

STATE OF GEORGIA

COUNTY OF FULTON

THIS AGREEMENT, made and entered into this __ day of _____, 2022 between FULTON COUNTY, a political subdivision of the State of Georgia, and Averbuch Rail Art LLC (hereinafter referred to as "Artist").

WHEREAS, the Fulton County Board of Commissioners passed an Art in Public Places Resolution ("Resolution"), thereby pledging to support, develop, and create a means of integrating public art into the design and development of Fulton County through an Art in Public Places Program;

WHEREAS, the Fulton County Board of Commissioners adopted the FY2022 Budget on January 19, 2022 which included an allocation for \$150,000 for the commissioning of public art using steel recycled from the Rogers Bridge in Johns Creek.

WHEREAS, on December 4, 2019 (via Agenda Item # 19-0986), the County and the City entered an Intergovernmental Agreement, along with the City of Duluth and Gwinnett County, for the replacement of the historic Rogers Bridge; and

WHEREAS, on April 13, 2022 (via Agenda Item # 22-0246) the Fulton County Board of Commissioners and the City of Johns Creek entered into an Intergovernmental Agreement to govern the creation of public art utilizing the steel material from the historic Rogers Bridge.

WHEREAS, both the Artist and the artwork were selected by procedures established by the Fulton County Public Art Master Plan and the Fulton County Arts and Culture Department ("FCAC");

WHEREAS, Fulton County wishes to commission Artist to create a works of art (collectively known as the "Work") in Artist's own unique style;

WHEREAS, the FCAC has been designated by Fulton County and the City of Johns Creek as its representative to work directly with Artist and shall perform certain services as defined herein;

WHEREAS, the parties acknowledge the commission of the Work by Artist shall be installed in Fulton County, Georgia, at Rogers Bridge, Johns Creek, (the "Site");

WHEREAS, the parties wish to have the Work governed by the mutual obligations, covenants and conditions herein:

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants hereinafter set forth, and other valuable considerations, receipt being acknowledged, the parties agree as follows:

- I. **SCOPE OF SERVICES.** The parties acknowledge that the Work shall be **a sculpture celebrating the bridge as a foundational form which connects communities. The Bridge will take the shape of two groups of recycled steel figures held together by colossal arch made of recycled stone. The recycled materials are emblematic of transformation: in life and in time and form.** The work is more fully described in the Artist's Proposal (Exhibit C) and Project Schedule (Exhibit B) attached hereto and incorporated herein by reference.

Artist shall execute, fabricate, deliver and install, or supervise installation of, the Work and provide other post-installation services as described above.

- II. **PAYMENT.** Fulton County shall disburse payments not to exceed **\$140,000.00** (the "Payment") to Artist according to the following schedule and terms set forth herein.

\$14,000.00 Initial Contract Payment (10%) After Execution of this Agreement for Design development to include engineering and/or architectural drawings, shop drawings, revised budget and schedule, proof of insurance

\$63,000.00 Interim Contract Payment (45%)
After Design Documentation Review and Approval, and written Notice to Proceed (NTP) given to Artist from FCAC

\$49,000.00 2nd Interim Contract Payment (35%)
After Artist's written notification to Fulton County and Fulton County's verification that 50% of the work has been completed in accordance with this Agreement

\$14,000.00 Final Contract Payment (10%)
Following written notification to Fulton County and after Fulton County's determination and written acknowledgment verifying that: (i) the Work has been completed and installed in accordance with this Agreement; (ii) the Site has been cleared of all Artist's and installer's debris; and (iii) all requirements of this Agreement have been satisfied, including submission by Artist of complete final report, photographic documentation, and written instructions for maintenance and preservation of the artwork.

- III. **BILLING.** In order to receive Payment, Artist shall submit a signed invoice to Fulton County indicating that each stage outlined above in Paragraph II has been reached. Fulton County may request, at any time, a good-faith estimate of the degree of completion of the Work, and Artist shall promptly comply.

A. **Disagreement with Estimation of Stage.** If Fulton County disagrees with Artist's estimation of the stage of completion, the Artist is required to comply with Fulton County's judgment.

B. **Agent Commission.** Notwithstanding any prior agreement between Artist and any

agent, representative or gallery, any agent's commission shall be paid solely by Artist; Fulton County shall assume no responsibilities for any agent's commissions.

- C. Excess Costs. In the event Artist incurs costs in excess of the Payment, Artist shall pay any excess from Artist's own funds and Fulton County shall not be required to pay any part of the excess costs and Artist shall have no claim against Fulton County on account thereof. Artist agrees to indemnify and hold Fulton County harmless for any and all claims, known or unknown, which may be brought against the County, or agents thereof, as a result of any excess costs.
- D. Withholding for Non-completion of Work. In the event the Work is not completed or partially completed according to the milestone dates set forth in Schedule (Exhibit B) herein, Fulton County may withhold monies otherwise due to Artist on account of Artist's failure to perform in accordance with the terms and conditions of this Agreement. Within thirty (30) days of exercising its right to withhold monies, Fulton County will provide written notice to Artist of the reasons therefore and shall thereafter provide Artist with thirty (30) days to cure. When all reasons supporting Fulton County's withholding any payment have been removed to Fulton County's reasonable satisfaction, Fulton County shall pay promptly to Artist any monies withheld that are otherwise due to Artist.

IV. FABRICATION/TRANSPORTATION/INSTALLATION.

- A. Artist Provides. Artist shall provide the following goods and services:
 - 1. Structural Design Documents. Artist shall work with a structural engineer in creating and conveying to Fulton County structural design documents for the Work (the "Documents"). The Documents shall include, but are not limited to, connections of the Work to the Site and structural integrity of the Work itself. Artist shall bear all cost and expense of any reasonable civil, architectural, structural, mechanical, electrical requirements and safety or material tests required for any element of the Work.
 - 2. Structural Certification. The Artist, when required by Fulton County, shall be responsible for having a certified structural engineer certify that the Work complies with applicable local, state or federal laws, statutes, ordinances or regulations. Artist shall also bear this expense.
 - a. Fulton County reserves the right, but assumes no duty or responsibility to request Artist to make revisions to any Documents as are necessary for the Work to comply with applicable statutes, ordinances or regulations of any governmental regulatory agency having jurisdiction over the Work or the Site. Any revisions required by Fulton County of the Documents or any changes, alterations, revisions, or modifications thereto, as required by this

Agreement, or otherwise, at any time shall in no way waive, relieve, discharge, excuse or otherwise release Artist from Artist's duties, responsibilities or obligations under this Agreement, and Fulton County shall not thereby assume, nor be deemed to have assumed, any duties, responsibilities or obligations of Artist.

- b. The Artist agrees to defend, indemnify, release and hold harmless Fulton County, its Commissioners, officers, employees and agents, from and against any and all losses, including claims, damages, liabilities, costs and expenses (including, but not limited to all actions, proceedings, or investigations in respect thereof and any costs of judgment, settlements, court costs, attorney's fees or expense, regardless of the outcome of any such action, proceeding or investigation) arising out of the actions of Artist in performing this Agreement, or out of the nonperformance of his obligations under this Agreement.
 - c. Fulton County may also request revisions of the Documents for other practical reasons at no additional cost to the County.
3. The Work. Artist shall be responsible for all supplies, materials and equipment as necessary for the Work's creation, fabrication, transportation, erection and installation except as otherwise delineated herein. Artist shall determine the Work's artistic expression, scope, design, color, size, materials and texture, all of which shall be subject to review and acceptance by Fulton County as set forth in this Agreement.
4. Review and Conformity of the Work.
- a. Periodic Review of the Work. Fulton County shall have the right to review the Work at reasonable times during the fabrication thereof within 24-hour notification.
 - b. Conformance with Schedule. Artist or an independent contractor shall create and fabricate the Work, and shall coordinate with Fulton County in transporting and installing the Work, in accordance with the approved Schedule (Exhibit B).
 - c. Conformity of the Work. Artist shall complete the creation and fabrication of the Work in conformity with the approved Proposal (Exhibit C).
 - d. Proposed Changes in the Work. Artist shall present any proposed significant changes in the artistic expression, scope, design, color, size, materials or texture of the Work not permitted by or not in conformity with the approved Proposal (Exhibit C) to Fulton

County in writing for Fulton County's review and approval. A significant change is any change in the artistic expression, scope, design, color, size, material, texture or proposed location on the Site of the Work that affects installation, scheduling, proposed site preparation, maintenance of the Work, or the concept of the Work as represented in the approved Proposal (Exhibit C). Fulton County reserves the right to reject any significant changes in the artistic expression, scope, design, color, size, materials or texture of the Work or proposed location.

5. Delivery and Installation.

- a. Notification of Completion of Fabrication. Artist shall notify FCAC in writing, when fabrication of the Work is completed and the Work is ready for transport to the Site.
- b. Transport of the Work. Artist shall coordinate with Fulton County to transport the Work to the Site in compliance with the approved Schedule (Exhibit B).
- c. Installation of the Work. Artist shall install, or shall cause to have installed, the Work at the Site as represented in the approved Proposal (Exhibit C). In the event Artist does not install the Work, Artist shall provide detailed instructions to, supervise, and pay an independent contractor for the Work's installation. Independent contractor shall use their best efforts to install the Work at the Site according to Artist's instructions. Following installation, Fulton County may, at its discretion, make adjustments to the installation. Artist shall notify Fulton County in writing, when installation of the Work at the Site is completed pursuant to the terms of Paragraph IV.A.5.d. below.
- d. Fulton County's Acceptance of the Work. The installation of the Work shall be considered complete, and the Work shall be considered accepted by Fulton County, following Artist's installation of the Work, removal of Artist's and/or installer's equipment, site debris, excess materials, etc., and written instructions for appropriate maintenance and preservation of the Work and Fulton County's verification, confirmation and acceptance by written notice to Artist to confirm compliance. This written notice, or a notice of deficiencies or nonconformity will be given within 14 business days then the work shall be considered accepted by Fulton County.
- e. The completed work must be installed at the Site no later than the schedule set forth in Article V (A).

B. Fulton County Provides. Fulton County shall provide the following goods and services:

1. Determination of Site. Artist acknowledges that decisions concerning the location of Artist's specific piece will be made by Fulton County, in conjunction with the Architect and with Artist's knowledge. Artist acknowledges that Fulton County, in its ownership of the Site shall have the right to remove or relocate the Work. Fulton County shall have the right to terminate water, electricity or other utilities Fulton County provides at the site.
2. Site Documents. Complete Site documents showing Site construction and attachment of the Work to the Site.
3. Licenses. Fulton County shall be responsible for any licenses and permits necessary for installation of the Work.
4. Site Preparation. While Fulton County shall take into consideration the preferences of Artist, Fulton County shall have the right to make final decisions regarding the Site preparation for the Work.
 - a. Artist will coordinate with Fulton County about attachment.
 - b. Subject to Section (B)(1) above, Fulton County will provide or be responsible for any water, electricity, lighting or other necessary utility services.
5. Plaque. Design, preparation and installation at the Site of a plaque identifying Artist, the title of the Work and the year of completion, and including the phrase "This public art project was funded by the Fulton County Board of Commissioners under the guidance of the Fulton County Arts Council." (the "Plaque").
6. Publicity. Each party gives to the other its permission to use the other Party's name, picture, portrait and photographs, if any, in all forms of media and in all manner, including, but not limited to, exhibition, display, advertising, trade and editorial uses, subject to the provisions of this Agreement regarding copyright, and without any violation of either party's rights of privacy or any other personal or proprietary rights they may possess solely in connection with the Work commissioned under this Agreement. Notwithstanding the foregoing, Artist must obtain the County prior written approval to use its name or logo in any and all media or publication prior to use.
7. Storage. In the event Fulton County causes construction or other events affecting the Site to preclude installation of the Work at the Site on the

date specified in Schedule (Exhibit B) Fulton County shall store the work at a County facility at no cost to Artist until the time that the Site becomes sufficiently accessible to permit installation of the Work.

8. Payments. Payments to Artist as indicated in Paragraph II above.
9. The FCAC shall maintain on file a record of this Agreement and of the location and disposition of Work.

C. Post-Installation.

1. Publicity Event. Artist agrees to attend and to participate in an art dedication ceremony and/or an artist's presentation on a date or dates to be determined by both the Artist and the Fulton County Arts and Culture.
2. Signature. The name or signature of the Artist shall be included on the completed Work. The Copyright Notice shall be visibly displayed in the manner and location as to give reasonable notice of the ownership of the copyright.
3. Documentation. Within thirty (30) days after the installation of the Work, the Artist shall furnish the County with ten digital images (jpeg or tiff format) saved at 300 dpi, at least 8" x 10" and (3) 8" x 10" photographs of the completed Work, taken from a minimum of the three different viewpoints. Artist should document multiple Works with a digital photograph of each Work. The artist shall furnish the Fulton County with a full and complete description of the work, to include title, dimensions, materials and a statement of concept. Artist shall also furnish the Fulton County Arts and Culture with an updated resume.
4. Project Budget. Within thirty (30) days after the installation of the Work, the Artist shall furnish the County with a final project budget indicating actual expenditures for the project.

V. **CONTRACT SCHEDULE AND CONTRACT TERM.**

- A. Schedule. This Schedule for Artist's completion of the Work shall be **ten months from the date of contract execution**, unless extended by prior written approval of FCAC. Artist shall be in breach of the contract if the Work is not completed by the schedule stated herein, unless same is extended by the County.
- B. Term. This Agreement shall commence upon complete execution hereof and shall remain in effect until the satisfactory completion of the terms and conditions set forth herein and final acceptance of Work by the County and final payment to Artist, unless sooner terminated pursuant to Paragraph XI.
- C. Delays. In the event construction or other events affecting the Site preclude

installation of the Work at the Site on the date specified in the Schedule (Exhibit B):

1. Fulton County shall promptly give written notice to the Artist of the situation.
2. Fulton County and Artist shall re-examine the Schedule (Exhibit B), and, if mutually agreed, shall revise the Schedule (Exhibit B), in accordance with Paragraph XV. herein.

VI. REPRESENTATIONS AND WARRANTIES.

- A. Schedule. Artist represents and warrants that Artist shall make this project and Artist's obligations herein Artist's first priority; further, Artist represents and warrants Artist can meet the schedules established pursuant to this Agreement and Artist is capable of completing this project within the required deadline.
- B. Warranties of Quality and Condition. Artist represents and warrants that the execution and fabrication of the Work will be performed in a workmanlike manner; that the Work, as fabricated and installed, will be free of defects in material and workmanship, including any defect consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendation submitted by the Artist as required hereinabove.
- C. Original Creation. Artist further represents and warrants that:
 1. The Work shall be the original creation of Artist and is solely the result of the artistic effort of Artist;
 2. The complete commission will be solely the result of the artistic effort of Artist;
 3. Except as otherwise disclosed in writing to Fulton County, the Work is unique and original and does not infringe upon any copyrights;
 4. The Work has not been accepted for sale elsewhere; and
 5. The Work and all copyrights thereto are the sole property of Artist and are free and clear from any liens, claims or licenses from any source whatsoever.
- D. Artist shall not cause or permit any hazardous material (as defined below) to be used or incorporated within the Work without notice and specific written consent of Fulton County.

As used herein, the term “hazardous material” means any hazardous or toxic substance, material, or waste which is or becomes regulated by any local governmental authority or the United States government. The term “hazardous material” includes without limitation any material or substance designated as a “hazardous substance” pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1317) or pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601).

VII. INDEPENDENT CONTRACTOR

Artist agrees that nothing contained herein shall be deemed to create any relationship other than that of independent contractor between the County and the Artist. Under no circumstances shall the Artist, its directors, officers, employees, agents, partners, successors, subcontractors or assigns, be deemed employees, agents, partners, successors, subcontractors, assigns, or legal representatives of the County. Artist acknowledges that its directors, officers, employees, agents, partners, successors, subcontractors, and assigns shall have no right of redress pursuant to the personnel rules and regulations of Fulton County.

VIII. RISK OF LOSS.

- A. The risk of loss or damage to the Work shall be borne by Artist until final acceptance of the Work by Fulton County as delineated in Paragraph IV.A.5.d. herein. Artist shall take reasonable measures as are necessary to protect the Work from loss or damage until Fulton County issues final written acceptance of the Work. Artist agrees to provide any insurance as may be specifically required and set out on Exhibit A.
- B. The Artist agrees to defend, indemnify, release and hold harmless Fulton County, its Commissioners, officers, employees and agents, from and against any and all losses, including claims, damages, liabilities, costs and expenses (including, but not limited to all actions, proceedings, or investigations in respect thereof and any costs of judgment, settlements, court costs, attorney’s fees or expense, regardless of the outcome of any such action, proceeding or investigation) arising out of the actions of Artist in performing this Agreement, or out of the nonperformance of his obligations under this Agreement.
- C. Subsequent to final acceptance of the Work by Fulton County as delineated in Paragraph IV.A.5.d. herein, Fulton County shall bear risk of loss or damage to the Work.

IX. COPYRIGHTS, TITLE, PERMITTED USES AND CREDITS.

A. Copyrights.

1. General. Artist specifically retains all rights under the Copyright Act, 17,U.S.C.§101, et. seq., as amended by the Visual Artists Rights Act, 17 U.S.C.§106A, and all other rights in and to the Proposal and completed Work (see Paragraph IV.A.5.d), commissioned pursuant to this agreement, except ownership and possession, and other such rights that are expressly limited by this Agreement. Upon Fulton County's final acceptance of the completed Work (in accordance of Paragraph IV.A.5.d), Fulton County shall retain title, possession, and ownership in the Proposal and the Work, and all copies, reproductions and derivatives of the Work including, but not limited to, selected working models, concept sketches, drawings and photographs.

In view of the intention that the completed Work shall be unique, the Artist shall not make any exact duplicate reproductions of the completed Work nor shall the Artist grant permission to others to do so except with the written permission of Fulton County.

The Artist shall grant to Fulton County an irrevocable license to create, limit or control reproductions of the images for educational and other non-commercial uses, the display or exhibition of models or drawings, and, with prior notification to the Artist, the right to use an image or likeness of the completed Work for commercial or fundraising uses.

2. Registration. Artist shall be responsible for registering the copyright for the Work with the United States Register of Copyrights, and for providing Fulton County with a copy of the application for registration, the registration number and the effective date of the registration. The Artist shall be responsible for enforcing the copyright.
3. Documents. Submission or distribution of documents to meet any official regulatory requirements or for similar purposes in connection with the installation of the Work on the Site shall not be construed as publication in derogation of the copyright in the Work or either parties' reserved rights.
4. Copyright Notice. All copies, reproductions or derivative works shall contain an appropriate copyright notice identifying the copyright owner and the date of the original publication.
5. Publication. No publication of the Work shall be made by either party prior to the final written acceptance of the Work by Fulton County as delineated in Paragraph IV.A.5.d. herein, transfer of title is complete, and Fulton County publishes the Work to the public.

B. Title. Title to the Work shall transfer to Fulton County upon final acceptance of the Work by Fulton County as delineated in Paragraph IV.A.5.d. herein, and payment in full to Artist. Artist shall effect transfer of title by executing and delivering transfer documents, confirmation of transfer or other written instruments as Fulton County may supply and reasonably request.

C. Permitted Uses. Fulton County grants to Artist the right to:

1. Include photographs, drawings or similar images of the Work in Artist's portfolio of artwork for purposes of demonstrating Artist's work; and
2. Use photographs, drawings or similar images of the Work for educational purposes.

The foregoing permitted uses of the Work shall not include any right to exploit commercially any copies, reproductions, public displays, sales or derivatives of the Work of any kind or in any manner, except two dimensional photographs in artists catalog or for biographical purposes.

D. Credit.

1. Credit to Fulton County. Artist shall give credit to Fulton County in any publication or public display of any photographs of the Work. The credit shall read substantially as follows: "An original work commissioned by the Fulton County Arts and Culture with funding provided by the Fulton County Board of Commissioners." The credit shall also include an appropriate copyright notice identifying the copyright owner and the date of the original publication.
2. Credit to Artist. All copies, reproductions or derivatives of the Work created by Fulton County shall contain a credit to the Artist. The credit shall read substantially as follows: 'by Ilan Averbuch'.

X. MAINTENANCE, REPAIRS, RESTORATIONS AND ALTERATIONS.

A. Maintenance. Fulton County shall use reasonable efforts to ensure that the Work is properly maintained and reasonably protected, taking into account the instructions of Artist provided in accordance with Paragraph IV.A.5.d. herein (Fulton County shall have the right to preserve the Work,). Any funds or income resulting from the preparation of reproductions or derivatives of the Work or otherwise from the Work shall be applied towards repair, maintenance and conservation of the Work.

B. Repairs and Restorations.

1. Determination of Need. Fulton County shall have the right to determine,

after consultation with a professional conservator, when and if maintenance, repairs and restorations to the Work will be made.

2. Artist's Rights to Repair or Restore. During Artist's lifetime, Fulton County shall make reasonable efforts to consult with the Artist regarding any repair or conservation and to contract with Artist or Artist's designee in the repair or conservation of the Work.
 - a. If Artist or Artist's designee cannot be located to discuss any repair or restoration, Fulton County shall have the right to make the repair or restoration.
 - b. To the extent practical, during Artist's lifetime, Artist, or Artist's designee, shall be given the opportunity to make or to supervise personally any significant repairs and restorations and shall be paid a reasonable fee for any services, provided that Fulton County and Artist shall agree in writing, prior to the commencement of any significant repairs or restorations, upon Artist's fee for services.
 - c. Artist, or Artist's designee, shall be afforded a maximum period of one (1) month to accept or decline the opportunity to provide the services, providing, however, that the state of the Work will not deteriorate during this period.
3. Adherence to Principles of Conservation. All maintenance, repairs and restorations shall take into consideration and be based upon recognized principles of conservation.

C. Alteration and Relocation.

1. Notification of Proposed Site Alterations. Fulton County shall notify Artist of any proposed alteration of the Site that would affect the intended character and appearance of the Work. Fulton County shall take into consideration Artist's concerns in the planning and execution of any alteration and shall make a reasonable effort to maintain the integrity of the Work.
2. Relocation of the Work. Nothing in this Paragraph IX.C. shall preclude any right of Fulton County to:
 - a. Move the Work to a different site;
 - b. Temporarily store the Work; or
 - c. Remove the Work from public display.

In the event that Fulton County moves the Work to a different site, Fulton County agrees to no longer represent the Work as that of Artist upon receipt of written request to that effect from Artist.

3. Fulton County agrees that it will not intentionally damage, alter, modify or change the Work.
4. Notwithstanding the above, should disaster, accident or emergency render the continued presence of the Work or building to which it is affixed a hazard, Fulton County shall have the right to remove the Work and/or building as to alleviate the hazardous situation without making prior notification to the Artist or obtaining the Artist's consent.
5. If the Work becomes a burden to Fulton County, Fulton County has the right to determine if the Work should be destroyed. Artist shall have the right of refusal to purchase Work from Fulton County, providing it stands alone and is not integrated into a larger architectural or sculptural element and can be removed without expense to Fulton County. If the sale is made to Artist, price paid for Work will be fair market value as agreed to by Fulton County. Artist will have ten (10) days to remove the work unless otherwise arranged.

D. Records. Fulton County shall maintain a record of this Agreement and of the location and disposition of the Works as set out in Paragraph IV.B.9.

E. Addresses and Assigns.

1. Artist's Address. Artist shall notify Fulton County of changes in Artist's address or contact details. The failure to do so, if the failure prevents Fulton County from locating Artist, shall be deemed a waiver by Artist of the right to enforce any and all provisions of this Agreement that require the express approval of Artist. However, Fulton County shall make a good faith effort to notify Artist, and should Artist fail to respond within sixty (60) days then Artist will be deemed to have granted approval as well as the waiver of rights as set out above. Notwithstanding this provision, Fulton County shall make every reasonable effort to locate Artist when matters arise relating to Artist's rights pursuant to this Agreement.
2. Fulton County's Address and Assigns. Fulton County shall notify Artist of changes in ownership of the Work and any associated changes in address as regards this Agreement.

F. Surviving Covenants. To the extent allowable by law, covenants and obligations set forth in this Paragraph IX. shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in

interest, and Fulton County's covenants do attach and run with the Work and shall be binding to and until twenty (20) years after the death of Artist. Fulton County shall give any subsequent owner of the Work notice in writing of the covenants herein, and shall cause each owner to be bound thereby.

- G. Additional Rights and Remedies. Nothing contained in this Paragraph IX. shall be construed as a limitation on the other rights and remedies available to the parties under the law which may now or in the future be applicable.

XI. ASSIGNMENT TRANSFER, SUBCONTRACTING.

- A. Assignment or Transfer of Interest. Neither Fulton County nor Artist shall assign or transfer any interest in this Agreement without the prior written consent of the other.
- B. Subcontracting by Artist. Artist agrees that an essential element of this Agreement is the skill and creativeness of Artist. Artist therefore shall not assign or license any portions of the Work to another party, without the prior written consent of Fulton County. Failure to conform to this provision will result in termination of this Agreement.

XII. TERMINATION.

- A. The County may terminate work under this Agreement in the event the Artist fails to perform in accordance with the provisions of this Agreement. The County is required to give thirty (30) days prior written notice to the other party. The Artist shall have thirty (30) days from receipt of the notice to cure the breach. In the event of termination due to breach of this Agreement by Artist, except as described in Paragraph XII.B. and C. below, all finished and unfinished drawings, sketches, photographs and other work products prepared and submitted or prepared for submission by Artist under this Agreement and the right to fabricate or execute the Work shall at Fulton County's option pass to Fulton County. Artist shall return to Fulton County all payments made under this Agreement to date. Artist shall not be relieved of liability to Fulton County for damages sustained by Fulton County by virtue of any breach of this Agreement by Artist, and Fulton County may reasonably withhold payments to Artist until the time that the exact amount of any damages due Fulton County from Artist is determined.
- B. Fulton County shall have the right to terminate this Agreement in the event illness or events beyond Artist's control prevent Artist from meeting the milestone dates established in the Schedule (Exhibit B). In the event of this occurring, the Artist shall return all funds provided by Fulton County in excess of expenses already incurred. The Artist shall provide documentation of all expenses. 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.

- C. This Agreement shall automatically terminate upon the death of Artist. Artist's estate shall retain all payments made to date under this Agreement and shall not be liable for any additional expenses, damages, or claims of any kind based on the failure to complete the Work. Fulton County shall have the title to, and shall have the right to immediate use and possession of, all finished and unfinished materials prepared under this Agreement.
- D. The exercise of a right of termination under this Paragraph XII. shall be written and shall set forth the grounds for termination delivered via certified mail.
- E. Notwithstanding any other provisions, FULTON COUNTY may terminate this Agreement for its convenience at any time by a written notice to CONTRACTOR or ARTIST. If the Agreement is terminated for convenience by FULTON COUNTY as provided in this article, CONTRACTOR or ARTIST will be paid compensation for those services actually performed to the satisfaction of FULTON COUNTY. Partially completed tasks will be compensated for based on a signed statement of completion to be submitted by CONTRACTOR or ARTIST which shall itemize each task element and briefly state what work has been completed and what work remains to be done. CONTRACTOR or ARTIST shall also be paid for reasonable costs for the orderly filing, closing, or turn-over of work within the Scope of Services.

XIII. COMPLIANCE.

- A. Non-Discrimination. The Artist agrees that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990, as amended, which states that no person shall, on the grounds of race, color, National origin, sex, or disability, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any programs or activity receiving Federal financial assistance.

During the Performance of this contract, the Artist agrees to comply with Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act of 1990, which states that it shall be unlawful employment practice for any employer to fail to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to its compensation, terms, conditions or privileges of employment because of such individual's race, color, religion, sex, or national origin. Non-compliance by Artist may result in the contract being canceled, terminated, or suspended in whole or in part, and Artist may be declared ineligible for further government contracts.

Artist agrees to comply with Federal laws, State laws, and Fulton County policy, rules and regulations relative to non-discrimination in client and client service practices because of political affiliation, sexual orientation, religion, gender, race, color, disability, age or national origin.

- B. Statutory Compliance. Artist shall comply with all federal, state and local laws, regulations, and ordinances applicable to the Work and this Agreement, including, without limitation, the Americans with Disabilities Act (ADA), the National Fire Protection Association (NFPA) requirements, and the Occupational Safety and Health Act (OSHA).
- C. Conflict of Interest. No officer, Agent or employee of the Fulton County Arts and Culture will participate in any decision relating to this contract which affects that person's financial interest, the financial interest of his or her spouse or minor child, or the financial interest of any business in which they have a direct or indirect financial interest.

XIV. NO JOINT VENTURE.

Fulton County and the FCAC are not and shall not be deemed to be, for any purpose, partners or joint ventures with Artist.

XV. NOTICES.

Any notice required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

A. If to Fulton County:

Director
Fulton County Arts and Culture
141 Pryor St. SW, Suite 2030
Atlanta, GA 30303

B. If to Artist:

Ilan Averbuch
Averbuch Rail Art LLC
10-15 48th Ave
Long Island City, NY 11101
Via email: ilanaverbuch@gmail.com

XVI. MODIFICATION.

No alteration, amendment, change, supplement or modification of the terms of this Agreement shall be valid unless made in writing and signed by all parties hereto and approved by appropriate action of Fulton County.

XVII. HEIRS AND ASSIGNS.

This Agreement shall be binding upon and shall inure to the benefit of Fulton County,

Artist and their respective heirs, personal representatives, successors and permitted assigns. Whenever in this instrument a reference to any party is made, the reference shall be deemed to include a reference to the legal representatives, heirs, successors and assigns of any party hereto.

XVIII. GOVERNING LAW.

The parties hereto agree that the validity and interpretation of the provisions hereof, and all rights and obligations arising hereunder shall be construed, interpreted, and governed, controlled and defined by and under the laws of the State of Georgia.

XIX. OTHER.

- A. Project Title. Parties agree the project shall be referred to as **The Bridge.** The Artist agrees to provide the FCAC with the final title of the work prior to the installation of the work.
- B. Voluntariness. The parties acknowledge that they are executing this Agreement voluntarily; that they have read and are familiar with the provisions herein contained before signing and have weighed all the facts and circumstances likely to influence their judgment; that they have sought and obtained independent advice; that they have each been duly advised and appraised of their questions pertaining to this Agreement with questions being fully and satisfactorily answered and they each represent and warrant that they clearly understand and consent to all the provisions herein.
- C. Entire Agreement. This Agreement constitutes the entire Agreement between the parties relating to the subject matter contained herein and it supersedes all prior and contemporaneous representations, oral or written agreements or understandings between the parties respecting its subject matter.
- D. Riders and Attachments. All Exhibits, attachments, riders and addenda referred to in this Agreement or incorporated in this Agreement are made a part hereof for all intents and purposes by specific reference thereto.
- E. Waiver. No consent or waiver, express or implied, of any one provision of this Agreement shall constitute a waiver of any other provision, nor shall any one waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party against whom the waiver is asserted.
- F. Interpretation. If any provision in this Agreement is held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and shall in no way be impaired.
- G. Remedies. In the event of a breach or threatened breach of the provisions of this Agreement, either party shall be entitled to any specific legal or equitable remedy

available unless provisions herein providing for arbitration or mediation shall apply.

- H. Disputes. Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by FCAC. The representative shall reduce the decision to writing and mail or otherwise furnish a copy thereof to Artist. Artist shall have 30 days from date the decision is sent to appeal the decision to the County Manager or his designee by mailing or otherwise furnishing to the County Manager or designee, copy of the written appeal. The decision of the County Manager or his designee for the determination of such appeal shall be final and conclusive. Pending any final decision of a dispute hereunder, Artist shall proceed diligently with performance of the Agreement and in accordance with the decision of FCAC.
- I. Cooperation. The parties agree to cooperate with each other in the prosecution of any claim that a third party has infringed or misappropriated any copyright, trade secret or other property right which they may now or hereafter have in the Work. That cooperation shall consist only of voluntary disclosure of information not protected by the attorney-client privilege in the possession of one party which may be of assistance to the other party in prosecuting any said claim of infringement or misappropriation, provided that neither party shall be obligated to take any action which would constitute a breach of any other contract to which they are a party or subject them to any liability in the opinion of their legal counsel.
- J. Headings. The subject headings of the paragraphs of this Agreement are included for purposes of convenience only, shall not effect interpretation of the paragraphs and are not to be used to construe the intent of this Agreement or any part hereof, nor to modify, amplify, or to aid in the interpretation or construction of any of the provisions thereof.
- K. Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders. The singular shall include the plural or vice versa.
- L. Counterparts. This Agreement may be executed in two or more counterparts each of which shall constitute an original Agreement as against the party who had signed it, but which in the aggregate shall constitute one and the same instrument.
- M. Time. Time is of the essence of this Agreement.

IN WITNESS WHEREOF, the parties have signed this Agreement as of the date first set forth above.

FULTON COUNTY:

Robert L. Pitts
Chair, Fulton County Commission

ATTEST:

Tonya R. Grier
Clerk to Commission

APPROVED AS TO FORM:

Y. Soo Jo, County Attorney

APPROVED AS TO SUBSTANCE:

David Manuel
Director, Fulton County Department of
Arts & Culture

ARTIST:

Ilan Averbuch, Averbuch Rail Art LLC

Artist's Signature

Sworn and subscribed before me this ____day
of _____, 2022.

Notary Public

My Commission expires:

Name (PRINT)

EXHIBIT A INSURANCE

I. ARTIST INSURANCE

A. General Preamble. Except as may be hereinafter set forth, the following general requirements apply to Artist as well as to any and all work performed by Artist, and all contractors and subcontractors of any tier who perform work directly or indirectly for Artist. Insurance and bonding requirements are based on information received as of date of execution of this Agreement. Fulton County reserves the right to adjust or waive any or all requirements based on receipt to adjust or waive any or all requirements based on receipt of additional information pertinent to this Agreement.

1. Insurance Required for Duration of Agreement. Any and all insurance and bonds required by this Agreement shall be maintained during the entire Term, including any extensions thereto, and until all work has been completed to the satisfaction of Fulton County. Fulton County shall have the right to inquire into the adequacy of the insurance coverage's set forth in this Agreement and to negotiate such adjustments as reasonably appear necessary.
2. Mandatory 30-Day Notice of Cancellation or Material Change. Fulton County shall without exception, be given not less than thirty (30) days notice prior to cancellation for other than non-payment of premium or for material change of any insurance or bond required by this Agreement. Non-payment of premium shall require ten (10) days notice of cancellation. Confirmation of this mandatory thirty (30) days notice of cancellation shall appear on the Accord Certificate of Insurance and on any and all bonds and insurance policies required by this Agreement.
3. Fulton County as Additional Insured. Fulton County shall be covered as Additional Insured, as its interest may appear under any and all insurance and bonds required by this Agreement, and such insurance shall primary with respect to the Additional Insured. Confirmation of this shall appear on the Accord Certificate of Insurance, and on any and all applicable Bonds and Insurance policies. However, this requirement does not apply to Workers Compensation or Professional Liability Insurance.
4. Mandatory Subcontractor Compliance. Artist shall incorporate a copy of these insurance, bond and indemnification requirements in each and every contract with each and every contractor and subcontractor of any tier, and shall require each and every contractor and subcontractor of any tier to comply with all such requirements. Artist agrees that if for any reason a contractor or subcontractor fails to procure and maintain Insurance and Bonds shall be procured and maintained by Artist at Artist's expense.

5. Authorization and Licensing of Agent. Each and every agent acting as Authorized Representative on behalf of a company affording coverage under this Agreement shall warrant when signing the Accord Certificate of Insurance that specific authorization has been granted by the company for the agent to bind coverage as required and to execute the Accord Certificate of Insurance as evidence of such coverage. The agent shall also warrant that where a Fulton County's coverage requirements may be broader than the original policies, these requirements may be broader than the original policies; these requirements have been conveyed to and accepted by the company.

In addition, each and every agent shall warrant when signing the Accord Certificate of Insurance that the agent is licensed to do business in the State of Georgia and that the company or companies are currently in good standing in the State of Georgia.

- B. Worker's Compensation and Employer's Liability Insurance. Artist shall procure and maintain Worker's Compensation and Employer's Liability Insurance in the following limits such insurance to cover each and every employee who is or may be engaged in work under this Agreement:

1. Worker's Compensation: Statutory Amount
2. Employer Liability
 - a. Bodily Injury by Accident/Disease:
\$100,000.00 each accident
 - b. Bodily Injury by Accident/Disease:
\$100,000.00 each employee
 - c. Bodily Injury by Accident/Disease:
\$500,000.00 policy limit

- C. General Liability Insurance. Artist shall procure and maintain General Liability Insurance in an amount not less than One Million Dollars (\$1,000,000.00) Bodily Injury and Property Damage combined single limit. The following specific extensions of coverage shall be provided and shall be indicated on the Accord Certificate of Insurance.

1. Comprehensive Form
2. Contractual Insurance (Blanket or specific applicable to this Agreement)
3. Personal Injury
4. Broad Form Property Damage
5. Premises-Operations
6. Products/Completed Operations

D. Automotive Liability Insurance. Artist shall procure and maintain Automotive Liability Insurance with not less than one million dollars (\$1,000,000.00). Bodily Injury and Property Damage combined single limit. The following extensions of coverage shall be provided and shall be indicated on the Certificate of Insurance:

1. Comprehensive Form
2. Owned, Hired, Leased and Non-owned vehicles to be covered.

In the event Artist does not own any automobile, non-owned vehicle coverage shall apply and must be endorsed on either Artist's personal automobile policy or the Comprehensive General Liability coverage required under this Agreement.

E. Property Insurance. Artist shall procure and maintain property insurance on an all risk form covering the Work and any other interests of Artist in or about the Site, including materials, tools, rental equipment, supplies and any personal property of Artist, located at the Site insuring against the perils of fire, lighting, extended coverage perils, vandalism and malicious mischief, in an amount equal to the full replacement value of the Work and any other interest of Artist in or about the Site.

EXHIBIT B
PROJECT SCHEDULE
10%/45%/30%/15% payment schedule
Rogers Bridge
Ilan Averbuch (Averbuch Rail Art LLC)
PUBLIC ART PROJECT

DATE	ACTION
Tentatively September, 2022	Contract to BOC for approval
1 Month	Initial Contract Payment (10%) Design Development Phase
1 Month	Design Documentation Review and Approval Written Notice to Proceed (NTP) given to Artist from FCAC Includes engineering and/or architectural drawings, shop drawings, revised budget and schedule, proof of insurance.
1 Month	Interim Contract Payment (45%) Fabrication Phase and Materials Purchase
3 Month(s)	2nd Interim Contract Payment (30%) Fabrication 50% Completion Midpoint Review FCAC Staff Evaluation Site Visit
5 Month(s)	Fabrication Phase Complete
2 weeks	On Site Installation and Assembly
2 weeks	Project Completion and Documentation Includes final report, photographic documentation and written instructions for maintenance and preservation of the artwork.
1 Month	Final Contract Payment (15%)

**EXHIBIT C
ARTIST PROPOSAL**

Attached herein is the final proposal submitted by the artist and approved by the Johns Creek Selection Panel, and the Arts Council for the Rogers Bridge Public Art Commission.

DRAFT