

ARTIST'S COMMISSIONED WORK AGREEMENT

THIS ARTIST'S COMMISSIONED WORK AGREEMENT ("**Agreement**") is made and entered into as of the date stamped by the Salt Lake City Recorder's Office ("**Effective Date**"), by and between SALT LAKE CITY CORPORATION, a Utah municipal corporation ("**City**"), and ARTIST, with an address of _____ ("**Artist**").

RECITALS

1. The City has implemented a public art program, as provided by Chapter 2.30, Salt Lake City Code, which may allocate certain funds for the establishment of artwork in public places as part of the Percent-for-Art Fund.
2. The Artist is engaged in the creation of works of art.
3. The City has selected the Artist to create a unique and original work of art ("**Work**") to be located at _____, Salt Lake City, UT (the "**Location**").
4. Pursuant to Chapter 2.30, Salt Lake City Code, the City has allocated funds for the selection, fabrication, and installation of the Work in the Location.

AGREEMENT

City and Artist, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other value considerations, agree as follows:

ARTICLE 1 -- TERMS

The Artist agrees to fabricate and install the Work, the description of which is attached and incorporated herein as Exhibit A and has been selected and approved by the City. Upon execution of this Agreement, the Artist will proceed to design, fabricate, install, and sell the Work to the City, subject to the terms and conditions of this Agreement, by _____ ("**Completion Date**"), providing the City does not unreasonably cause a delay in the Completion Date. If Artist does not install the Work by the designated completion date, Artist will be

charged 1% (one) per day of 25% of the Purchase Price until the installation is complete. This amount will be deducted from the final 25% payment from City to Artist.

The installation of the Work shall be the sole and exclusive responsibility of the Artist, and the Work shall be installed only within the boundaries of the Location. The Artist may hire (and Utah law may require the Artist to hire) a licensed contractor to physically install the Work. The Artist agrees to oversee such installation, and agrees to promptly pay and indemnify and hold harmless the City for any mechanics' liens such contractor claims in connection with the installation of the Work. It is the current intention of the City and the Artist that the Work remain at this location for a minimum of three (3) years from the date of this Agreement. However, if the City desires to (a) dispose of the Work, (b) remove and store the Work, or (c) relocate the Work to a different location (each, a "**Removal**"), whether before or after the expiration of said three-year period, the City shall first attempt to notify the Artist and seek the Artist's recommendations on the Removal. In the event of a disagreement between the City and the Artist over such recommendations, the dispute shall be decided by the Mayor or his or her designee, whose decision shall be final. If any Removal occurs, the Artist, at the Artist's discretion, shall have the right to disclaim authorship of the Work and to require that the Artist's name be removed from the Work.

ARTICLE 2 -- DESIGN CONFORMITY

The Artist shall complete the fabrication and installation of the Work in substantial conformity with the City-approved design, as shown on Exhibit A. During fabrication, the Artist shall immediately present to the City any proposed significant variances to the Work not in substantial conformity with the design for review and approval. For the purposes of this Agreement, a significant variance is any change in the scope, design, color, size, or material of the Work that affects cost, installation, site preparation, maintenance, or concept as represented in the design. The Artist agrees not to execute any significant variance in the Work without the

City's written approval. The City shall not be obligated to accept or purchase or compensate the Artist for the Work unless the Artist obtains approval for any significant variance.

ARTICLE 3 -- COORDINATED INSTALLATION

In order to integrate the installation of the Work with other activity at the Location, the Artist agrees to coordinate the timing and execution of the installation with the City's public art project manager (the "**Project Manager**").

ARTICLE 4 -- COMPLETED INSTALLATION AND ACCEPTANCE

The Artist shall notify the City in writing when the Work has been installed. The Artist's notification shall include written recommendations for the appropriate maintenance and preservation of the Work. Upon the Artist's completion of installation and receipt of the maintenance and preservation recommendations, the City shall inspect the Work and shall accept the Work if it is in conformity with the design and structural requirements. The inspection shall be conducted by the Project Manager. Upon such inspection and approval, the Artist shall receive the final payment as pursuant the terms of this Agreement.

ARTICLE 5 -- PURCHASE PRICE

The purchase price to be paid by the City to the Artist for the Work shall be _____ ("**Purchase Price**"). The City shall pay the Artist for the Work as follows: twenty-five percent (25%) of the Purchase Price upon execution of this Agreement; twenty-five percent (25%) upon the Artist's submittal of signed, stamped engineering drawings for the work and approval of those drawings by Salt Lake City Engineering Division; twenty-five percent (25%) upon the City's inspection and approval of the fabrication of the Work at seventy-five percent (75%) completion; and twenty-five percent (25%) upon the City's inspection and approval of the completed fabrication and installation of the Work and Artist's delivery to City of fully executed lien waivers signed by all contractors and subcontractors hired to install

or fabricate the Work. Upon full payment of the Purchase Price, the City shall own the Work free and clear of any claims by Artist as to ownership.

ARTICLE 6 -- ARTIST'S LIABILITY

Neither the City's approval of fabrication nor acceptance of the installation, nor payment for any of the services required under this Agreement, shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and the Artist shall be and remain liable to the City in accordance with applicable law for breach of contract and for all damages to the City caused by the Artist's negligent performance of any of the services furnished under this Agreement.

ARTICLE 7 -- RISK OF LOSS

The Artist shall be responsible for the care and protection of all work performed by the Artist until completion of the installed Work and acceptance by the City and shall repair or restore any damaged work; provided, however, that the Artist shall not be responsible for any damage that occurs after acceptance by the City unless such damage is caused by an act or omission of the Artist or any of the Artist's agents or employees.

ARTICLE 8 -- TERMINATION RIGHT OF CITY

In the event the City finds that the Work, as it progresses, fails to comply with the submitted and City-approved design, or does not comply with the City's specifications, the City has the option at any time to terminate this Agreement. Payment will be made to the Artist for the Work completed to date of termination. The City shall determine the state of the completion of the Work and the amount that may be due hereunder, with input from the Artist. If such termination is due to an unapproved substantial variance from the approved design provided to the City by the Artist, the City shall have the option of paying nothing hereunder and require repayment by the Artist of any sums previously paid by the City. Upon such termination, the Artist shall retain all rights to the concept, design, and the Work itself, including the right to

complete, exhibit, and sell the Work, except that the Artist will be required, at Artist's sole cost and expense, to remove the Work from the Location within ten (10) days after termination.

ARTICLE 9 -- ARTIST'S INCAPACITY

If the Artist dies, becomes so ill that he cannot work, or is otherwise unable to complete the Work, then the City shall have the right, at the City's option, to terminate this Agreement pursuant to Article 8, or to have the Work completed by the Artist's studio or associates, or, if that is not possible, by another artist.

ARTICLE 10 -- INSURANCE

The following insurance requirements apply to this Agreement:

A. GENERAL INSURANCE REQUIREMENTS FOR ALL POLICIES.

(1) Artist has the option of obtaining insurance based on either a claims-made model, or an occurrence-based model. If the Artist chooses to obtain insurance coverage written on a "claims made" form rather than on an "occurrence" form, such "claims made" insurance shall (i) provide full prior acts coverage or have a retroactive date effective before the date of this Agreement, and (ii) be maintained for a period of at least three (3) years following the end of the term of this Agreement or contain a comparable "extended discovery" clause. Evidence of current extended discovery coverage and the purchase options available upon policy termination shall be provided to City.

(2) All policies of insurance shall be issued by insurance companies licensed to do business in the state of Utah and either:

(a) Currently rated A- or better by A.M. Best Company;

—OR—

(b) Listed in the United States Treasury Department's current *Listing of Approved Sureties (Department Circular 570)*, as amended.

(3) Artist shall furnish certificates of insurance, acceptable to City, verifying the foregoing matters concurrent with the execution of this Agreement and thereafter as required.

(4) In the event any work is subcontracted, Artist shall require its subcontractor, at no cost to City, to secure and maintain all minimum insurance coverages required of Artist hereunder. Each subcontractor shall provide City with a certificate of insurance and name City as an additional insured.

(5) All required certificates and policies shall provide that coverage thereunder shall not be canceled or modified without providing 30 days prior written notice to City in a manner approved by the City Attorney.

B. REQUIRED INSURANCE POLICIES.

Artist, at its own cost, shall secure and maintain during the term of this Agreement, including all renewal terms, the following minimum insurance coverage:

(1) Unless the Artist lacks sufficient employees to require compliance with Utah's Worker's Compensation requirements or is otherwise exempt, the Artist must provide worker's compensation and employer's liability insurance sufficient to cover all of the Artist's employees pursuant to Utah law. In the event any work is subcontracted, the Artist will require its subcontractor(s) to provide worker's compensation insurance for all of the latter's employees unless such subcontractors are exempted from the requirement to obtain worker's compensation insurance. At Artist's expense, Artist must apply for a Worker's Compensation Waiver if Artist lacks sufficient employees or is otherwise exempt.

(2) Commercial general liability (CGL) insurance with City as an additional insured, in the minimum amount of \$1,000,000 per occurrence with a \$2,000,000 general aggregate. These limits can be covered either under a CGL insurance policy alone, or a combination of a CGL insurance policy and an umbrella insurance policy and/or a CGL insurance policy and an excess insurance policy. The policy shall protect City, Artist, and any subcontractor from claims for damages for personal injury, including accidental death, and from claims for property damage

that may arise from the Artist operations under this Agreement, whether performed by the Artist itself, any subcontractor, or anyone directly or indirectly employed by either of them.

(3) Commercial automobile liability insurance that provides coverage for owned, hired, and non-owned automobiles, with City as an additional insured, in the minimum amount of a combined single limit of \$1,000,000 OR \$500,000 per person, \$1,000,000 liability per occurrence, and \$250,000 Property Damage. These limits can be reached either with a commercial automobile liability insurance policy alone, or with a combination of a commercial automobile liability insurance policy and an umbrella insurance policy and/or a commercial automobile liability insurance policy and an excess insurance policy.

OR

If the Artist's personal vehicle is used in connection with any service rendered under this Agreement the Artist shall maintain personal automobile liability insurance that provides coverage for business use in the same minimum amounts required in a commercial policy.

Artist agrees that neither the Artist nor any of the Artist's subcontractors shall operate any vehicle in connection with any aspect of creating, moving or installing the Work unless such vehicle is properly insured as set forth above.

C. SUBCONTRACTORS.

All subcontractors of the Artist in connection with this Agreement shall provide insurance coverage for that portion of the fabrication and installation of the Work performed by such subcontractors. Certificates of insurance from such subcontractors shall be in accordance with the requirements of this Article 10, shall name City as an additional insured, and shall be filed with the City prior to the Effective Date.

ARTICLE 11 -- ARTIST'S WARRANTIES

A. The Artist represents and warrants that: (a) the Work is the original creation of the Artist; (b) the Work is unique and an edition of one; (c) no identical or greatly similar Work will be created by the Artist; (d) the Work does not infringe upon any copyright, trademark, or any

other property or personal right; (e) the Work is free and clear of liens or encumbrances from any source whatsoever; and (f) the Artist knows of no adverse claims to the Work and neither the Work nor any portion thereof is in the public domain.

B. The Artist represents and warrants that: (a) the Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of inherent vice, defined as qualities that cause or accelerate deterioration of the Work; and (b) maintenance of the Work will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Article 4. The warranties described in this paragraph shall survive for a period of two years after the City's final acceptance of the installation of the Work ("**Warranty Period**"). During the Warranty Period, in the event of any breach of warranty that is curable by the Artist and which cure is consistent with generally accepted professional conservation standards, the Artist shall, at the request of the City, cure such breach at no cost to the City. The City shall give notice to the Artist of any such observed breach with reasonable promptness, and, if required hereunder, the Artist shall cure such breach with reasonable promptness.

ARTICLE 12 -- RIGHTS RETAINED BY ARTIST

The Artist retains all rights under the Federal Copyright Act and all other rights in and to the Work except ownership and possession, and except as such rights are limited by this Agreement. In view of the intention that the Work in its final dimension shall be unique, the Artist shall not make any additional or duplicate reproductions of the final work, nor shall the Artist grant permission to others to do so; provided, however, that the Artist may use depictions of the Work in promotional material such as portfolios and resumes. The Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, and catalogues or other similar publications, provided that these rights are exercised in a tasteful and professional manner. Non-commercial purposes shall include

the sale of such publication by the City at a nominal fee. The Artist shall be given credit for the work in any such reproductions.

ARTICLE 13 -- ART WORK PLAQUE

Upon completion and installation of the Work, a plaque of a size and type to be determined jointly by the Artist and the City shall be placed on or near the Work showing the Artist's name and mentioning the City's ownership, at the expense of the City.

ARTICLE 14 -- REPAIRS AND MAINTENANCE

Where, in the opinion of the City or the Artist, repairs and or restoration of the Work are required, other than Artist's required repairs during the Warranty Period, the City shall, when reasonably practicable, provide the Artist the opportunity to accomplish such repairs and or restoration if a reasonable fee can be agreed upon between the parties. Nothing herein shall obligate the City to make such repairs and/or restoration or to contract with the Artist to accomplish such repairs and/or restoration.

ARTICLE 15 -- RIGHT OF FIRST REFUSAL TO PURCHASE

If in the future the City desires to sell the Work, the Artist shall, when reasonably practicable, be given the right of first refusal to purchase the Work from the City at its then value as determined by the average of at least two (2) appraisals conducted by two (2) separate qualified appraisers that are approved by the City. Artist shall have sixty (60) days from the date of the last appraisal to provide City written notice of its intent to exercise the right of first refusal. If the Artist does not exercise his/her right of first refusal under this Article, the Artist, at his/her option, shall be entitled to receive fifteen percent (15%) of the proceeds of any sale of the Work by the City to any person or entity other than the Artist. The right of the Artist under this Article shall expire after fifteen (15) years from the Effective Date; said rights shall be specific to the Artist personally and shall not be transferred, assigned, pledged, or levied upon, nor shall they pass by way of inheritance or other operation of law to any third party.

ARTICLE 16 -- ARTIST'S CHANGE OF ADDRESS

The Artist shall keep the City notified in writing of changes in the Artist's address, and failure to do so shall be deemed a waiver of the Artist's rights under Articles 1, 14, and 15.

ARTICLE 17 -- DISPUTE RESOLUTION

If a conflict or dispute arises under this Agreement between the Artist and the City, said dispute shall, following a good faith effort by all parties to resolve the dispute, be resolved by the Mayor of the City or the Mayor's designee, whose decision shall be final.

ARTICLE 18 -- INDEMNIFICATION

The Artist shall hold the City harmless and indemnify and defend it and its officers and agents from any and all claims of loss, damage, or injury sustained by any person or property and shall pay all expenses, including reasonable attorneys' fees, arising from the performance of the Artist or his subcontractors, representatives or employees under the provisions of this Agreement provided that this covenant shall not extend to any claims of loss, damage, or injury sustained by any person or property or to expenses, including reasonable attorneys' fees, resulting from (a) the use or misuse of the Work by any person or persons other than the Artist or the Artist's subcontractors, representatives or employees, or (b) the negligence of any person or persons other than the Artist or the Artist's subcontractors, representatives or employees.

ARTICLE 19 -- PARTIES NOT EMPLOYEES OF EACH OTHER

For the purposes of this Agreement, it is understood that the parties are independent contractors and no employee or agent of one is, for any purpose of this Agreement, an employee or agent of the other. Nothing contained herein, or any of the obligations of the parties hereunder, shall in any manner inure to the benefit of third parties.

ARTICLE 20 -- RULES AND REGULATIONS

In conducting the operations hereunder, the Artist shall comply with all applicable laws of the United States of America and the State of Utah and lawful rules and regulations promulgated by their authority, and all applicable lawful rules, regulations and ordinances of the

City now in force or thereafter prescribed and promulgated by authority of law, specifically including all fire codes and security regulations.

ARTICLE 21 -- SALT LAKE ART DESIGN BOARD

It is understood and agreed that City law prohibits any member of the Salt Lake Art Design Board from receiving any contract for any work of art or from having any financial interest in or financial benefit from any work of art that is recommended by such board or that is produced by any firm or person that receives any contract for such work of art from the City.

ARTICLE 22 -- FORCE MAJEURE

If any party to this Agreement shall be delayed or prevented from the performance of any act required hereunder by reason of strike, labor trouble, act of God, or any other cause beyond the reasonable control of such party (financial liability excepted), and such party is otherwise without fault, then performance of such act shall be excused for the period of the delay.

ARTICLE 23 -- THIRD PARTY CLAIMS

All negotiations relative to this Agreement and the transactions contemplated by and under this Agreement have been carried on without the intervention of any person whose act or acts would give rise to any valid claim against any party to this Agreement for a finder's fee, brokerage commission, or other like payment.

ARTICLE 24 -- DAMAGE TO PROPERTY

The Artist shall be responsible for any and all damage to property belonging to the City or the City's tenants to the extent caused by an act or omission of the Artist or his agents or employees. The Artist shall be responsible for promptly repairing said damage to property and shall pay the costs thereof.

ARTICLE 25 -- LIMITS ON ARTIST'S ASSIGNMENT RIGHTS

Neither the benefits nor the obligations under this Agreement may be assigned or otherwise disposed of by the Artist without the prior written consent of the City.

ARTICLE 26 -- NOTICES

Notices to the City provided for herein shall be sufficient if sent certified mail, postage prepaid, for which a delivery receipt to required, addressed to:

Executive Director
Salt Lake City Arts Council
54 Finch Lane
Salt Lake City, Utah 84102

and notices to Artist, if sent by mail, postage prepaid, for which a delivery receipt is required, addressed to:

Artist Name
Address
City, State Zip Code

ARTICLE 27 -- REPRESENTATION REGARDING ETHICAL STANDARDS FOR CITY OFFICERS AND EMPLOYEES AND FORMER CITY OFFICERS AND EMPLOYEES

Artist represents that he has not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in the City’s conflict of interest ordinance, Chapter 2.44, Salt Lake City Code; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in the City’s conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

ARTICLE 28 -- SEVERABLE PROVISIONS

If any provision of this Agreement shall be held invalid and unenforceable, such provision shall be severable from, and such invalidity or unenforceability shall not be construed to have any effect on, the remaining provisions of this Agreement.

ARTICLE 29 -- GOVERNING LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, and any legal action pertaining to this Agreement shall be filed in the State of Utah.

ARTICLE 30 -- ENTIRE AGREEMENT AND ALTERATIONS

This Agreement embodies the entire agreement between the Artist and the City. It shall not be altered except by a written instrument signed by both parties.

[SIGNATURE PAGE FOLLOWS]

