

[FORM OF AGREEMENT– SUBJECT TO CHANGE]
ARTIST COMMISSION AGREEMENT

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

RECITALS

- A. City owns the right-of-way commonly known as Regent Street, located at approximately 100 South Regent Street, Salt Lake City, Utah 84111 to 200 South Regent Street, Salt Lake City, Utah 84111 (“Regent Street” or the “Location”);
- B. The Artist is engaged in the creation of works of art.
- C. The City selected the Artist to design, fabricate, and install a unique and original work of art (“Artwork”) to be located at Regent Street as determined by the City.
- D. The City has allocated funds for the fabrication and installation of the Artwork in the Location.
- E. City and Artist desire to enter into an agreement for the Artist to provide the Artwork as specified below.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals and the following mutual promises and considerations, the parties agree to the following:

SECTION 1: DEFINITIONS

- A. The following terms, when capitalized in this Agreement, shall have the following meanings, unless the context clearly indicates a different meaning:
 - 1. “Agreement” means this Artist Commission Agreement, including all documents and exhibits attached hereto.
 - 2. “Artist” means [name of artist entity].
 - 3. “Basic Services” means the series performed by Artist pursuant to this Agreement, as outlined in Exhibit A.
 - 4. “Basic Service Standards” means the standards set by City for the operation of Artist’s business as further described in Exhibit A.

5. “Board” means the Salt Lake City Art Design Board.
6. “City” means Salt Lake City Corporation.
7. “Department” means the Salt Lake City Department of Economic Development.
8. “Government Records Access and Management Act” or “GRAMA” means Chapter 2, Title 63G, Utah Code or its successor.
9. “Notices” means the addresses for City and for Artist as set forth in Section 26 below.
10. “RDA” means the Salt Lake City Redevelopment Agency.
11. “Regent Street Project” or “Artwork” means the Regent Street Redevelopment Artwork Project.
12. “VARA” means Visual Artist’s Rights Amendments to the Copyright Law of the United States, 17 U.S.C. §106A.

SECTION 2 – ARTIST SERVICES/REPRESENTATIVE

A. Basic Services. The Artist may perform the “Basic Services,” as more fully specified in Exhibit A, attached hereto and hereby incorporated by reference, generally described as the Regent Street Artwork Project (“Project”).

B. Artist Representative. The Artist has designated [name], Project Manager, or his or her designee as the Artist’s representative who shall have 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.

SECTION 3 - TERM

The term of this Agreement shall commence upon the Effective Date and continue nine (9) months through [Date], unless terminated as specified herein. City may at its sole option extend the term of this Agreement thereafter for six (6) additional periods of one (1) month each as City may determine. City shall exercise each such option by providing Artist written notice of such extension at least five (5) days prior to any expiration of this Agreement.

SECTION 4 - NON-EXCLUSIVITY

The Artist acknowledges that City has hired or may hire other artists to perform work similar to that which 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 5 - COMPENSATION

City shall pay Artist **up to** Two Million and 00/100 Dollars (\$2,000,000.00) for the Basic Services specified in Exhibit A of this Agreement, which services include design, fabrication, installation, all travel expenses, hotels, meals, any costs associated with purchasing any easement or property (should the Artist design the Artwork to be installed on private property), any costs associated with purchasing any easement or property should the Artist design the Artwork to be installed on private property), or any other costs whatsoever that the Artist may incur to perform the Basic Services (the "Commission"). Out of the potential \$2,000,000.00 Commission, City shall retain a contingency fund in the amount of Two Hundred Thousand Dollars and 00/100 (\$200,000.00), to be spent at City's sole discretion for additional costs (the "Contingency"). Any remaining amounts of the Contingency not utilized for the Artwork or for purposes related to the Regent Street Project shall be paid to Artist as a portion of the Commission.

Artist shall be paid a quarter of the total commission value, **up to** \$500,000 upon execution of this Agreement; a quarter of the total commission value, **up to** \$500,000 after City reviews and approves engineer-stamped drawings for the Artwork; a quarter of the total commission value, **up to** \$500,000 after City's approval of fabrication of the Artwork; and the final a quarter of the total commission value, **up to** \$500,000 after installation and City's acceptance of the Artwork. 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. City and Artist will work in good faith to resolve disputed invoices in a timely manner.

SECTION 6 - SERVICE STANDARDS AND QUALITY ASSURANCE

A. Conformance to Laws. The Artist and Artist's work product 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. The foregoing standard shall not be construed, and is not intended, to require the Artist to exercise professional skill greater than, or to utilize techniques more advanced than, such as are now generally exercised and utilized by similar artists in the same business as the Artist in the United States.

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 the leading and most reputable companies 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 Project.

SECTION 7 - INDEMNITY PROVISIONS

A. Artist shall, at its sole cost and expense, indemnify and hold City and its officers, board members, departments, representatives, City authorized representative(s), agents, employees, affiliates, successors and assigns 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, but not limited to, 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 and its officers, board members, departments, representatives, authorized representative(s), agents and employees, affiliates, successors and assigns 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 fault, which shall be apportioned as required by Utah law.

E. The parties intend that the indemnity and defense provisions in this Section 7 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 7 shall survive the termination of this Agreement and the completion of the work and shall apply to all Claims regardless of whether they arise before or after completion of the work under the Agreement.

SECTION 8 – INSURANCE AND BONDS

A. Insurance and Bonds. 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 and bonds:

B. Professional Liability Insurance.

1. The professional liability policy shall have limits of not less than \$2,000,000 per claim, which insures the agreement to indemnify and save harmless City

from and against any and all claims arising from the negligent acts, errors, or omissions of the Artist and any sub-provider in the performance of the professional services rendered under this Agreement whether such operations be by Artist, sub-provider, or anyone directly or indirectly employed by either of them.

2. In the event that City's tender of defense based on the Artist's and any sub-provider's alleged negligence is rejected by the Artist, and the Artist is later found by a court of competent jurisdiction to have been negligent as aforesaid, then in addition to any other remedies City may have, the Artist agrees to pay City's reasonable costs, expenses and attorney fees in proving such negligence, defending itself and enforcing this indemnity provision.
3. The policy shall (i) provide full prior acts coverage or have a retroactive date effective before the Effective Date, and (ii) be maintained for a period of three (3) years following the end of the term of this Agreement or contain a comparable "extended discovery" clause or "tail coverage."

C. 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 7. The policy or policies shall have limits of not less than \$5,000,000 per occurrence 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. If the policy is issued on a claims made basis, the policy shall be maintained for a period of one (1) year following the completion of this Agreement or contain a comparable "extended discovery" clause or "tail coverage."

D. Business Auto Coverage Form. Whenever Artist or any sub-provider or subcontractor shall use and operate automobiles, trucks, or other vehicles on public streets and highways in complying with the terms and conditions of this Agreement, each such Artist, sub-provider or subcontractor shall carry Business Auto Coverage Form. The policy or policies shall

provide coverage for owned, hired and non-owned automobiles. The policy or policies shall have limits of not less than \$5,000,000 per occurrence limit of liability.

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. Builder's Risk Insurance. During any construction activity, Artist shall obtain and maintain for the benefit of City "special peril" Builder's Risk insurance equal to one hundred percent (100%) of the value of the project. Coverage shall also include: (a) form work in place; (b) form lumber on site; (c) temporary structures; (d) equipment; and (e) supplies related to the work while at the site. In the event Artist fails to maintain such insurance, City may, at its option, arrange therefor, and any premium incurred shall be reimbursed by Artist to City upon demand.

G. 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 the professional liability insurance required in subparagraph B.1. and workers' compensation required in subparagraph B.4. 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.

H. 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.

I. Delivery of Certificates of Insurance. Artist shall deliver certificates of insurance either by mail to the Notice Address listed in Section 21, or by email to dana.hernandez@slcgov.com.

J. 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.

K. 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.

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

M. 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 9 - CITY'S RESPONSIBILITY

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 A – Basic Services herein, which set forth City's objectives, constraints and criteria.

B. City's Project Manager. City designates the Public Art Program Manager, 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 and shall render approvals and decisions as promptly as practicable so as to avoid unreasonable delay in the progress of the Artist's services.

SECTION 10 - 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 receiving written notice to cure.

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 fifteen (15) 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 or terms in the Basic Services. 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 10.E. City shall retain copyright and all ownership interests of any kind in the design materials and the Artwork.

3. If the City desires in the future to sell the Artwork, the Artist has the first right to purchase the piece(s) at their appraised fair market value (“FMV”).

F. Illness of Artist. The City shall have the right in its sole discretion to either terminate this Agreement or have the Artwork completed 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 on the death of the Artist. 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 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.

H. Alternate Artist. Artist agrees and acknowledges that City may replace Artist with the alternate artist (“Alternate Artist”) selected through the RFQ process, or any other artist as determined by the City, if either party terminates this Agreement.

SECTION 12 – OWNERSHIP OF THE ARTWORK AND THE DESIGN MATERIALS UPON SUBSTANTIAL 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 substantial completion and acceptance of the Artwork by the City and the Artist has received payment of all compensation due under the Agreement.

B. In view of the intention that the installed Artwork be unique, the Artist shall not make any additional exact duplicate, three-dimensional reproductions of the Artwork or permit others to do so except with the written permission of the City, which permission may be withheld for any reason or no reason at all. However, this Agreement shall not be deemed to prohibit the Artist from reusing the themes, separate elements, and concepts incorporated in the Artwork in new Artworks so long as any such reuse in new Artworks does not result in a combination that as a whole constitutes a work substantially similar to the Artwork, in City's sole determination.

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

D. 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 12.

E. The Artist waives any and all claims that the might arise from any application of VARA, unless otherwise specified in this Agreement.

SECTION 13 – 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 at the Location 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.

SECTION 14 – DISPLAY OF ARTWORK

A. The City shall, at its expense and in consultation with the Artist, prepare and install at the Location where the Artwork is installed a public notice including the title of the Artwork, the Artist’s name and year of creation.

B. 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. Any relocation of less than the entire Artwork without Artist’s prior written approval allows that the Artist may require City to remove any attribution to Artist from the Artwork. 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 to buy back or provide other method of disposition of the Artwork that is not relocated on the City’s property. 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. The Artist must exercise its right of first refusal to buy back the Artwork by giving the City notice to that effect 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 15 – 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 product, service, organization or cause.

SECTION 16 - ARTIST/SUB-PROVIDER RELATIONSHIP

Except as may be otherwise provided, the Artist shall not contract with sub-providers to perform any portion of the Artwork provided for in this Agreement without the prior written consent of

City. 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.

ARTICLE 17 – 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 commercially reasonable efforts to maintain such plaque and notice in good repair.

B. The City shall have the right to determine, after consultation with a professional conservator, when and if repairs and restorations to the Artwork will be made. During the lifetime of the Artist, the Artist shall have the right of first refusal to approve all repairs and restorations, provided, however, that the Artist shall not unreasonably withhold approval for any repair or restoration of the Artwork. If the Artist unreasonably fails to approve any repair or restoration, as determined solely by the City, the City shall have the right to make such repair or restoration. To the extent practical, as determined solely by the City, the Artist shall be given the opportunity to make or personally supervise significant repairs and restorations and shall be paid a reasonable 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 commercially reasonable 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 17 are in lieu of any rights that the Artist may have under VARA, or any other applicable remedy at law or equity.

SECTION 18 – 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 Thousand and 00/100 Dollars (\$1,000.00) per day for each calendar day beyond the dates set forth in the Agreement that the Artist fails to achieve substantial completion for the Project. 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 19 - 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 20 - 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 21 – LICENSES AND PERMITS

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

SECTION 22 - INDEPENDENT CONTRACTOR

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

SECTION 23 – ASSIGNMENT

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

SECTION 24 – 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
dana.hernandez@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:
[Address]

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 25 - 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 26 - 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 27 – 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, governmental restrictions, governmental controls, governmental regulations, 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 28 - 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 29 - 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 30 - 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:

[NAME OF ENTITY] [Type of entity]

Signature

Print Name

Print Title

EXHIBIT A
(BASIC SERVICE STANDARDS & SERVICES)

I. Basic Service Standards.

- A. Artist, if doing business under an assumed name, i.e. an individual, association, partnership, corporation, or otherwise, shall be registered with the Utah State Division of Corporations and Commercial Code.
- B. Artist shall assume full responsibility for damage to City property caused by Artist's employees or equipment as determined by designated City personnel.
- C. Artist shall be solely responsible for the safety of Artist's employees and others relative to Artist's work, work procedures, material, equipment, transportation, signage, and related activities and equipment.
- D. Artist shall possess and keep in force all licenses and permits required to perform services under this Agreement.
- E. No guarantee of the actual service requirement is implied or expressed by this Agreement. Service requirements shall be determined by actual need.
- F. The standards set forth in this Section are in addition to any additional standard set forth in the Agreement.

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

- A. Artist shall furnish all materials, equipment and labor required for the Project.
- B. Final artwork must be in accordance with the proposal approved by the Salt Lake Art Design Board without any significant design change, unless approved by the Board.
- C. Final artwork must be in accordance with the following goals for the artwork listed in the RFQ:
 - 1. Responds to the architectural and natural environment;
 - 2. Is of the highest quality—creatively and technically;
 - 3. Serves as a catalyst for social change and enhanced quality of life in the downtown business and cultural district;
 - 4. Exemplifies strong, imaginative design and content and contributes to a visually stimulating environment that lends itself to thought and adds character to the site;

5. Encourages an element of interactivity;
 6. Is prominent at all hours and proportionate to its surroundings;
 7. Meets all public safety, structural, and maintenance standards and complies with the Americans for Disabilities Act (ADA), and all other applicable laws, codes and regulations.
- D. Artwork could be suspended and/or attached to an existing building, contingent upon permission and agreement with third-party property owners. Permanently installed or applied elements on the street may be considered as long as access to and the function of the street is not compromised.
- E. The Artist will work with the Design Board to further conceptualize the project including determining preparation of the site, i.e. structural, electrical requirements, City codes, etc. and the method in which the work will be installed.