify the Artist, Artist's subcontractors, agents or employees ("Artist's Parties") from any claims arising solely out of the breach of this Agreement by RCRRA and Artist shall have no obligation under this Section with respect to any such claims that are caused solely by any performance of this Agreement by RCRRA, its respective officers, agents, and employees.
- 6.2.3 The RCRRA and the Artist (Each a "Party") shall immediately notify the other of any written claim regarding any matter resulting from or relating to the Party's obligations under this Agreement. Each Party shall cooperate, assist, and consult with the other in the defense or investigation of any such claim arising out of or relating to the performance of this Agreement.
- 6.2.4 The indemnification shall include reasonable attorneys' fees and costs.
- 6.2.5 This indemnification shall survive the termination or expiration of this Agreement.

- 6.2.6 Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a Party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

Article 7 Ownership and Intellectual Property Rights

7.1 Title

Title to the Artwork shall transfer to the RCRRA upon the RCRRA's written final acceptance and payment for the Artwork pursuant to Article 1 and **Exhibit 4**. The Artist shall provide the RCRRA with a Transfer of Title in substantially the form attached hereto and made a part of this Agreement as **Exhibit 6**.

7.2 Ownership of Documents

One set of presentation materials prepared and submitted under this Agreement shall be retained by the RCRRA for possible exhibition and to hold for permanent safekeeping.

7.3 Copyright Ownership

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright.

7.4 Reproduction Rights

7.4.1 In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate two or three-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the RCRRA. However, nothing shall prevent the Artist from creating future Artworks in the Artist's manner and style of artistic expression.

7.4.2 The Artist grants to the RCRRA and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.

7.4.3 All reproductions by the RCRRA shall contain a credit to the Artist in substantially the following form: [Individual contributing artist's name(s), Artwork title, date of publication, produced by Northern Lights.mn].

7.4.4 The Artist shall use the Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to the RCRRA in substantially the following form: "Artwork commissioned by the Ramsey County Regional Railroad Authority, St. Paul, MN."

7.4.5 The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.

- 7.4.6 If the RCRRA wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
- 7.4.7 Third Party Infringement. The RCRRA is not responsible for any third party infringement of the Artist's copyright and not responsible for protecting the intellectual property rights of the Artist.

Article 8 Artist's Rights

8.1 General

- 8.1.1 The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- 8.1.2 The RCRRA agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first consulting with the Artist. Furthermore, without exception, the RCRRA shall not permit any commercial or promotional use of the Artwork or change the content of Artwork without the prior written consent of the Artist.
- 8.1.3 If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist may have in law or equity under this contract. Upon written request, the RCRRA shall remove the identification plaque and all attributive references to the Artist at its own expense within 30 days of receipt of the written request. No provision of this Agreement shall obligate the RCRRA to alter or remove any such attributive reference printed or published prior to the RCRRA's receipt of such written request. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

8.2 Alterations of Site or Removal of Artwork

- 8.2.1 The RCRRA shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork. The RCRRA shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. The RCRRA shall make a reasonable effort to maintain the integrity of the Artwork.
- 8.2.2 The RCRRA agrees not to arbitrarily remove or relocate the Artwork without first making a good faith effort to contact the Artist. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation, the Artist shall provide the RCRRA with written handling instructions. In the event that the Artist is deceased or unable to otherwise give the Artist's consent, the current owner of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist at the time of commission and fabrication.

- 8.2.3 This clause is intended to replace and substitute for the rights of the Artist under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

Article 9 Permanent Record

The RCRRA shall maintain on permanent file a record of this agreement and of the location and disposition of the Artwork.

Article 10 Artist as an Independent Contractor

The Artist agrees to perform all Artwork under this Agreement as an independent contractor and not as an agent or employee of the RCRRA. The Artist acknowledges and agrees that the Artist shall not hold himself or herself out as an authorized agent of the RCRRA with the power to bind in any manner. The Artist shall provide the RCRRA with the Artist's Tax Identification Number and any proof of such number as requested by the RCRRA.

Article 11 Nondiscrimination

The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

Article 12 Assignment of Artwork

The Artwork and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the RCRRA. The RCRRA shall have the right to assign or transfer any and all of the RCRRA's rights and obligations under this Agreement if ownership of the Site is transferred.

Article 13 Suspension/Termination

13.1 Either Party may suspend this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operations; superior governmental regulation or control, public emergency or strike or other labor disturbance. Notice of suspension of this Agreement shall be given to the other Party in writing not less than 15 days prior to the effective date of the suspension. If the suspension continues for more than 90 days, either party may terminate this Agreement without cause. If this Agreement is terminated, the RCRRA shall pay the Artist for services performed and costs incurred that cannot be eliminated prior to the date of termination, consistent with the schedule of payments set forth in **Exhibit 4** of this Agreement.

13.2 The RCRRA may terminate this Agreement without cause upon 15 days written notice to the Artist. The RCRRA shall pay the Artist for services performed and costs incurred that

cannot be eliminated prior to the date of termination, consistent with the schedule of payments set forth in **Exhibit 4** of this Agreement.

- 13.3 If the Artist willfully or negligently fails to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the RCRRA shall thereupon have the right to terminate this Agreement by giving written notice to the Artist of its intent to terminate, specifying the grounds for termination. The Artist shall have 30 days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate and the Artist shall return to the RCRRA all payments received from the RCRRA in excess of expenses already incurred. The Artist shall provide an accounting of such expenses along with the reimbursement payment. All finished and unfinished drawings, sketches, photographs and other Artwork products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. The RCRRA shall retain the right to have the Artwork completed, fabricated, executed, delivered and installed. However, the Artist shall retain the copyright in the Artwork and all rights under Article 7 and Article 8.
- 13.4 Upon notice of termination, the Artist and his or her subcontractors shall cease all activities under this Agreement.

Article 14 Death or Incapacity

If the Artist becomes unable to complete this Agreement due to death or incapacitation, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for the purpose of Article 13. However, nothing in this Article shall obligate the RCRRA to accept the Artwork. In the event of death of the Artist, this Agreement shall terminate as of the date of death; in the event of incapacity, the Agreement shall terminate upon expiration of 90 days of incapacity. The RCRRA shall pay the Artist, the Artist's heirs, or the Artist's estate, as appropriate, for all services and work delivered in a satisfactory manner and in accordance with the provisions of this Agreement prior to the Artist's death or first day of incapacity.

Article 15 Compliance with Applicable Law

The Artist agrees to comply with all federal, state and local laws or ordinances, and all applicable rules, regulations, and standards established by any agency of such governmental units, which are now or hereafter promulgated insofar as they relate to the Artist's performance of the provisions of this Agreement, including the provisions of the specific **Federal Requirements**, attached hereto and made a part of this Agreement as **Exhibit 8**. It shall be the obligation of the Artist to apply for, pay for and obtain all permits and/or licenses required by any governmental agency for the provision of those services contemplated herein.

Article 16 Notices and Documents

Notices required under this Agreement shall be delivered personally or through the [registered or certified mail, return receipt requested] mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party pursuant to the provisions of this Article:

For the RCRRA:

Josh Collins or successor

Ramsey County Regional Railroad Authority
Suite 6560 RCGC-West
50 W. Kellogg Blvd
St. Paul, MN 55102

For the Artist: Steve Dietz
Northern Lights.mn, Inc.
2751 Hennepin Ave. S. #231
Minneapolis, MN 55408

Notice shall be deemed effective on the date personally delivered or, if mailed, on the date the return receipt is signed.

Article 17 Waiver

The Parties agree that a waiver of any breach of violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term of condition.

Article 18 Audit

18.1 Until the expiration of six (6) years after the furnishing of services pursuant to this Agreement, the Artist, upon written request, shall make available to the RCRRA, the State Auditor or the RCRRA's ultimate funding sources, a copy of this Agreement and the books, documents, records and accounting procedures and practices of the Artist relating to this Agreement.

18.2 The Artist shall maintain all books, documents, records and accounting procedures and practices of the Artist relating to this Agreement for a period of six years from the date of transfer of title following acceptance and final payment is made. Those records subject to an audit shall be maintained until the audit is resolved, even if this period extends beyond the six years stated. All records shall be made available for inspection or audit, at any time during regular business hours, upon written request by the RCRRA's General Counsel or designated representative, the State Auditor or the County's ultimate funding sources.

Article 19 Data Practices

All data collected, created, received, maintained or disseminated for any purpose in the course of the Artist's performance of this Agreement is governed by the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, or any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

Article 20 Conflict of Interest

The Artist and the RCRRA shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

Article 21 Arbitration

- 21.1 If, during the creation of the Artwork, its installation and subsequent existence, either Party breaches this Agreement, each Party agrees to submit to arbitration upon the request of the other, provided that the breach is not cured within a reasonable time under Section 13.3 of this Agreement.
- 21.2 If an ambiguity arises regarding this Agreement upon which the parties cannot agree or a dispute arises as to the completion of a provision, the Parties shall submit the matter to arbitration.
- 21.3 Each Party agrees to be responsible for its own attorney's fees and costs.

Article 22 Amendments

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto in the form of an amendment to this Agreement.

Article 23 Conflicts of Law

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel or mediation procedure to be in conflict with the laws, rules, and/or regulations of the United States or the State of Minnesota, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

Article 24 Interpretation of Agreement; Venue

This Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate state or federal district court in Ramsey County, Minnesota.

Article 25 Prompt Payment

Payment of interest on late payments and disputes regarding payments shall be governed by the provisions of Minn. Stat. Section 471.425.

Article 26 Contractor Certification Regarding Debarment, Suspension, and Responsibility (If applicable)

Federal Regulation 45 CFR 92.35 prohibits the RCRRA from purchasing goods or services with federal money from vendors who have been suspended or debarred by the federal government.

By signing this Agreement, the Artist certifies that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from transacting business by or with any federal, state or local governmental department or agency; and
2. Have not within a three-year period preceding this Agreement:

- a. been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction or contract;
 - b. violated any federal or state antitrust statutes; or
 - c. committed embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
3. Are not presently indicted or otherwise criminally or civilly charged by a governmental entity for:
 - a. commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (federal, state or local) transaction;
 - b. violating any federal or state antitrust statutes; or
 - c. committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property; and
4. Have not had one or more public transactions terminated with in the preceding three years for cause or default; and
5. Shall not knowingly enter into any transaction with a subcontractor who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, and that they will require any subcontractor that receives more than \$100,000 to make a similar certification as set forth herein; and
6. Are not aware of any information and possess no knowledge that any subcontractor(s) that will perform work pursuant to this Agreement are in violation of any of the certifications set forth above; and
7. Shall immediately give written notice to the RCRRA should the Artist come under investigation for allegations of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local government) transaction; violating any federal or state antitrust statutes; or committing embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property.

Article 27 Non-Conforming Services

The acceptance by the RCRRA of any non-conforming services under the terms of this Agreement or the foregoing by the RCRRA of any of the rights or remedies arising under the terms of this agreement shall not constitute a waiver of the RCRRA's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the RCRRA provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

Article 28 Unavailability of Funding

The purchase of goods or services from the Artist under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds from the RCRRA Board. The RCRRA may immediately terminate this Agreement if the funding for the Artwork is no longer available or is not appropriated by the RCRRA Board. Upon receipt of the RCRRA's notice of termination of the Agreement the Artist shall take all actions necessary to discontinue further commitments of funds to the Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the RCRRA.

Article 29 Prevailing Wage

The Artist and all subcontractors shall conform to the labor laws of the State of Minnesota, and all other laws, ordinances, and legal requirements affecting the work in Ramsey County and Minnesota. The minimum wage rate per hour to be paid for each classification of work shall be the union wage rate in the locality of the project for those classifications over which the unions have jurisdiction and the local prevailing rate for those classifications of work in the localities over which the unions do not have jurisdiction.

Article 30 Respectful Workplace and Violence Prevention

The Artist shall make all reasonable efforts to ensure that the Artist's employees, officials and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined in the Ramsey County Respectful Workplace and Violence Prevention Policy, means words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority where the impact is to cause pain, fear or injury.

Article 31 Subcontractor Payment

The Artist shall pay any subcontractor within ten days of the Artist's receipt of payment from the RCRRA for undisputed services provided by the subcontractor. The Artist shall pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Artist shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Artist must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

Article 32 Lobbying

For all contracts involving over \$100,000 in federal funds, the Artist must sign the Certification Regarding Lobbying for Contracts, Grants, Loans, and Cooperative Agreements, attached hereto and made a part of this Agreement as **Exhibit 8**.

Article 33 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements, and conditions between the parties. No verbal agreements or conversations between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligations.

WHEREFORE, this Agreement is duly executed on the last date written below.

**RAMSEY COUNTY REGIONAL
RAIL AUTHORITY**

ARTIST NAME

Jim McDonough, Chair
Ramsey County Regional Railroad Authority

Print Name: _____

Bonnie Jackelen, Chief Clerk
Board of County Commissioners

Date: _____

Date: _____

Approval recommended:

Timothy Mayasich, Director
Ramsey County Regional Rail Authority

Approved as to form and insurance:

Assistant County Attorney

Exhibit 1
Concept/Schematic Design
(To be developed and incorporated into the contract as provided in Section 1.3.1 of the
forgoing contract to which this exhibit is attached.)

Exhibit 2
Insurance Requirements

The Artist shall obtain and maintain for the duration of the contract, an insurance policy or policies for the protection of both the **Artist** and the **RCRRA**. The **RCRRA** requires certification of insurance coverage from all Artists/subArtists, Sub-contractors and suppliers before commencing work. All subcontractors used for the installation shall provide certificates of insurance evidencing General Liability, Workers Compensation, and automobile coverage prior to installation with the RCRRA and Ramsey County as property manager added as an additional insured with respect to installation of the artwork.

Please carefully review the requirements outlined.

IT IS HIGHLY RECOMMENDED THAT YOU CONFER WITH YOUR INSURANCE BROKER/AGENT OR OTHER INSURANCE COMPANY REPRESENTATIVE, BEFORE SUBMITTING YOUR BID, TO DETERMINE THE AVAILABILITY AND APPLICABLE COST, IF ANY, OF CERTIFICATES, ENDORSEMENTS, COVERAGES, AND LIMITS REQUIRED.

1. MINIMUM SCOPE AND EXTENT OF COVERAGE

A. GENERAL LIABILITY

Commercial General Liability, ISO coverage form number **CG 00 01** ("occurrence" basis).

\$ 1,000,000 limit per occurrence for bodily injury, personal injury, and property damage; **\$1,000,000** annual aggregate

The Ramsey County Regional Rail Authority, its commissioners, officers, officials, agents, and employees, shall be endorsed as **additional insureds** by ISO Form **CG 20 26 – ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION** or equivalent. As additional insureds, they shall be covered as to work performed by or on behalf of the **Artist** or as to liability which arises out of **Artist's** activities or resulting from the performance of services or the delivery of goods called for by the **Contract**.

B. AUTOMOBILE LIABILITY (IF APPLICABLE)

Business Auto or Personal Automobile Liability insurance
\$1,000,000 limit per occurrence covering bodily injury and property damage.

C. WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY (IF APPLICABLE)

Statutory Workers' Compensation insurance for all states where Proposer has work

locations and standard Employer's Liability insurance, *if required by state law.*

D. PROFESSIONAL LIABILITY – REGISTERED STRUCTURAL ENGINEER
(IF APPLICABLE)

D.1 Per Claim \$1,000,000
Aggregate Limit: \$2,000,000

D.2 Certificate of Insurance must indicate if the policy is issued on a claims-made or occurrence basis. If coverage is carried on a claims-made basis, then: 1) the retroactive date shall be noted on the Certificate and shall be prior to or the day of the inception of this Agreement; and 2) evidence of coverage shall be provided for three years beyond expiration of this Agreement.

E. PROPERTY

The Artist shall maintain property coverage on an all-risk basis and shall add the RCRRA as a loss payee as the RCRRA's interest in the Artwork may appear. This interest shall be based on the payments made according to **Exhibit 4** for the commissioned Artwork as defined in the contract between the Artist and the RCRRA. The Artist shall keep this policy in effect until the RCRRA's final acceptance of the Artwork under Article 4 Risk of Loss.

2. INSURER QUALIFICATIONS/ACCEPTABILITY

The insurance required hereunder shall be issued by an **A.M. Best "A-" rated, Class VI** insurance company licensed to conduct insurance business in the state of Minnesota.

3. VERIFICATION OF INSURANCE COVERAGE

Prior to commencing work, the **Artist** shall furnish the **RCRRA** with CERTIFICATE(S) OF INSURANCE (including a Professional Liability insurance certificate from Registered Structural Engineer) and with any applicable original endorsements evidencing the required insurance coverage. A person authorized by that insurer to bind coverage on its behalf must sign the insurance certificates and endorsements. All certificates and endorsements received by the **RCRRA** are subject to review and approval by the Ramsey County Attorney's Office. The **RCRRA** reserves the rights to require complete, certified copies of all required policies at any time. If the scope of this contract will exceed one (1) year—or, if any of **Artist's** applicable insurance coverage expire prior to completion of the work or services required under this contract—the **Artist** will provide a renewal or replacement certificate before continuing work or services hereunder.

4. NON-WAIVER

Nothing in this Agreement shall constitute a waiver by the **RCRRA** of any statutory or common law immunities, limits, or exceptions on liability.

Exhibit 3
Final Design

**(To be developed and incorporated into the contract as provided in Section 1.3.4 of the
forgoing contract to which this exhibit is attached)**

[This exhibit will identify the location of the Artwork and will provide a detailed narrative describing the proposed artwork with explicit detail regarding the overall form or design, scale, dimensions, color and surface treatment of the Artwork.]

Exhibit 4
Artwork Budget

(To be developed and incorporated into the contract as provided in Section 1.4.1 of the forgoing contract to which this exhibit is attached.)

Fee and Payment Schedule

The RCRRA shall pay the Artist a fixed fee of five hundred thousand dollars (\$500,000), which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

- a. \$100,000 upon the execution of this Agreement, recognizing that the Artist will invest time and expense in preparing the Design as set forth in Section 1.3 of the Agreement;
- b. \$150,000 upon the RCRRA's notification to the Artist of its approval of the Final Design as set forth under Section 1.3 and issuance of a Notice to Proceed with Fabrication and Installation;
- c. \$100,000 within 30 days after the Artist notifies the RCRRA that the Artwork fabrication is 50% complete and provides photographic or other reasonable documentation as requested by the RCRRA. At the discretion of RCRRA staff, this payment may be subdivided to reflect 50% completion of distinct, discrete elements of the Artwork;
- d. \$100,000 within 30 days after the Artist notifies the RCRRA that the Artwork is fabricated and ready for delivery and installation at the Site as set forth under Section 1.5(f). At the discretion of RCRRA staff, this payment may be subdivided to reflect acceptance of distinct, discrete elements of the Artwork;
- e. \$50,000 within 30 days after final acceptance of the Artwork by the RCRRA as set forth under Section 1.8(e).

Exhibit 5

Project Schedule

(To be developed and incorporated into the contract as provided in Section 1.5.1 of the forgoing contract to which this exhibit is attached.)

Exhibit 6
Transfer of Title

STATE OF MINNESOTA
COUNTY OF RAMSEY

TRANSFER OF TITLE

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the undersigned Artist located at the address noted below does hereby sell, transfer and convey to the RCRRA, located in St. Paul, Minn., its assigns and successors, all right, title and interest in the ownership of the Artwork commissioned by the Ramsey County Regional Railroad Authority and as described in the agreement between the parties.

Title: _____
Location: _____

IN WITNESS WHEREOF, the Artist has executed this written transfer of title on this
____ day of _____, 20____.

ARTIST

ADDRESS

WITNESS
Sworn to and subscribed
before me this ____ day
of _____, 20____.

NOTARY PUBLIC
My Commission Expires:
(NOTARY SEAL)

Exhibit 7

Federal DBE Requirements

1. **Artwork Disadvantaged Business Enterprise Requirements** (FTA Funding with DBE Goal – APPLICABLE TO SUBCONTRACTED WORK ONLY)

A. General Requirement. This contract is funded in part with a grant from the Federal Transit Administration (FTA), whose funds are administered locally by the Metropolitan Council ("Council"), and provided to the RCRRA through a sub-recipient grant agreement. For this project, the Disadvantaged Business Enterprise (DBE) requirements of the Transportation Equity Act for the 21st Century (TEA-21) and 49 CFR part 26 will apply only to subcontracted portions of the Artwork project. Under 49 CFR section 26.51, the Council will establish a goal for DBE participation for work that will be subcontracted by the Artist. The DBE goal will be based on the proposed scope of subcontracted work for the Artwork.

Selected artists who subcontract work will be required to make good faith efforts to meet the established DBE goal. Good faith efforts may be demonstrated by either:

- 1) documenting the participation of specific DBEs to meet the goal; or
- 2) documenting adequate good faith efforts to meet the goal, even if the efforts were not successful in obtaining sufficient DBE participation to meet the goal.

B. Documenting Good Faith Efforts

Participation of DBE. If the Artist will be using a DBE the Artist must list all firms, if any, whose participation is committed to be credited toward meeting the DBE goal. All DBE firms which are listed must, as of the date the information is provided by the Artist to the RCRRA, be:

- 1) certified by the Minnesota Unified Certification Program (MnUCP) as a DBE; or
- 2) certified by any other United States Department of Transportation (USDOT) recipient and then certified by the MnUCP; or
- 3) included on the MnUCP **Disadvantaged Business Enterprise (DBE) Directory**. All of the firms on this listing shall be considered "currently certified" for the purposes of proposal submittal. This listing is available from the Council and can also be found at the following website:
<http://www.dot.state.mn.us/civilrights/ucpdirectory.html>

Adequate Good Faith Efforts. If the Artist will not be using a DBE, the Artist must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if it was not fully successful.

The Council's DBE Liaison Officer will determine whether the Artist made sufficient good faith efforts to meet the goal in accordance with the guidelines set forth in 49 CFR section 26.53, and Appendix A thereto.

Compliance will be determined based on a review of documentation of the following types of activities:

- 1) Soliciting through all reasonable and available means (e.g. attendance at pre-proposal meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the subcontracted work related to the Artwork. The Artist must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Artist must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- 2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Artist might otherwise prefer to perform these work items with its own forces. The Artist is not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- 3) Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal offices of minority/women business assistance; and other organizations as allowed on a case-by-case basis to provide assistance in the solicitation of DBEs.

Exhibit 8

Specific Federal Requirements

(continued on following eight pages)

SPECIFIC FEDERAL REQUIREMENTS

FTA-1 Fly America Requirements. The Contractor agrees to comply with 49 U.S.C. § 40118 (the "Fly America Act") in accordance with the General Services Administration's regulations at 41 C.F.R. part 301-10, which provide that recipients and subrecipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

FTA-2 Energy Conservation. The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act.

FTA-3 Access to Records and Reports. The Contractor agrees to provide the Council, the FTA Administrator, the Comptroller General of the United States, and any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

The Contractor also agrees, pursuant to 49 C.F.R. § 633.15, to provide the FTA Administrator or the Administrator's authorized representatives, including any project management oversight (PMO) contractor, access to the Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. § 5302(a)(1), which is receiving federal financial assistance through the programs described at 49 U.S.C. §§ 5307, 5309, or 5311.

The Contractor agrees to permit any of the foregoing parties to reproduce such documents by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. In addition to any other requirements for maintenance of project records and documents in this contract, the Contractor agrees to maintain such records and documents until the Council, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives have disposed of all litigation, appeals, claims or exceptions arising from the performance of this contract

FTA-4 Federal Changes. The Contractor shall at all times comply with the required FTA clauses set forth in this contract and with all applicable FTA regulations, policies, procedures and directives including, without limitation, those listed directly or by reference in the Master Agreement between the Council and FTA, as they may be amended or promulgated from time to time during the term of this contract. The Contractor's failure to so comply shall constitute a material breach of this contract.

FTA-5 Recovered Materials. The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recovery Act (RCRA), as amended (42 U.S.C. § 6962), including but not limited to the regulatory provisions of 40 C.F.R. part 247, and Executive Order 12873, as they apply to the procurement of the items designated in subpart B of 40 C.F.R. part 247.

FTA-6 No Obligation by the Federal Government. The Council and the Contractor acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of this contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Council, the Contractor, or any other party (whether or not a party to the contract) pertaining to any matter resulting from this contract. The Contractor agrees to include the preceding clause in each subcontract under this contract and that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FTA-7 Program Fraud and False or Fraudulent Statements or Related Acts. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.*, and USDOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. part 31, apply to its actions pertaining to this contract. Upon execution of this contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or the FTA-assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, 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 on the Contractor to the extent the Federal Government deems appropriate.

The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. chapter 53, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001, 49 U.S.C. § 5307(k)(1), 49 U.S.C. § 5323(i) or other applicable federal law on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above language in each subcontract under this contract and that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

FTA-8 Civil Rights. The following requirements apply to this contract:

- 1. Nondiscrimination.** In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d *et seq.* and USDOT regulations "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of

Title VI of the Civil Rights Act," 49 C.F.R. part 21, 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 Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable federal implementing regulations and other implementing requirements FTA may issue.

2. Equal Employment Opportunity. The following equal employment opportunity requirements apply to this contract:

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 Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract 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 this contract. The Contractor 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 Contractor 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 Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor 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 Contractor 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 Contractor agrees to comply with any implementing requirements FTA may issue.

3. Inclusion in Subcontracts. The Contractor agrees to include the requirements of this Section FTA-8 in each subcontract under this contract, modified only to identify the subcontractor that will be subject to the provisions.

FTA-9 Disadvantaged Business Enterprise ("DBE")

1. Nondiscrimination. Pursuant to 49 C.F.R. § 26.13, the Contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 C.F.R. part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as the Council deems appropriate. The Contractor shall include this requirement in all subcontracts pursuant to this contract.

2. Prompt Payment. The Contractor agrees to pay subcontractors within 10 calendar days of the Contractor's receipt of payment from the Council for undisputed services provided by the subcontractor. The Contractor agrees to pay subcontractors all undisputed retainage payments within 10 calendar days of the Contractor's receipt of payment of retainage from the Council. The Contractor shall not postpone or delay any undisputed payments owed subcontractors without good cause and without prior written consent of the Council. The Contractor agrees to include in all subcontracts a provision requiring the use of appropriate alternative dispute resolution mechanisms to resolve payment disputes. The Contractor will not be reimbursed for work performed by subcontractors unless and until the Contractor ensures that subcontractors are promptly paid for work they have performed. Failure to comply with the provisions of this section may result in the Council finding the Contractor in noncompliance with the DBE provisions of this contract.

FTA-10 Incorporation of FTA Terms. Specific provisions in this contract include, in part, certain standard terms and conditions required by USDOT, whether or not expressly set forth in the contract provisions. All contractual provisions required by USDOT, as set forth in 49 C.F.R. § 18.36 and FTA Circular 4220.1F, are hereby incorporated by reference. Notwithstanding anything to the contrary in this contract, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Council requests which would cause the Council to be in violation of the FTA terms and conditions.

FTA-10a National Intelligent Transportation Systems Architecture and Standards. To the extent applicable, the Contractor agrees to conform to the National Intelligent Transportation Systems (ITS) Architecture and Standards as required by SAFETEA-LU § 5307(c), 23 U.S.C. § 512 note, and to comply with FTA Notice, "FTA National ITS Architecture Policy on Transit

Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001, and other Federal requirements that may be issued.

FTA-11 Clean Water. The Contractor 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 Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FTA-12 Certification of Restrictions on Lobbying; Disclosure. The Contractor certifies that no federal appropriated funds have been paid or will be paid by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement. The certification of this compliance ("Lobbying Restriction Certification") submitted by the Contractor in connection with this project is incorporated into, and made a part of, this agreement.

The Contractor further certifies that, if any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee or any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit to the Council, Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The Contractor certifies that it will require the language of this certification be included in the award documents for any subcontracts equal to or in excess of \$100,000.00 under this agreement, and that all subcontractors shall certify and disclose accordingly to the Contractor.

The certifications referred to in this section (including the "Lobbying Restriction Certification" submitted by the Contractor in connection with this project and incorporated in, and made a part of, this agreement) are material representations of fact upon which the Council relies when this contract is made.

FTA-13 Clean Air. The Contractor 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 Contractor agrees to report each violation to the Council and understands and agrees that the Council will, in turn, report each violation as required to assure notification to the FTA and the appropriate Environmental Protection Agency (EPA) Regional Office. The Contractor also agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by FTA.

FTA-14 Suspension and Debarment. This contract is a covered transaction for the purposes of 2 C.F.R. part 1200. By executing this contract, the Contractor certifies that none of the Contractor, its principals, as defined at 2 C.F.R. § 180.995, or affiliates, as defined at 2 C.F.R. § 180.905, are disqualified or excluded as defined at 2 C.F.R. §§ 180.935 and 180.940. The certification in this clause is a material representation of fact relied upon by the Council. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to Council, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 2 C.F.R. part 180, subpart C throughout the term of this contract. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

FTA-15 [Reserved].

FTA-16 [Reserved].

FTA-17 Buy America. The Contractor agrees to comply with 49 U.S.C. § 5323(j) and 49 C.F.R. part 661, which provide that federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 C.F.R. § 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, and microcomputer equipment and software. Separate requirements for rolling stock are set out at 49 U.S.C. § 5323(j)(2)(C) and 49 C.F.R. § 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

FTA-18 Cargo Preference. The Contractor agrees: (a) to use privately-owned United States-Flag commercial vessels to ship at least 50% of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill of lading in English for each shipment of cargo described in the preceding paragraph (a) to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to the Council (through the Contractor in the case of a lower-tier participating subcontractors bill of lading); and (c) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

FTA-19 [Reserved].

FTA-20 Contract Work Hours and Safety Standards Act.

(1) **Overtime Requirements.** No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek, unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) **Violation; Liability for Unpaid Wages; Liquidated Damages.** In the event of any violation of the clause set forth in paragraph (1) of this section, the Contractor and any subcontractor responsible for a violation shall be liable for the unpaid wages. In addition, the Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) **Withholding for Unpaid Wages and Liquidated Damages.** The Council shall, upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of the Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

(4) **Subcontracts.** The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in this section.

(5) **Safety Standards.**

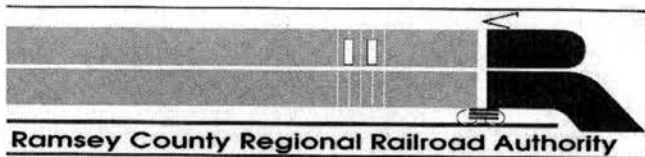
(i) **General Requirement.** The Contractor agrees to comply with section 107 of the Contract Work Hours and Safety Standards Act, 40 U.S.C. § 3704, and applicable Department of Labor regulations, "Safety and Health Regulations for Construction" 29 C.F.R. part 1926. Among other things, the Contractor agrees that it will not require any laborer or mechanic to work in unsanitary, hazardous, or dangerous surroundings or working conditions.

(ii) **Subcontracts.** The Contractor also agrees to include the requirements of this paragraph (5) in each subcontract. The term "subcontract" under this paragraph (5) is considered to refer to a person who agrees to perform any part of the labor or material requirements of a contract for construction, alteration or repair. A person who undertakes to perform a portion of a contract involving the furnishing of supplies or materials will be considered a "subcontractor" under this paragraph (5) if the work in question involves the performance of construction work and is to be performed: (1) directly on or near the construction site, or (2) by the employer for the specific project on a customized basis. Thus, a supplier of materials which will become an integral part of the construction is a "subcontractor" if the supplier fabricates or assembles the goods or materials in question specifically for the construction project and the work involved may be said to be construction activity. If the goods or materials in question are ordinarily sold to other customers from regular inventory, the supplier is not a "subcontractor." The requirements of this paragraph (5) do not apply to contracts or subcontracts for the purchase of supplies or materials or articles normally available on the open market.

FTA-21 [Reserved]

FTA-22 Pre-Award and Post Delivery Audit Requirements. The Contractor agrees to comply with 49 U.S.C. § 5323(m) and FTA's implementing regulation at 49 C.F.R. part 663 and to submit the following certifications:

- 1. Buy America Requirements.** The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the Bidder/Offeror certifies compliance with Buy America, it shall submit documentation which lists 1) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and 2) the location of the final assembly point for the rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
- 2. Solicitation Specification Requirements.** The Contractor shall submit evidence that it will be capable of meeting the bid specifications.



5

REQUEST FOR ACTION

Type of Agenda: ☒ Policy ☐ Administrative ☒ Discussion ☐ Information

Regional Railroad Authority Meeting Date: 08/07/12

Regional Railroad Authority Meeting Date: _____

SUBJECT: 2013 RCRRA Supplemental Budget

EXECUTIVE SUMMARY

On December 13, 2011 the Ramsey County Regional Railroad Authority (RCRRA) adopted the two-year 2012-2013 RCRRA budgets. The 2013 approved budget is \$17,127,615.00. There are two addenda to this budget: debt service budget; and Union Depot operating budget increase.

The two-year budget approval process requires presentation of RCRRA critical success indicators, performance measures, and addenda.

ACTION REQUESTED

Discussion will occur on RCRRA critical success indicators, performance measures, and addenda.

SUBJECT: 2013 RCRRA Supplemental Budget

ATTACHMENTS:

1. Department Summary of Department Mission, Department Vision and Direction, Programs/Services, and Critical Success Indicators
2. Critical Success Indicators and Performance Measures
3. Opportunities and Challenges
4. Changes to 2013 Approved Budget
5. Budget Addenda

PREVIOUS ACTION:

None.

COUNTY MANAGER'S COMMENTS:

The two-year budget approval process requires presentation of RCRRA critical success indicators, performance measures, and addenda.

SUBJECT: 2013 RCRA Supplemental Budget

Regional Railroad Authority – Authorized Signature	Date
	8/2/12

Budgeting & Accounting – Authorized Signature	Date
 for Sue Kuss	8/1/12

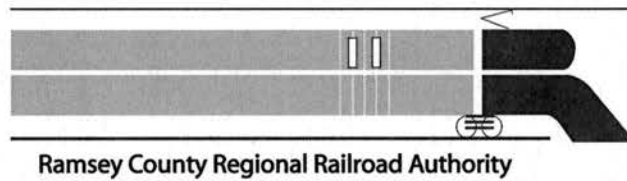
County Attorney – Authorized Signature	Date
	7/30/12

Property Management – Authorized Signature	Date

Information Services – Authorized Signature	Date

Other – Authorized Signature	Date

Department Summary



DEPARTMENT MISSION

REGIONAL RAILROAD AUTHORITY

Providing effective and efficient transit alternatives for Ramsey County and surrounding regions.

DEPARTMENT VISION AND DIRECTION

The RCRRA will develop the Union Depot into a multi-modal transit and transportation hub as a sustainable facility that offers a vast array of modal choices as well as a vibrant meeting place for the public that will include commercial activity, programmed events, and a showcase for artists. The RCRRA will also continue to pursue advancement of its various corridor studies currently underway in order to continue expanding transit options for residents of Ramsey County. Realization of these corridors will bring the Union Depot vision to fruition by bringing in more people to utilize the facility and transportation modes at the Union Depot.

PROGRAMS / SERVICES

Ramsey County Regional Railroad Authority is comprised of the seven elected Ramsey County Commissioners.

The Ramsey County Regional Railroad Authority recognizes the importance of transit to the mobility of people in the county and its importance in maintaining a strong economy in the county. For those reasons, the Railroad Authority plans, advocates, designs, communicates, educates, coordinates, implements, operates, preserves and funds transit options in Ramsey County.

The Ramsey County Regional Railroad Authority performs its activities to address the needs for mobility, improved transportation affordability, mitigation of traffic congestion, enhanced environmental quality and recognizes the economic health of the county depends on accessibility to jobs, services and recreation.

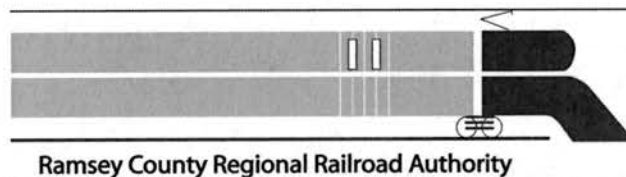
CRITICAL SUCCESS INDICATORS

A variety of safe and effective transportation options are accessible and safe for users of all abilities and incomes.

Transit and transportation investments support economic growth and stability and minimize resource impacts and pollution.

Attachment # 1

Department Summary



CRITICAL SUCCESS INDICATOR & PERFORMANCE MEASURES

A VARIETY OF TRANSIT AND TRANSPORTATION OPTIONS ARE ACCESSIBLE AND SAFE FOR USERS OF ALL ABILITIES AND INCOMES

PERFORMANCE MEASURES – HIGHLIGHTS

The Regional Railroad Authority is developing a multi-modal transit hub at the historic Union Depot. Construction began January 2011 and the project will be substantially completed in late 2012.

The Union Depot will accommodate Amtrak, regional, inter-city, and para-transit buses, taxis, automobiles, bicycles, pedestrians, and the Central Corridor light rail line operations.

As other RCRRA corridor projects advance to construction, these lines will connect at the Union Depot, bringing in other modes of transit and transportation, such as commuter rail and high speed rail.

PERFORMANCE MEASURES

#	Performance Measures	2009	2010	2011	2012	2013
		Actual	Actual	Actual	Estimate	Estimate
1	Number of modes available at the Union Depot	N/A	N/A	N/A	7	8

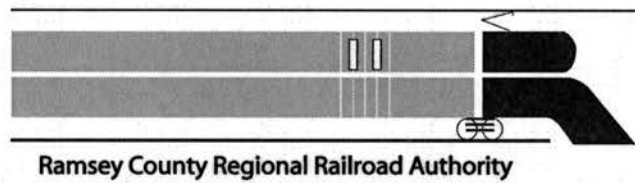
PERFORMANCE MEASURES - DISCUSSION

1. The Union Depot Multi-modal transit hub will become the heart of future transportation in the east metro. In 2012, the Depot will serve regional, inter-city, and para-transit buses, taxis, automobiles, bicycles and pedestrians. In 2013, the Depot will house and serve Amtrak, and in 2014, the Central Corridor LRT line will open.

Attachment # 2

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Department Summary



CRITICAL SUCCESS INDICATOR & PERFORMANCE MEASURES

TRANSIT AND TRANSPORTATION INVESTMENTS SUPPORT ECONOMIC GROWTH AND STABILITY AND
MINIMIZE RESOURCE IMPACTS AND POLLUTION

PERFORMANCE MEASURES – HIGHLIGHTS

The Regional Railroad Authority is developing a multi-modal transit hub at the historic Union Depot. Construction began January 2011 and the project will be substantially complete in late 2012.

The Union Depot will be a hub for multiple modes of transit and transportation options, as well as a hub for commercial activity, programmed events, and a showcase for artists.

By developing the Union Depot, other businesses in the region are allowed to compete with others globally by providing transit and transportation options.

PERFORMANCE MEASURES

#	Performance Measures	2009	2010	2011	2012	2013
		Actual	Actual	Actual	Estimate	Estimate
1	Number of programmed events at the Union Depot	N/A	N/A	N/A	N/A	N/A

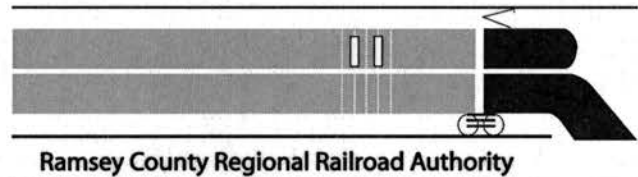
PERFORMANCE MEASURES - DISCUSSION

1. The Union Depot will become the living room of ~~St. Paul~~ and be a catalyst for development of downtown St. Paul. Bringing people to the Union Depot also brings them to other businesses downtown.

Attachment # 2 (continued)

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Department Summary



OPPORTUNITIES & CHALLENGES

REGIONAL RAILROAD AUTHORITY

Opportunities that may impact department performance in the current biennium or in the 2014 – 2015 Budget

The Union Depot will accommodate Amtrak, regional, inter-city, and para-transit buses, taxis, automobiles, bicycles, pedestrians, and the Central Corridor light rail line operations at the Union Depot. Leased tenant spaces will bring customers, visitors, travelers, and revenue to the Union Depot. The multimodal network coming thru the Union Depot will ease congestion, provide alternative modes of transportation, and improve economic competitiveness and vitality of St. Paul, Ramsey County, and the region.

Engaging freight companies early on in rail studies has been positive in establishing strong working relationships. These communications are important because the department will need to collaborate with the freight companies on sharing rail lines with future commuter and passenger rail lines. The department is the lead agency for a Freight Rail Capacity Study for freight movements affecting the Union Depot. Early collaboration with the freight railroads has provided strong working relationships and garnered an environment of trust between the public and private sector.

The completion of the Gateway Corridor Alternatives Analysis in 2012 and the initiation of the Gateway Corridor Draft Environmental Impact Statement (DEIS) in 2013 will lead to the selection of a Locally Preferred Alternative (LPA) upon completion of the DEIS in 2014. The LPA will provide the RCRRA the opportunity to work with various stakeholders along the selected alignment through Ramsey County so that impacts to area residents and businesses are minimized while also providing an opportunity to identify locations that can support economic development.

Growing federal and philanthropic interest in regional and local efforts to support development that aligns with community goals and recognizes the interrelationship between transportation, housing, employment, economic development, environment, health, and amenities that enhance the quality of life can provide the opportunity to build on work already undertaken by the RCRRA to form regional partnerships. Ramsey County has been participating in a multi-jurisdictional planning process known as Corridors of Opportunity (CoO). The CoO initiative promotes sustainable, vibrant, and healthy communities, using the region's emerging transitway system as a development focus.

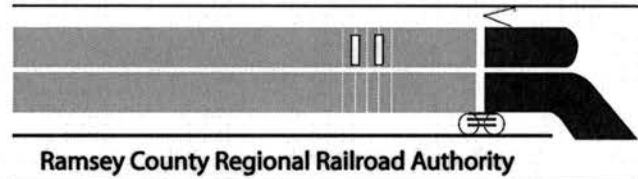
Amtrak is leading a study partnering with the Minnesota Department of Transportation and the Wisconsin Department of Transportation to add a second passenger train from Chicago to the Twin Cities. This is one example of facilitating improved intercity passenger rail service. The Union Depot is a major station stop along this corridor.

To ensure the East Metro remains competitive in the region, the RCRRA must continue to promote transportation and transit infrastructure investments that provide an equitable balance of infrastructure investment in the region. This can be achieved by advocating, coordinating, funding, planning, and implementing transit and transportation options.

Attachment # 3

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Department Summary



OPPORTUNITIES & CHALLENGES

REGIONAL RAILROAD AUTHORITY

Challenges that may impact department performance in the current biennium or in the 2014 – 2015 Budget

RCRRA may have to provide a subsidy for operating costs associated to the Union Depot. Agreements with modal partners and future retail/commercial entities have not been established. Jones Lang LaSalle (JLL) will manage the Union Depot. RCRRA will work closely with its operator and lease agent to maximize development of this one of a kind facility, which houses residents, commercial, multimodal, and program space.

RCRRA will work with its delegation members locally and in Washington D.C. to find long-term stable funding sources to pay for capital and operating costs associated with future high speed rail lines. At this time, a large local share is required for both capital and operating costs.

Nationally, finding a long-term funding source for transit/transportation operations and infrastructure costs is needed. With more transit riders and more fuel efficient vehicles being driven, the designated gas tax allocation is providing less revenue for transit/transportation needs.

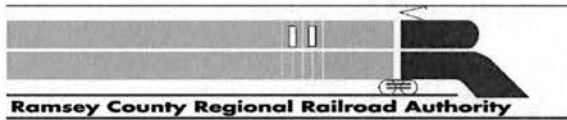
The Gateway, Rush Line, Robert Street, Minnesota High Speed Rail, and Red Rock Corridor Commissions and other RCRRA corridor collaborations continue to have funding, staffing, advocacy, and legislative policy and finance challenges.

Attachment # 3 (continued)

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Department Summary

2013 Supplemental Budget



CHANGES TO 2013 APPROVED BUDGET

Regional Railroad

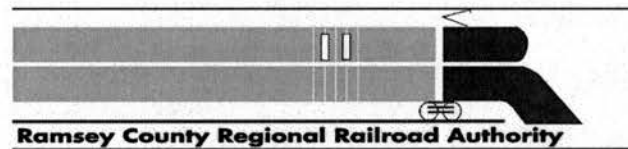
	2013 FTEs	2013 Budget	2013 Financing	2013 Fund Balance	2013 Levy
2013 Budget as Approved		17,127,615	817,171	3,189,816	19,500,060
<u>Changes Previously Approved by County Board</u>					
1 None					
2013 Approved as Adjusted by County Board	-	17,127,615	817,171	3,189,816	19,500,060
<u>Budget Addenda Recommended to Adjusted 2013 Approved Budget</u>					
1 Debt Service budget		168,000		(168,000)	
2 Union Depot operating budget increase		2,000,000		(2,000,000)	
2013 Budget as Recommended	-	19,295,615	817,171	1,021,816	19,500,060

Attachment # 4

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Department Summary

2013 Supplemental Budget



BUDGET ADDENDA

Regional Railroad

No. Budget Addendum	2013 FTEs	2013 Budget	2013 Financing	2013 Levy
1 Debt Service budget	-	168,000	168,000	-

EXPLANATION

In March 2012, the RCRRA borrowed \$10,000,000 from U.S. Bank National Association. This loan is to provide funds for capital costs of renovating the Union Depot and related parking structures. RCRRA Resolution No. R12-21, dated 3/20/12 require a Debt Service Account to be used to pay the principal and interest of the loan. The Debt Service Schedule requires \$84,000 in interest (\$168,000 total) be paid on 8/1/2013 and 2/1/14 out of the RCRRA 2013 Debt Service budget. Financing, in this case, is a reduction in the contribution to debt service.

No. Budget Addendum	2013 FTEs	2013 Budget	2013 Financing	2013 Levy
2 Union Depot operating budget increase	-	2,000,000	2,000,000	-

EXPLANATION

On May 15, 2012, per RCRRA Resolution No. R12-23, the RCRRA approved the selection of Jones Lang LaSalle (JLL) to provide property management and activation and development services at the Union Depot. RCRRA staff is currently in negotiations with JLL and plan to return the to RCRRA on July 24, 2012 for approval of a contract with JLL. Currently, the JLL budget for services within the contract are estimated to be about \$2,000,000 more than what RCRRA budgeted for Union Depot operating expenditures for 2013. Most of this increase is due to JLL staffing and marketing cost estimates. Financing, in this case, is a reduction in the contribution to fund balance.

Attachment # 5