

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

This Assignment and Transfer of all rights under the copyright in this original visual artwork and the expressed waiver of all moral rights in said original visual artwork (the “**Agreement**”) is entered on the [_____] day of [____], 20____, (the “**Effective Date**”) by and between the Artist [insert first/last name of Artist here] (the “**ASSIGNOR**”) located at [insert address of Artist here] and the California Department of Transportation located at 1120 N. Street, Sacramento, CA 95814 (the “**ASSIGNEE**”) (collectively, known as the “**PARTIES**”), with respect to this original visual artwork described below (hereinafter referred to as the “**Final Artwork**”).

RECITALS:

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

1. **Copyrights**: means the intangible property rights in original works of authorship fixed in any tangible medium of expression, as defined and enforceable under the U.S. Copyright Act of 1976. The original works of authorship include all categories of artistic work protectable under the copyright laws, including but not limited to, pictorial, graphic, sculptural, architectural and visual art works.
2. **Local Agency Agreement**: means the agreement entered into between **ASSIGNOR** [insert Full Name of Artist here] and the [insert Name of Local Public Agency or Tribal Govt here] (hereinafter, “**LOCAL AGENCY**”) executed on [insert Date of Signed Local Agency Agreement here], pertaining to the design, installation, operation, maintenance and removal of the transportation art, and **Copyright** ownership and attached as **Exhibit A** to this **Agreement**.
3. **Material Object**: means the tangible visual **Final Artwork** created and installed on **ASSIGNEE’s** right of way by **ASSIGNOR** [insert Full Name of Artist here] pursuant to the **Local Agency Agreement**.
4. **VARA**: means Section 106A added by the Visual Artists Rights Act of 1990, which confers upon authors of works of visual arts, several types of attribution and integrity rights, including the right to prevent any intentional distortion, mutilation, or other modifications of that work.
5. **CAPA**: means the California Art Preservation Act, which confers to artists of works of fine art (original paintings, sculpture, drawings or original work of art in glass, of recognized artistic quality. In addition, this act prohibits the intentional commission of any physical defacement, mutilation, alteration, or destruction of a work of fine art by any person or entity who possesses or owns the fine art.
6. **Project**: means the content, size, and proposed location where the visual artwork will be installed, including but not limited to, the attachments or the reproducible drawings, sketches, visual presentations, photographs, photo simulations or other appropriate renditions of the artwork to be installed.
7. **Preliminary Works**: means all artwork including, but not limited to, concepts, sketches, or other visual presentations or other alternate or preliminary designs and documents

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developed by the Artist and which form part of the **Final Artwork**. The **Preliminary Work** is hereby incorporated by reference and made part of this **Agreement** and attached as **Exhibit B**.

8. **Final Artwork**: means all creative content developed or created by the Artist which form the final **Material Object** of the work commissioned exclusively for the **Project**, and as detailed in the **Project** description, provided by the Artist and accepted by the **[insert Name of Local Agency here]**. **ASSIGNOR** acknowledges that the **Final Artwork** includes **Preliminary Works** and the **Material Object** which are incorporated and made part of the final representation of the **Final Artwork**. The **Final Artwork** is hereby incorporated by reference and made part of this **Agreement** and attached as **Exhibit C**.

Whereas the **PARTIES** agree to the description of the **Final Artwork** as described by **ASSIGNOR** as follows:

1. **Description of the Final Artwork:**
 - a) **Title:** **[insert the Exact Title of the Final Artwork here]**
 - b) **Size:** **[insert the Exact Size of the Final Artwork here]**
 - c) **Category of Work:** **[Pick One: Pictorial; Graphic; Sculptural]**
 - d) **Project:** **[insert the Project No. or description here]**
 - e) **Installation Location:** **[insert Exact Address/Location of Artwork Installed here]**
 - f) **Year Final Artwork Created:** **[insert year final artwork completed]**
 - g) **Artist (ASSIGNOR):** **[insert Full Name of Artist here]**
 - h) **Artist (ASSIGNOR) Signature:** **[Artist(s) Must Sign Full Name here]**

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

1. **Assignment and Transfer of Copyright in the Final Artwork:**
 - a) **ASSIGNOR** hereby conveys, transfers and irrevocably assigns to **ASSIGNEE** all rights, title and interest to the **Final Artwork**, including but not limited to, its entire and exclusive **Copyrights** under federal and state copyrights laws, in the United States and all jurisdictions outside the United States, its common law copyrights and all other intellectual property rights associated and subsisting in the **Final Artwork**. **ASSIGNEE** shall be the exclusive owner of the **Final Artwork** and of the **Copyright** in the **Final Artwork** from the **Effective Date** forward and shall have the exclusive right to secure registration of the copyright in the **Final Artwork** internationally. No rights in the **Final Artwork** or in the **Copyright** in the **Final Artwork**, shall be retained by **ASSIGNOR**, nor shall there be any reversion of those rights to **ASSIGNOR** in the future;

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- b) **ASSIGNOR** hereby agrees that the exclusive rights assigned and transferred to **ASSIGNEE** under state and federal copyright laws shall include the right to reproduce the **Final Artwork**; the right to prepare derivative works based on the **Final Artwork**; the right to distribute copies to the public of the **Final Artwork**; the right to display the **Final Artwork** publicly, the right to alter, exploit and make changes to the **Final Artwork**, including any and all other privileges and rights to the **Final Artwork** attributed to a copyright owner;
 - c) **ASSIGNOR** hereby conveys, transfers and irrevocably assigns to **ASSIGNEE** the ownership to the **MATERIAL OBJECT** in its tangible form, in which the copyrightable **Final Artwork** is embodied. **ASSIGNOR** acknowledges that the **MATERIAL OBJECT** is the **Final Artwork** in its tangible form as defined in section 8 Definitions in this **Agreement**;
 - d) **ASSIGNOR** hereby conveys, transfers and irrevocably assigns to **ASSIGNEE** its full-term and renewal term **Copyright** rights in the under federal and state copyright laws;
 - e) **ASSIGNOR** agrees that this assignment and transfer of **Copyrights** subsisting in the **Final Artwork**, will remain in effect for the entire duration of such **Copyrights** and will include all exclusive rights, interest and ownership under the copyright laws.
2. **Waiver of Statutory Moral Rights by ASSIGNOR:**
- a) **ASSIGNOR** [insert Full Name of Artist here], the author and Artist of the original visual artwork, hereby acknowledges the existence of his or her federal and state statutory moral rights under **VARA** and **CAPA**, as those rights are more particularly described in 17 U.S.C. section 106A(a) **VARA**, and in the California Civil Code section 987 **CAPA**, and knowingly executes this waiver on the following terms:
 - i. **Scope:** This waiver applies to the following visual work: **Final Artwork**, described in this **Agreement** and attached as **Exhibit C**, entitled, [insert Full Title of the Final Artwork here].
 - ii. **Uses Covered:** This waiver applies to all applicable uses reserved to an owner of a lawfully copyrighted work under the copyright laws, including but not limited to, display the visual artwork publicly and to any and all applications in which either the attribution right, the integrity right, or the personal moral right may be implicated.
 - iii. **Waiver:** With respect to the **Final Artwork** enumerated in subparagraph (i) above and for uses enumerated in subparagraph (ii) above, **ASSIGNOR**, as the Artist and author of the **Final Artwork**, hereby expressly and forever waives any and all moral rights arising under 17 U.S.C. section 106A(a) and California Civil Code section 987, and any rights arising under U.S. federal or state law or under the laws of any other country that conveys rights of the same nature as those conveyed under 17 U.S.C. section 106A(a) and California Civil Code section 987, or any other type of moral rights or droit moral.

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3. **ASSIGNOR** does hereby covenant and agree to cooperate with **ASSIGNEE** whereby **ASSIGNEE** may enjoy to the fullest extent the exclusive right, title, and interest herein conveyed. Such cooperation shall include:
- a) Prompt execution of all papers (prepared at the expense of **ASSIGNEE**) which are deemed necessary or desirable by **ASSIGNEE** to perfect in it the right, title, and interest herein conveyed:
 - b) Prompt execution of all petitions, oaths, specifications, declarations, or other papers (prepared at the expense of **ASSIGNEE**) which are deemed necessary by **ASSIGNEE** for obtaining copyright registration in the United States covering said **Final Artwork**.

4. **Relationship of the PARTIES:**

The **PARTIES** agree that **ASSIGNEE** is solely a third-party beneficiary and that **ASSIGNEE** is not a party to nor legally obligated or bond by any of the terms and conditions contained in the **Local Agency Agreement** described in section 2 (Definitions) . The **PARTIES** agree that **ASSIGNOR** is an independent contractor commissioned to create the **Final Artwork** by the **LOCAL AGENCY** and that no agency, partnership, joint venture, employee-employer relationship is intended or created by this **Agreement**. All rights granted to **ASSIGNEE** are contractual in nature and expressly defined by this **Agreement**.

5. **Accreditation and Promotions by ARTIST as ASSIGNOR**

- a) **ASSIGNOR** retains the right to reproduce, publish and display the **Final Artwork** in **ASSIGNOR's** portfolios and websites, and in galleries, design periodicals and other media or exhibits for the purpose of recognition of creative excellence or professional advancement and to be credited with authorship of the **Final Artwork** in connection with such uses. **ASSIGNOR** may describe, subject to approval of **ASSIGNEE**, its role in relation to the **Project** and, if applicable, the services provided to the other party on its website and in other promotional materials.
- b) All displays or publications of the **Final Artwork** shall bear **ASSIGNEE's Copyright** notice in the form, size and location as suggested by the U.S. Copyright Office for the type of copyrightable work protected under the copyright laws or as otherwise directed by **ASSIGNOR**, in the following form:

**“Copyright [insert YEAR CREATED] California Department of
Transportation. All Rights Reserved.”**

6. **Term:**

The **Copyright** protection term of this irrevocable and exclusive assignment shall be for the full term of the copyrighted work, including its renewal term and any applicable extended renewal term of **Copyright** protection. The terms, covenants, and provisions of this assignment shall inure to the benefit of **ASSIGNEE**, its officers, successors, assigns, and/or other legal representatives, and shall be binding upon said **ASSIGNOR**.

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7. Warranty:

ASSIGNOR warrants and represents that:

- a) The **Final Artwork** is an original work of authorship;
- b) The **ASSIGNOR** as the author, Artist and sole proprietor of the **Final Artwork**;
- c) The **Final Artwork** does not infringe any existing copyright;
- d) The **Final Artwork** is not regarded as Site-Specific Art and therefore has no legal protection as visual art that derives its meaning from the surrounding environment; and
- e) The **ASSIGNOR** has not entered into any assignments, transfers, licenses, contracts or mutual understandings in conflict with the terms and obligations in this **Agreement**.
- f) There are no claims currently pending or threatened, nor does **ASSIGNOR** have any reason to believe that any claims will be brought or threatened in the future, against **ASSIGNOR's** right, ownership or interest in the **Final Artwork**.

8. Indemnification:

ASSIGNOR agrees to indemnify **ASSIGNEE** against loss, injury or damage (including any related legal costs or expenses properly incurred) occasioned to **ASSIGNEE** in consequences of any breach by **ASSIGNOR** (unknown to **ASSIGNOR**) of the **Warranty** in section 7, above.

9. Delivery:

ASSIGNOR must properly sign, date, and notarize this **Agreement** and attach the required **Exhibit A**, **Exhibit B** and **Exhibit C**, necessary to give effect to this **Agreement**. **ASSIGNOR** shall provide to **ASSIGNEE** the "original wet signature" **Agreement** with the attached above-mentioned Exhibits. **ASSIGNOR** will receive a copy of the fully executed **Agreement**.

10. General Terms:

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

11. Further Agreements:

This instrument contains the entire and only agreement between the **PARTIES** and supersedes all pre-existing agreements between them respecting its subject matter.

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Any representation, promise, or condition in connection with said subject matter that is not incorporated in this **Agreement** shall not be binding upon either party.

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

ARTIST ASSIGNOR): **SIGNATURE OF ARTIST/ASSIGNOR MUST BE NOTORIZED**

PRINT NAME(S) OF ARTIST (ASSIGNOR):

ARTIST (ASSIGNOR) ADDRESS:

SIGNATURE OF ARTIST (ASSIGNOR):

DATE: _____ [MONTH, DAY AND YEAR], before me,

_____ **[Name of Notary]**, personally appeared

_____ **[Name of ARTIST/ASSIGNOR]**, and proved to me on with

satisfactory evidence to be the person whose name is subscribed to the above **Assignment and Transfer of Copyright and Waiver of Moral Rights in Final Artwork**, and acknowledged to me that [he or she] executed the same in his authorized capacity and that by his signature on the **Assignment and Transfer of Copyright and Waiver of Moral Rights in Final Artwork**, did [himself or herself] execute this **Assignment and Transfer of Copyright and Waiver of Moral Rights in Final Artwork**.

WITNESS MY HAND AND OFFICIAL SEAL _____

NOTARY PUBLIC

California Department of Transportation (ASSIGNEE)

ASSIGNEE SIGNATURE: _____

ASSIGNEE PRINTED NAME: _____

ASSIGNEE TITLE: _____

ASSIGNEE ADDRESS: _____

DATE: _____

APPROVED AS TO FORM:

MARIA S. SAPIANDANTE, ATTORNEY