

## ARTIST COMMISSION AGREEMENT

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THIS ARTIST COMMISSION AGREEMENT (“Agreement”) is between SALT LAKE CITY CORPORATION, a Utah municipal corporation (“City”), and [ARTIST, ENTITY], a Utah limited liability company with an address of [ADDRESS] (“Artist”) and is dated as of the date the City Recorder attests the City signature (“Effective Date”).

### RECITALS

- A. The City enacted Chapter 2.30 of the Salt Lake City Code to create the Salt Lake City Art Design Board (“Board”), for the purpose of recommending works of public art to be placed in and around City construction projects, recommending the allocation of certain funds for the establishment of artwork in public places, and consulting with other departments or City agencies regarding, among other things, selection of artists and placement of public art within Salt Lake City.
- B. The Artist is engaged in the creation of works of art.
- C. The City selected the Artist to create a unique and original work of art (“Artwork”) to be located in the roundabout at 900 East 1100 South, Salt Lake City, UT 84105 (“Location”) as determined by the City and depicted and described in Exhibit A (the “Design”).
- D. City and Artist desire to enter into an agreement for the Artist to provide the Artwork as specified below.

### AGREEMENT

NOW, THEREFORE, the parties agree to the following:

#### SECTION 1 – ARTIST SERVICES; REPRESENTATIVE; TEAM

- A. Basic Services. The Artist shall perform the “Basic Services,” as specified in Exhibit B, attached, and generally described as the 9<sup>th</sup> South Roundabout Project (“Project”).
- B. Artist Representative. The Artist has designated [ARTIST] as Project Manager. The Artist’s representative who (if not the Artist) has the authority to act on behalf of the Artist. Artist shall not change the Artist’s representative without at least seven (7) days prior written

notice to City. Any replacement for the Artist's representative shall be at least as qualified for the work as the person being replaced.

C. Artist Team. If the Artist is comprised of a team, the Artist shall not change any member of the Artist team without prior written approval from the City. The Artist may request changing an Artist team member, which City may approve or disapprove, in its sole discretion. If Artist changes any Artist team member without City's prior written consent, City may terminate this Agreement upon delivery of written notice to Artist. Any replacement for the Artist's team member shall be at least as qualified for the work as the person being replaced.

## **SECTION 2 - TERM**

The term of this Agreement shall commence upon the Effective Date and continue through **September 1, 2021**, unless terminated or extended as specified herein. City may at its sole option extend the term of this Agreement thereafter for up to six (6) additional periods of one (1) month each. City shall exercise such option by providing Artist written notice of each extension at least five (5) days prior to any expiration of this Agreement.

## **SECTION 3 - NON-EXCLUSIVITY**

The Artist acknowledges that City has hired or may hire other artists to perform work like that is within the Artist's scope of work under this Agreement. The Artist further acknowledges that this Agreement is not a guarantee of the assignment of any work and that City may assign work to various artists solely within City's discretion.

## **SECTION 4 - COMPENSATION**

City shall pay Artist **One-Hundred Thousand and 00/100 Dollars (\$100,000.00)** for the Basic Services specified in Exhibit B of this Agreement, which includes design, fabrication, permits, installation, materials, all travel expenses, hotels, meals, or any other costs whatsoever that the Artist may incur to perform the Basic Services (the "Commission").

The City shall pay the Artist for the Work as follows: **(1) Twenty-Five Thousand dollars (\$25,000.00)** of the Commission upon execution of this Agreement; **(2) Twenty-Five Thousand**

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**dollars (\$25,000.00)** of the Commission after the City reviews and approves engineer-stamped drawings for the design and installation of the Artwork; **(3) Twenty- Five Thousand dollars (\$25,000.00)** of the Commission upon the City’s inspection and approval of the fabrication of the Artwork at seventy-five percent (75%) completion of the Artwork; and **(4) Twenty-Five Thousand dollars (\$25,000.00)** of the Commission following the installation of the Artwork, Artist’s delivery to City of fully executed lien waivers signed by all contractors and subcontractors hired to fabricate the Work, Artist’s delivery of a maintenance plan, and the City’s inspection, approval, and acceptance of the completed Artwork. Upon all payments made to Artist, the City shall own the Artwork free and clear of any claims by Artist. Unless otherwise provided for herein, City shall approve or disapprove and remit compensation for undisputed work submitted by Artist within thirty (30) days. Should City dispute any aspect of an invoice, City shall notify Artist of such dispute within fifteen (15) days of the disapproval. City and Artist will work in good faith to resolve disputed invoices in a timely manner.

All City payments shall be made to **[ARTIST, ENTITY]** who shall be solely responsible to distribute funds among all members of the Artist if the Artist is comprised of a team.

## **SECTION 5 - SERVICE STANDARDS AND QUALITY ASSURANCE**

A. Conformance to Laws. The Artist and Artwork shall conform with all applicable federal, state and City and any other applicable local laws, regulations and ordinances.

B. Quality Assurance. The Artist shall be solely responsible to City for the quality of all services performed by the Artist or its sub-providers under this Agreement. All services furnished by the Artist or its sub-providers shall be performed in accordance with the best professional judgment and skill, in a timely manner, and shall be fit and suitable for the purposes intended by City.

C. Standard of Care. In addition to its duties and obligations under this Agreement, the Artist and its sub-providers shall exercise the degree of skill, competence, quality, and professional care rendered by artists performing the same or similar type services in the United

States and shall cooperate with City and other parties in furthering the interests of the City in connection with the 9th South Roundabout Public Art Project.

## **SECTION 6 - INDEMNITY PROVISIONS**

A. Artist shall, at its sole cost and expense, indemnify and hold City harmless from and against all losses, claims, demands, suits, actions, legal or administrative proceedings, damages, costs, charges and causes of action of every kind or character whatsoever, including, reasonable attorney fees and other legal costs such as those for paralegal, investigative, legal support services and the actual costs incurred for expert witness testimony, (collectively “Claims”) directly or indirectly arising from, related to or connected with, in whole or in part, Artist’s work under the Agreement, including but not limited to Claims directly or indirectly arising from, related to or connected with, in whole or in part: any act, omission, fraud, wrongful or reckless conduct, fault or negligence by Artist or its officers, directors, agents, employees, subcontractors or suppliers of any tier, or by any of their employees, agents or persons under their direction or control; violation by Artist or Artist’s officers, directors, agents, subcontractors or suppliers of any tier, or by any of their employees, agents and persons under their direction or control, of any copyright, trademark or patent or federal, State or local law, rule, code, regulation, policy or ordinance; nonpayment to any of Artist’s subcontractors or suppliers of any tier, or if any officers, agents, Artists, employees or representatives of Artist or its subcontractors or suppliers of any tier; and, any other act, omission, fault or negligence, whether active or passive, of Artist or anyone acting under its direction or control or on its behalf in connection with or incidental to the performance of this Agreement (collectively “Acts and Omissions”).

B. Artist shall, at its sole cost and expense, defend City from and against all Claims that are directly or indirectly based, in whole or in part, upon the allegation or assertions, express or implied, that Artist, or its officers, directors, agents, subcontractors or suppliers of any tier, or any of their employees, agents or persons under their direction or control, committed any Acts or Omissions, regardless of whether such allegations or assertions are true and whether or not City, Artist, or its officers, directors, agents, subcontractors or suppliers of

any tier, or any of their employees, agents or persons under their direction or control, are ultimately found liable for such Acts or Omissions.

C. Artist's duty to defend shall arise only upon City's tender of defense to Artist in writing. Upon receipt of City's tender of defense, if Artist does not promptly accept the defense and thereafter duly and diligently defend City and its officers, board members, departments, representatives, authorized representative(s), agents and employees, affiliates, successors and assigns as provided herein, then Artist shall pay and be liable for the reasonable costs, expenses and attorney fees incurred after the tender of defense by City and its officers, board members, departments, representatives, authorized representative(s), agents and employees, affiliates, successors and assigns, in defending against the Claims and enforcing this provision.

D. Nothing herein shall be construed to require Artist to indemnify or defend City from City's gross negligence or willful misconduct, which may be apportioned as required by Utah law.

E. The parties intend that the indemnity and defense provisions in this Section 6 shall be interpreted so as to be enforceable to the fullest extent permitted by law, but nothing herein shall be interpreted in any manner to violate public policy.

F. Artist's agreements with its subcontractors shall provide in writing (in a form acceptable to City) that each subcontractor shall, jointly and severally with Artist, indemnify and defend City, and City's officers, board members, departments, representatives, authorized representative(s), agents and employees, affiliates, successors and assigns, from any alleged Acts and Omissions of the subcontractor, and its officers, directors, agents, subcontractors or suppliers of any tier, and their employees, agents or persons under their direction or control, to at least the same degree as Artist is bound to indemnify, defend and hold City harmless from and against such alleged Acts and Omissions under the provisions of this Agreement. Nothing in this Agreement shall prevent Artist from making a claim against its subcontractors at law or pursuing contribution or indemnification from its subcontractors pursuant to the terms and conditions of the subcontracts between Artist and its subcontractors.

G. The Artist hereby acknowledges receipt of good and valuable consideration for the indemnification obligations of this Agreement.

H. The indemnification obligations of this Agreement shall not be reduced by a limitation on the amount or type of damages, compensation or benefits payable by or for the Artist, a sub-provider or subcontractor under workers' compensation acts, disability benefits acts, or other employee benefit acts.

I. If the above indemnity provisions in this Agreement are deemed void in whole or in part under Utah law, then the following indemnification obligations shall apply except to the extent such provisions are deemed void: Artist shall indemnify and hold harmless the City, its officers and employees, from liabilities, damages, losses and costs, including but not limited to, attorney fees, to the extent caused by the acts or inaction, negligence, recklessness, or intentional wrongful misconduct of the Artist and persons employed or utilized by the Artist in the performance of the Agreement.

J. The provisions of this Section 6 shall survive the earlier termination or expiration of this Agreement for one year of the completion of the work and shall apply to all Claims regardless of whether they arise before or within one year after completion of the work under the Agreement.

## **SECTION 7 – INSURANCE**

A. Insurance. Artist must be covered by insurance for the Artist's operations and for sub-providers, and for all other parties for whom the Artist is legally liable. Artist, at its own cost and expense, shall secure and maintain the following policies of insurance:

B. Commercial General Liability Insurance. Provider shall provide and maintain commercial general liability insurance naming City as Additional Insured on a primary and non-contributory basis in comparison to all other insurance including City's own policy or policies of insurance, for all claims against City described in Section 6. The policy or policies shall have limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate limit of liability. The commercial general liability policy or policies shall provide coverage for premises operations, acts of independent contractors and completed operations, whether such operations be by

Artist, sub-provider, or anyone directly or indirectly employed by either of them, with the City named as an additional insured.

C. Auto Insurance. 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 instead of and 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.

--OR IF THERE WILL NOT BE ANY VEHICLE OPERATIONS--

Artist shall not operate a vehicle in connection with any services rendered under this agreement. Inasmuch as Artist agrees not to operate a vehicle in connection with services rendered under this Agreement, City shall not require Artist to provide commercial automobile liability insurance.

D. Subcontractors. 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.

E. Workers' Compensation and Employers Liability. The policy shall provide workers' compensation and employer's liability insurance sufficient to cover all of Artist's employees pursuant to Utah law, unless a waiver of coverage is allowed and acquired pursuant to Utah law. In the event any work is subcontracted, Artist shall require its subcontractor(s) similarly to provide workers' compensation insurance for all of the latter's employees, unless a waiver of coverage is allowed and acquired pursuant to Utah law.

F. Additional Insured and Pre-Cancellation Notice. The insurance policies required above shall contain an endorsement listing Salt Lake City Corporation as an additional insured (except for workers' compensation required in subparagraph E. of this Section) and shall further provide that the policy may not be canceled or modified in a way which impairs the protection of the additional insureds without thirty (30) days prior written notice to City.

G. Certificates of Insurance. Prior to execution of this Agreement by City, the Artist shall provide City with certificates evidencing the coverage described above in a form acceptable to the City Attorney's Office. All certificates of insurance shall list Salt Lake City Corporation as Certificate Holder and Additional Insured.

H. Delivery of Certificates of Insurance. Artist shall deliver certificates of insurance either by mail to the Notice Address listed in Section 23, or by email to [katherine.nix@slcgov.com](mailto:katherine.nix@slcgov.com).

I. Rights Reserved by City. City reserves the right to increase limits and coverage hereunder consistent with industry standards, statute or judicial decision, or City policy; provided, however, that any such increase shall be consistent with other similarly situated Artists. Artist shall then cause its insurance coverages hereunder increased to any such new limit.

J. City Continuance of Coverage. If any of the policies of insurance required from the Artist are canceled or lapse, City may, at City's sole discretion, obtain substitute coverage at reasonable rates. City may deduct the cost of such coverage, plus ten percent (10%) for administrative charges, from any monies owing to the Artist.

K. Policies of Insurance. At City's request, the Artist shall provide City with the actual policies providing the coverage required above.

L. Quality of Insurance Companies. All policies of insurance provided shall be issued by insurance companies qualified to do business in the state of Utah and listed on the United States Treasury Department's current Department of Treasury Fiscal Services List 570, or having a general policyholders rating of not less than "A-" in the most current available A.M. Best Co., Inc.'s, Best Insurance Report.

## SECTION 8 - CITY'S OBLIGATIONS

A. City's Program for the Artwork. Artist acknowledges and agrees that City has provided the Artist full information regarding City's requirements for the Project, including Exhibit B – Basic Services herein, which set forth City's objectives, constraints and criteria. Artist acknowledges that other known or unknown conditions may exist, for which City shall have no liability.

B. City's Project Manager. City designates the Public Art Program Manager, or his or her designee, as Project Manager who shall have authority to act in City's behalf with respect to the Project.

C. City's Performance. City shall furnish required information to the extent practicable and shall render approvals and decisions as promptly as practicable to avoid unreasonable delay in the progress of the Artist's services.

## SECTION 9 - TERMINATIONS

A. City Termination. City may terminate this Agreement at any time for any reason or no reason upon fifteen (15) calendar day's written notice to Artist.

B. Termination for Cause by City. City may terminate this Agreement for cause if the Artist fails to cure any defect in the Artist's performance of the Basic Services under this Agreement within seven (7) calendar days after Artist's receipt of written notice to cure, unless such default may not be cured within seven days and, in the City's determination, the Artist is diligently pursuing a cure of such default.

C. Termination by Artist. If City materially fails to meet its responsibilities and obligations under this Agreement, the Artist shall notify City of such failure. If City fails to cure or diligently pursue the cure of its material breach, the Artist may, after thirty (30) days written notice, terminate its performance under this Agreement.

D. Payment for Termination. In the event of termination, City shall pay the Artist according to the payment schedule, on an actual work basis, or terms in the Basic Services, in City's discretion. The Artist shall furnish a complete accounting of all services performed through the date of termination, less any sums already received by the Artist as of the date of

termination. The City will consider this accounting in determining payment due, less any appropriate damages as City may determine. Artist acknowledges that such compensation as determined by the City shall be full and complete compensation and remedy and no additional compensation or damages shall be due or provided.

E. Ownership of Artwork, Materials and Design after Termination. In the event of termination, the City and the Artist agree to the following:

1. If at the time of termination, the fabrication and installation of the Artwork has not been initiated, the City shall return the design proposals to the Artist and any rights in the design that the City may have obtained shall revert to the Artist. The City may retain a copy of any drawings, models or similar materials for its records. However, possession of such copies by the City shall not confer upon it any right to utilize any idea, concept or design contained in such copies, and such rights shall remain with Artist.

2. If at the time of termination, the fabrication and installation of the Artwork has been initiated, the Artist may submit a plan for consideration to complete the Artwork in accordance with the design materials, and the City will have the right to have the Artwork fabricated, delivered and installed by a party selected by City or otherwise determined in accordance with the design materials, provided that the City shall compensate the Artist prior to the date of termination as set forth in Section 9.E. City shall retain copyright and all ownership interests of any kind in the design materials and the Artwork.

F. Illness of Artist. The City shall have the right in its sole discretion to either terminate this Agreement or have the Artwork completed by another artist if, after the completion of the Design Services contract, the illness of the Artist or other circumstance that may cause an extended delay of more than three (3) months in the completion of the artwork beyond the completion date for the Artwork. Prior to termination, the Artist may submit a plan for consideration to complete the Artwork in accordance with the design materials and terms of the design proposal. If the City proceeds with such termination, the City shall have the right to have the Artwork fabricated, delivered and installed by a party mutually selected by the City and the Artist in accordance with the design materials, provided that the City shall compensate the Artist for all services provided prior to the date of termination. The Artist and the City shall

make good faith efforts to mutually select a party for installation and fabrication of the Artwork. If the City and the Artist cannot mutually select a party for fabrication and installation, the City reserves the right to make such a selection in its discretion.

G. Death of Artist. The City shall have the right in its sole discretion to either terminate this Agreement or have the Artwork completed by another artist upon the death of the Artist. Prior to City's election to terminate the Agreement and if circumstances allow, the Artist may submit a plan for consideration to complete the artwork in accordance with the design materials and terms of the design proposal. If the City proceeds with such termination, the City shall have the right to have the Artwork fabricated, delivered and installed by a party selected by City in accordance with the design materials. The Artist and the City shall make good faith efforts to mutually select a party for installation and fabrication of the Artwork if feasible prior to death of the Artist. If the City and the Artist cannot mutually select a party for fabrication and installation, the City reserves the right to make such a selection in its discretion. Provided that the City shall compensate the Artist for all services provided prior to the date of termination.

#### **SECTION 10 – OWNERSHIP OF THE ARTWORK AND DESIGN MATERIALS UPON COMPLETION**

A. Except as otherwise specified in this Agreement, title and all rights and interests of any kind whatsoever, including copyright, in the Artwork shall pass to the City upon completion and acceptance of the Artwork by the City and the Artist has received payment due under the Agreement.

B. All photographic, filmed or videotaped reproductions created by the City of the Artwork shall identify the Artist and the title to the Artwork and shall identify the location of the original Artwork.

C. Artist warrants that it will not produce a substantially similar replica of the Artwork, or allow others to do so on its behalf, without the prior written approval of City. This covenant shall continue in effect for a period consisting of the life of the Artist plus fifty (50) years after his or her death and shall be binding on Artist's successors, heirs and assigns. City understands and acknowledges that the Artist may use materials, themes, elements, concepts,

dimensions, colors and shapes used in the Artwork in other works of art produced by Artist and the use of similar materials, themes, elements, concepts, dimensions, colors and shapes in other works of art does not violate this Section 10.

D. The Artist waives any and all claims that might arise from any application of the Visual Artist's Rights Amendments to the Copyright Law of the United States, 17 U.S.C. §106A ("VARA").

#### **SECTION 11 – RISK OF LOSS**

The Artist shall bear all risk of loss or damage to the Artwork prior to City's acceptance thereof. The period in which the Artist has the risk of loss or damage shall include any period in which the City has suspended performance. The risk of loss or damage to the Artwork shall pass to the City upon final installation of the Artwork at the Site, and City's acceptance of the installation. If prior to installation of the Artwork and City's acceptance of the installation, the Artwork, or any part thereof, is lost, damaged, or destroyed and such loss, damage or destruction is not caused by the City or City's agent, the Artist shall be responsible to reconstruct or remake such Artwork without any compensation additional to that specified herein except to the extent that the City is compensated for such loss by insurance, if any.

#### **SECTION 12 – DISPLAY OF ARTWORK**

A. The City shall have the right to remove the Artwork from display for any reason. In addition, the City may relocate the Artwork at any time, provided that the City shall confer with the Artist on any relocation and will consider any reasonable proposal by the Artist to relocate the Artwork and permit the Artist to provide artistic supervision of such relocation. The Artist may require City to remove any attribution to Artist from the Artwork if any the City relocates less than the entire Artwork without Artist's prior written approval. If the City elects to remove the Artwork or relocate less than the entire Artwork, the City will consider any proposal thereupon presented by the Artist for such relocation or Artist's proposal to buy back or provide other method of disposition of the Artwork that is not relocated. The City agrees that upon notice to the Artist, the Artist shall have the right of first refusal on the sale of the

Artwork or any portion thereof at fair market value, as determined by a mutually selected, independent third-party appraiser. The Artist must exercise its right of first refusal to buy back the Artwork by giving the City notice of its election within thirty (30) days after the City has given written notice to the Artist. The Artist's failure to timely give such notice shall constitute a waiver of the Artist's right of first refusal.

### **SECTION 13 – PUBLICITY**

The Artist grants to the City the right to use the Artist's name, biography, photograph or likeness in connection with the Artwork in any manner and in any media, provided that the use is for a non-commercial purpose according to the standards set forth in this Agreement. The Artist shall have the right to approve in advance any photograph, likeness or biographical information utilized by the City under this Section. The City shall not use the Artist's name or biography, photograph and/or likeness as endorsing any commercial product, service, organization or cause.

### **SECTION 14 - ARTIST/SUB-PROVIDER RELATIONSHIP**

It is solely the Artist's responsibility to ensure that any of the Artist's permitted sub-providers perform in compliance with the terms of this Agreement.

### **SECTION 15 – ARTIST'S RIGHTS**

A. The City shall provide and install, at the City's expense, a plaque on or near the Artwork, containing a credit to the Artist and identifying the title of the Artwork. If requested by the Artist, the plaque shall also identify the fabricator of the Artwork. If the plaque is to be placed on the Artwork or on a pedestal holding the Artwork, placement should be made in consultation with the Artist. The City shall make efforts to maintain such plaque and notice in good repair.

B. The City shall have the right to determine, when and if repairs and restorations to the Artwork will be made. During the lifetime of the Artist, the City will make best efforts to give the Artist the opportunity to make or personally supervise significant repairs and restorations of the Artwork. The Artist shall be paid a mutually agreed-upon fee for any such

services, provided that the City and the Artist shall agree in writing, prior to the commencement of any significant repairs or restorations, upon the Artist's fee for such services. All repairs and restorations shall be made in accordance with recognized principles of conservation.

C. City agrees to use best efforts to implement the Artist's suggested maintenance plan to protect the Artwork from modifications resulting from the passage of time or the inherent nature of the materials used to create the Artwork. The City agrees to allow the Artist to disclaim authorship and attribution of the Artwork if the City intentionally distorts, or mutilates the Artwork, as determined solely by the City. Artist agrees that, regardless of the City's implementation (or lack thereof) of any maintenance plan, modification of the Artwork by: (1) a third-party; (2) the City's conservation efforts; (3) the passage of time; (4) the inherent nature of the materials of the Artwork; (4) the weather; (5) any natural event; (6) or any unintentional modification of the Artwork, does not constitute a modification of the Artwork for purposes of disclaiming attribution of authorship.

D. The rights provided to the Artist in this Section 15 are in lieu of any rights that the Artist may have under VARA, or any other applicable remedy at law or equity.

#### **SECTION 16 – LIQUIDATED DAMAGES**

Time is of the essence of this Agreement. Unless delay is caused by the City, if the Artist shall neglect, fail, or refuse to complete the Artwork within the time specified for substantial completion in the Agreement, then the Artist does hereby agree, as a part consideration for the awarding of this Agreement, to pay to the City, as liquidated damages and not as a penalty, the sum of One Hundred and 00/100 Dollars (\$100.00) per day for each calendar day beyond the dates set forth in this Agreement that the Artist fails to perform. City shall provide written notice of said imposition of liquidated damages and Artist shall have seven (7) days to cure. The said amount is fixed and agreed on by and between the Artist and the City because of the impracticability and extreme difficulty of fixing and ascertaining the true value of the damages which the City will sustain by failure of the Artist to complete the Artwork on time, such as loss of revenue, service charges, interest charges, delays caused to other construction activities of

City by failure to perform this Agreement, and other damages, some of which are indefinite and not susceptible of easy proof, said amount is agreed to be a reasonable estimate of the amount of damages which the City will sustain and said amount shall be deducted from any monies due or that may become due to the Artist.

#### **SECTION 17 - SAFETY**

The Artist agrees to take all necessary safety precautions and comply with all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to its employees, agents or sub-providers and to protect other persons on, about or adjacent to the premises where the Artist's work is being performed and any accidents or injuries caused by the Artist, its agents or sub-providers. This safety requirement shall not relieve any contractor performing work on the Project from complying with the safety requirements of its contract, nor shall it make the Artist responsible for the contractor's compliance with the safety requirements. City Project Manager, the Public Art Program Manager, or his or her designee may stop the Artist's work if safety laws or safe work practices are not being observed.

#### **SECTION 18 - DAMAGE TO PROPERTY**

The Artist shall be responsible for any and all damage to property belonging to City or any other third-party to the extent caused by any act or omission of the Artist, its agents or employees. The Artist shall be responsible for repairing any damaged property and shall pay the costs therefor.

#### **SECTION 19 – LICENSES AND PERMITS**

The Artist agrees to possess and keep current all applicable state and local licenses and permits required for the services to be performed herein.

#### **SECTION 20 –WARRANTIES**

As of the date of City's acceptance of the Artwork, the Artist represents and warrants that: (a) the Artwork is the original creation of the Artist; (b) the Artwork is unique and an edition of one; (c) no identical or substantially similar Artwork will be created by the Artist; (d) the

Artwork does not infringe upon any copyright, trademark, or any other property or personal right; (e) the Artwork is free and clear of liens or encumbrances from any source whatsoever; and (f) the Artist knows of no adverse claims to the Artwork and neither the Artwork nor any portion thereof is in the public domain.

The Artist represents and warrants that: (a) the Artwork, 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 Artwork; (b) maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist to the City prior to City's acceptance of the Artwork; and (c) all warranties provided to the Artist by the manufacturer of any materials used to create the Artwork will be transferred to the City. 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 Artwork. 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.

#### **SECTION 21 - INDEPENDENT CONTRACTOR**

The Artist is an independent contractor and not an employee of City.

#### **SECTION 22 – ASSIGNMENT**

This Agreement may not be assigned by either party without the prior written consent of the other.

#### **SECTION 23 – NOTICES**

Notice will be sufficient if delivered to the following Notice Addresses by hand delivery directly to the named individual or title, by express U.S. mail postage prepaid, or by overnight delivery service for which delivery receipt is required.

A. To City:  
Public Art Program Manager  
Salt Lake City Division of Arts  
54 Finch Lane  
Salt Lake City, Utah 84102  
katherine.nix@slcgov.com

With a copy to:

Salt Lake City Attorney's Office  
451 S. State Street, Rm 505A  
Salt Lake City, Utah 84114

B. To Artist Representative:  
ARTIST  
ENTITY  
ADDRESS  
EMAIL

Any notice delivered by hand shall be deemed received by the addressee upon actual delivery; any notice delivered by overnight delivery service or express mail as set forth in this Agreement shall be deemed received by the addressee on the following business day after deposit. The parties may designate in writing other Notice Addresses for notice from time to time.

**SECTION 24 - NO THIRD-PARTY BENEFICIARIES**

This Agreement does not and shall not be deemed or construed to confer upon or grant to any third party or parties, except to bona fide successors in interest, any rights to claim damages or to bring any suit, action or other proceeding against either the City or the Artist because of any breach hereof or because of any of the terms, covenants, agreements or conditions herein contained.

**SECTION 25 - GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT**

The City is subject to the requirements of the Government Records Access and Management Act, Chapter 2, Title 63G, Utah Code or its successor ("GRAMA"). All materials submitted by the Artist pursuant to this Agreement are subject to disclosure unless such materials are exempt

from disclosure pursuant to GRAMA. The burden of claiming an exemption from disclosure shall rest solely with the Artist. Any materials for which the Artist claims a privilege from disclosure shall be submitted marked as “Confidential” and accompanied by a statement from the Artist explaining the Artist’s claim of exemption from disclosure. City will promptly notify the Artist of any requests made for disclosure of documents submitted under a claim of confidentiality. The Artist may, at the Artist’s sole expense, take any appropriate actions to prevent disclosure of such material. The Artist specifically waives any claims against City related to disclosure of any materials required by GRAMA.

**SECTION 26 – FORCE MAJEURE**

Any prevention, delay or stoppage of performance of the Artist’s or City’s obligations hereunder due to strikes, lockouts, labor disputes, acts of God, enemy or hostile government action, fire or other casualty, or any other cause beyond the reasonable control of the Artist or City shall not be deemed to be a breach of the Agreement or a violation of or failure to perform any covenants hereof. If such an event does not abate within sixty (60) days, either party shall have the right to terminate this agreement without liability or obligation to the other.

**SECTION 27 - COMPLETE AGREEMENT**

This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations or agreements either written or oral, and cannot be altered, amended or modified except in writing signed by both parties.

**SECTION 28 - GOVERNING LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Utah, and venue shall be in Salt Lake County, Utah.

**SECTION 29 - REPRESENTATION REGARDING ETHICAL STANDARDS FOR CITY OFFICERS AND EMPLOYEES AND FORMER CITY OFFICERS AND EMPLOYEES**

The Artist represents that it 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 contract 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 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 City's conflict of interest ordinance, Chapter 2.44, Salt Lake City Code.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the parties have signed this Agreement to be effective as of the Effective Date.

**CITY:**

SALT LAKE CITY CORPORATION, a Utah municipal corporation

\_\_\_\_\_

Signature

\_\_\_\_\_

Print Name

\_\_\_\_\_

Print Title

**ATTEST:**

Salt Lake City Recorder's Office

\_\_\_\_\_

City Recorder

**APPROVED AS TO FORM:**

Salt Lake City Attorney's Office

\_\_\_\_\_

Senior City Attorney

Date \_\_\_\_\_

**ARTIST:**

**[ENTITY]** a Utah limited liability company

By: \_\_\_\_\_

Signature

\_\_\_\_\_

Print Name

Its: \_\_\_\_\_

**EXHIBIT A**  
**(Design)**

**EXHIBIT B**  
**(Basic Services)**

I. Basic Services. Artist shall provide the following services to the City. Artist shall track costs associated with each task separately.

- A. Artist shall furnish or secure all materials, equipment, insurance, permits, and labor (including travel and lodging expenses) required for the Artwork.
- B. Final artwork must be in accordance with the proposal approved by the Board without any significant design change without prior approval by the Board, as depicted in Exhibit A.

Final artwork must be in accordance with the following goals for the artwork listed in the RFQ:

1. Considers incorporating mural surfaces into the artwork for another artist to respond to or otherwise achieves all other artwork goals;
2. Serves as a welcoming entrance to the 9<sup>th</sup> South Corridor;
3. Is site-specific and engages with the dynamism of the 9th and 9th neighborhood;
4. Is engaging from all angles as the roundabout provides an opportunity for viewers to engage from 360 degrees;
5. Is of the highest quality—creatively and technically and exemplifies strong, imaginative design and storytelling that contributes to community and connection;
6. Considers and incorporates sustainable concepts and materials;
7. Resists to general wear, vandalism, or theft; offers easy, minimal and low-cost maintenance;
8. Meets all public safety, structural, and maintenance standards and complies with the Americans for Disabilities Act (ADA), Salt Lake City requirements, and all other applicable laws, codes, and regulations, including guidance from the Salt Lake City Engineering Department;
9. Meets all transportation safety laws, ordinances, regulations and guidelines, including all applicable height, sightline, color, and material requirements.

- C. If Artist chooses to incorporate mural surfaces into their artwork with the intention that other artists create artwork on those surfaces, artist understands they do not have authority to select which murals will or will not be selected. Artist understands that mural program is rotating and that designated mural surfaces will be changed out every few years.
- D. Artist shall coordinate all dates for installation with the Public Art Program Manager, and all parties will agree to a projected timeline, and coordinate in good-faith to communicate progress or potential delays.