

**ARTWORK DONATION AGREEMENT
BETWEEN
THE CITY OF ALEXANDRIA, THROUGH ITS OFFICE OF THE ARTS
AND
THE WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY**

This Artwork Donation Agreement (“Agreement”) is made and entered into this ___ day of ____, 20__, by and between the City of Alexandria, a municipal corporation of the Commonwealth of Virginia through its Office of the Arts (“DONOR”), with a principal place of business at 1108 Jefferson Street, Alexandria, Virginia, 22314, and the Washington Metropolitan Area Transit Authority (“WMATA”), an interstate compact agency of the State of Maryland, the Commonwealth of Virginia, and the District of Columbia, with headquarters located at 300 Seventh Street, SW, Washington, DC 20024. WMATA and DONOR are each referred to herein by name or as a “Party,” or collectively, as the “Parties.”

1. Purpose. DONOR wishes to donate Artwork described in **Exhibit A**, attached hereto and incorporated by reference herein (singularly or collectively, the “Artwork”), to WMATA for installation and display at _____ (the “Location”), , subject to the conditions set forth in paragraph 7, below, which Artwork WMATA is willing to accept on the terms and conditions set forth herein.

2. Donation and Conveyance. DONOR hereby irrevocably donates and conveys title to the Artwork to WMATA. DONOR conveys all intellectual property rights, including the rights of display, relocation, removal, and reproduction of the Artwork, whether mechanical or electronic, to WMATA. The donation shall be effective as of _____, 20__ (the “Effective Date”).

3. Intellectually Property and Warranty.

DONOR represents and warrants that the Artwork is free of encumbrances and that DONOR has all rights, including intellectual property rights, to donate and convey the Artwork to WMATA, including the right to authorize WMATA to display, reproduce, relocate and/or remove the Artwork in accordance with the terms of this Agreement. As between the Parties, DONOR will be responsible and liable for any intellectual property claims brought against WMATA relating to the Artwork.

4. Insurance. No later than the Effective Date, DONOR shall provide WMATA with a Certificate of Self Insurance that states that it is self-insured to the required level.

5. Liability. DONOR agrees to be responsible for the negligent or wrongful acts or omissions of its employees arising under this Agreement.

6. Use of Artwork. DONOR acknowledges that images of the Artwork may be used to produce other items, which may be sold by WMATA, and the Artwork may be sold, donated, given away, or otherwise disposed of by WMATA, subject to the City’s right of first refusal to reclaim the Artwork. In the event that WMATA determines to sell or otherwise dispose of the Artwork, it shall offer in writing the Artwork to the City. The City shall have thirty days to determine whether it wants to reclaim the Artwork and shall notify WMATA of its intention in

writing. In the event that the City disclaims any interest in the Artwork, WMATA shall have the ability to sell, donate, give away or otherwise dispose of the Artwork.

7. Maintenance; Repair; Restoration; Removal.

(a) Beginning on the Effective Date, WMATA shall be solely responsible for all maintenance, repair, and restoration of the Artwork.

(b) WMATA shall have the right to temporarily remove or relocate the Artwork for maintenance and/or repair or when necessary to address operational needs or to facilitate other WMATA activities and shall notify the City in writing that the Artwork has been temporarily removed or relocated. If the proposed relocation of the Artwork is outside of the City of Alexandria, the City shall have the right to require that the Artwork remains in the City of Alexandria.

(c) WMATA shall have the right to permanently relocate the Artwork to address safety and/or operational concerns on WMATA property, subject to the written approval of the City.

(d) WMATA shall have the right to permanently remove the Artwork if WMATA determines the Artwork is (i) deteriorated or damaged beyond repair or (ii) no longer meets WMATA's aesthetic or safety and/or security standards,. Subject to the terms and conditions of paragraph 6 above, the City shall have the right to reclaim the Artwork at no cost to WMATA.

8. Event of Default; Remedies. In the event either Party breaches any provision of this Agreement, and fails to cure the breach within 30 days of receipt of notice of such breach, then an event of default shall occur. In the event of an event of default, in addition to any other rights and remedies the Parties may have at law and in equity, the non-breaching Party may terminate this Agreement by written notice, which termination shall be effective as of the date of such written notice.

9. Termination. WMATA shall have the right to terminate this Agreement if, at any time, it is determined that DONOR does not have the requisite property rights to the Artwork. WMATA shall serve written notice to DONOR that property rights are in question, and DONOR shall have no more than sixty (60) days to cure or otherwise establish its ownership. If DONOR fails to cure or establish ownership, this Agreement will terminate without further notice from WMATA on the sixty-first (61st) day after the date of WMATA's written notice. Any such termination shall not absolve DONOR from liability for intellectual or other property claims brought by a third party against WMATA related to the Artwork.

10. Notice. All required notices hereunder shall be in writing and shall be deemed to have been sufficiently given or served for all purposes when presented personally or sent by certified or registered mail, first class, postage paid, return receipt requested to a party as follows:

If to WMATA:

Laurent Odde
WMATA
Program Manager, Art in Transit
4201 Mill Road
Alexandria, VA 22314
lodde@wmata.com

If to DONOR:

Office of the Arts
1108 Jefferson Street
Alexandria, Virginia 22314

With a copy to:

Office of the City Attorney
301 King Street, Suite 1300
Alexandria, Virginia 22314

11. Anti-Deficiency Clause. All obligations of WMATA under this Agreement that directly or indirectly require the expenditure by WMATA of any of its funds are subject to the appropriation and availability of funding through WMATA's budgetary procedures.

12. Invalid or Unenforceable Term. If any provision of this Agreement or the application thereof to any person or situation is held to be illegal, invalid or unenforceable under present or future laws, such provision or application shall be fully severable and not affect the validity of any other provision of this Agreement.

13. Governing Law/Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of laws principles, unless there is a conflict with the WMATA Compact, in which case the Compact shall prevail. Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought only in the U.S. District Court for the Eastern District of Virginia, Alexandria Division, and each Party irrevocably consents to the sole and exclusive jurisdiction of such federal court (and of the appropriate appellate court) in any such action or proceeding and waives any objection to venue laid therein.

14. Amendment. No alteration, amendment, change, or addition to this Agreement shall be binding upon DONOR or WMATA unless reduced to writing and signed by DONOR and WMATA.

15. Assignment. DONOR acknowledges and agrees that the rights and obligations of DONOR under this Agreement may not be assigned or delegated, in whole or in part, to any third party without the prior written consent of WMATA.

16. Entire Agreement; Counterparts. The Agreement and the Exhibits attached hereto or referenced herein constitute the entire agreement between the Parties with respect to the matters contemplated by this Agreement. There are no covenants, promises, agreements, conditions, or understandings, either oral or written between WMATA and DONOR other than as are herein set forth. No alteration, amendment, change or addition to this Agreement shall be binding upon WMATA or DONOR unless reduced to writing and signed by WMATA and DONOR. This Agreement may be executed in one or more counterparts and by exchange of signed counterparts transmitted electronically, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same original instrument.

17. Independent Contractors. The Parties are and shall be independent contractors to one another, and nothing herein shall be deemed to create an agency, partnership, employment, or joint venture between the Parties. Each Party's personnel shall be considered solely employees or agents of that Party and not employees or agents of the other Party. Neither Party has the authority to bind the other to any third party nor otherwise to act in any way as the representative of the other, unless otherwise expressly agreed to in writing and signed by both.

18. Severability. If any of the provisions of this Agreement is deemed to be invalid or unenforceable, such invalidity or unenforceability will not invalidate or render unenforceable the remainder of the Agreement.

19. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the respective heirs, successors, assigns and personal representatives of the Parties, subject, however, to the restriction upon assignment by DONOR as set forth in Section 15 above.

IN WITNESS WHEREOF, DONOR and WMATA have caused this Agreement to be executed by their duly authorized respective officials.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

Randy Clarke
General Manager and Chief Executive Officer

Date

**CITY OF ALEXANDRIA, a municipal
corporation of the Commonwealth of Virginia**

James F. Parajon, City Manager

Date

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EXHIBIT A
ARTWORK

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EXHIBIT B
INSURANCE REQUIREMENTS

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