



Artist's Contract

THIS AGREEMENT made effective this _____ DAY of _____, 20__

BETWEEN:

THE EDMONTON ARTS COUNCIL SOCIETY

(hereinafter called the "Society")

- and -

XXX

(hereinafter called the "Artist")

- and -

THE CITY OF EDMONTON

(hereinafter called the "City")

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- A. The Society has been contracted by the City to fulfill the requirements stated in the City of Edmonton Policy “Public Art to Enhance Edmonton’s Public Realm” (C458D), or its replacement/successor policy, to supervise and control expenditure of funds for related artwork, and to carry out the program goals and objectives of that Policy;
- B. The Society has held a selection committee meeting in order to select an Artwork for XXX (the “Project”);
- C. The Artist’s submission was chosen by the Society’s selection committee for the XXX;

In consideration of the mutual covenants herein contained the Parties agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1 “Artwork” means the final piece of artwork that will be created for display at the Place of Installation and developed from the design and specifications provided by the Artist and approved by the Society and the City, as further described in Schedule “A” attached hereto.
- 1.2 “Work” means the act of researching for, planning, designing, specifying, producing and fabricating the Artwork as well as storing, delivering, and installing it at the Place of Installation.
- 1.3 “Completion Package” is a manual provided by the Society to be completed by the Artist upon completion of the Work and which describes the completed Artwork in detail, including material specifications and maintenance program. Described in 3.12 Final Project Documentation.
- 1.4 “Place of Installation” means the location where the Artwork will be installed and is described in Schedule “A” to this Agreement.
- 1.5 “Projected Completion Date” is the date the Work can be entirely installed as estimated at the time of execution of this Agreement, as potentially modified by 3.3 DATE OF PERFORMANCE and described in Schedule “C”.
- 1.6 “Extended installation Date” is a date the Place of Installation will be ready for the Work to be entirely installed should the Projected Completion Date need to be adjusted pursuant to 3.3 Date of Performance and as described in Schedule C.

ARTICLE 2 PAYMENT

2.1 PRICE

- (a) The price to be paid by the Society for the Work and Artwork, completed and installed as contemplated herein, shall be \$XXX CAD inclusive of all applicable federal and provincial taxes including G.S.T. Such payment shall be full compensation for all work performed and/or services rendered to complete the Work.

- (b) The Artist shall ensure that payments will be made to all suppliers and subcontractors that may be engaged by the Artist in regard to the design, fabrication, storage, delivery and installation of the Artwork. Should the Society request such, the Artist shall provide a Statutory Declaration of payments made.

2.2 PAYMENT SCHEDULE

Payment shall be structured in a payment schedule to the Artist as aligned with deliverables outlined in Schedule C, and as follows:

A—Design Development Package (20%):

- a) \$XXX Upon execution of this Agreement by all parties and submission of an invoice from the Artist;
- b) \$XXX Upon Society approval of concept package (see schedule C) and submission of an invoice from the Artist.

B—Fabrication (60%):

- a) \$XXX upon Society approval of Fabrication Plan (see Schedule C) and submission of an invoice from the Artist;
- b) \$XXX upon commencing fabrication (see Schedule C) and invoice from the Artist and notice that the fabrication status is initiated.
- c) \$XXX upon completion of fabrication and submission of an Installation Plan (see Schedule C) and invoice from the Artist and notice that the fabrication status is complete, and installation status is ready.

C – Installation (15%):

- a) \$XXX as soon as reasonably possible after satisfactory installation of the finished Artwork, in its final location, notification of deficiencies (if any) and upon submission of an invoice;
- b) \$XXX subject to approval by the Society’s designated agent, rectified deficiencies (if any) and upon submission of an invoice and the Artwork Project Completion Package from the Artist.

D) – Holdback Funds: 5%

- \$XXX up to 90 days after the City receives the Transfer of Title.

The monies withheld as holdbacks will be reserved by the Society to be used should the Artist fail to remedy any default by the Artist, any deficiency in the Artwork, or any breach of the warranties described in Section 4.3 during the holdback period, or in the event a builder’s lien is registered in relation to the Work.

Subject to Section 2.3, all remaining holdback funds will be paid by the Society to the Artist for up to 90 days after the date the City receives the Transfer of Title pursuant to Section 8.1.

2.3 WITHHOLDING PAYMENT

- (a) The City and Society may withhold payments to the extent necessary to protect the City and Society if in the opinion of the City and Society the Artist has failed to provide any portion of each deliverable outlined in Schedule “C”.
- (b) If any builder’s lien is filed in accordance with the Builders’ Lien Act, R.S.A. 2000, c. B-7 or any successor legislation, in respect to or arising out of any of the Work performed or products being furnished under this Agreement, in addition to the remedies provided for in section 6.4 of this Agreement, no payment need be made to the Artist until the Artist provides evidence that the Work is clear of Builders’ Liens and any other charges arising out of the Artist’s execution of the Work.

2.4 INVOICING

- (a) The Artist shall submit appropriate invoices to the Society in accordance with Schedule “C” Deliverables and per payment schedule, which, subject to section 2.3, shall be payable within 30 days of receipt.
- (b) All invoices submitted by the Artist to the Society shall be marked with the Project Name and include:
 - A list of the completed Deliverables for which payment is being claimed; and
 - GST as a separate amount.

2.5 NON-RESIDENT ARTIST WITHHOLDING TAXES

Before paying the Artist, the Society shall determine if a non-resident withholding tax is applicable. If required, the City and Society may withhold and remit the withholding tax to the relevant government authority, unless the Artist provides the City with a waiver letter from Canada Revenue Agency. This remission is considered payment in accordance with the Price, and the amount of the withholding tax remitted will constitute a payment to the Artist.

It is the Artist’s responsibility to inform the Edmonton Arts Council if their country has a treaty with Canada reducing those withholding taxes. Withholding taxes are incurred on any part of the services that are performed in Canada by an international Artist and/or their contractors. Waiver must be received by the Edmonton Art Council 30 days before payment is issued.

ARTICLE 3 WORK

3.1 DESCRIPTION OF WORK

- (a) The Artist shall create, design, execute, fabricate, transport and install an original Work in conformity with the artistic and technical elements described in the Description of Artwork (the “**Description of Artwork**”) attached as Schedule “A”, as further developed in accordance with this Agreement, and with the comments provided by the City, the Society and Society’s selection committee as set out in Schedule “B” (the “**Revision / Comments**”),
- (b) The Artist agrees to provide all Work and materials necessary to create the Artwork and to fulfill all its obligations as set out in this Agreement.
- (c) The Artist is responsible for providing all deliverables as described in Schedules “C”.
- (d) In producing the Work, the Artist shall use the skills, diligence and workmanship as are normally found in the artistic profession, and will ensure that all materials incorporated into the Artwork are of the utmost quality and design expected in the public art industry, and are designed to withstand the elements and conditions of the Place of Installation.

3.2 ACQUAINTANCE WITH CONDITIONS

The Artist is responsible to acquaint themselves with the project site and with all conditions pertaining to the performance of the services. The City and the Society shall accept no responsibility or cost for failure of the Artist to do so. Costs for remedy of unforeseen and/or undetermined issues related to the site conditions may be considered for negotiation between the City, the Society and the Artist, at the Society’s discretion.

3.3 DATE OF PERFORMANCE

- (a) The Artist shall commence work upon the effective date of this Agreement and shall complete the Work to the satisfaction of the Society by the Projected Completion Date, unless such time limits are otherwise modified by written notice to the Artist.
- (b) The Artist agrees the Projected Completion Date may be extended or otherwise modified due to capital project schedule changes or other factors unknown at the time of signing this Agreement. The Artist will be notified in writing of the modified or Extended Completion Date and the Artist will act reasonably to make necessary adjustments to schedules and deliverables at no cost to the City or Society.

3.4 DELIVERY AND INSTALLATION

- (a) The Artist is responsible for delivering and installing the Artwork at the Place of Installation to the satisfaction of the Society, by the Projected Completion Date or Extended Installation Date, as applicable.
- (b) The Artist will notify the Society in writing when fabrication of the Artwork is completed and the Artist is ready for its transport, delivery and installation at the Place of Installation. The Society will review all permits and approvals and confirm in writing to the Artist that the site is ready for installation.
- (c) The Artist will transport, deliver, store and install the completed Artwork at the site in compliance with the approved design and all risks, costs and liabilities in respect thereof shall be borne by the Artist under the terms of this Agreement.
- (d) The Artist shall ensure that when the Artwork is delivered and installed to the site it is free from all defects and meets the specifications, and as may be revised following Recommendations and Design Development, "Schedules B and C".
- (e) Upon installation of the Artwork the Artist shall ensure that all dirt, imperfections and extraneous materials are removed from the Artwork and the work site.
- (f) For clarity, if the Artist fails to install the Artwork at the Place of Installation to the satisfaction of the Society, by the Projected Completion Date or Extended Installation Date, as applicable, the City or its contractor, may continue to move forward with the construction of the Project and the Artist will be fully responsible for any additional costs incurred by it as a result of the aforementioned failure to install.

3.5 EARLY COMPLETION OF ARTIST'S SERVICES

The Artist shall bear any additional transportation, insurance, storage or other costs resulting from the completion of the Artist's services prior to the Projected Completion Date or Extended Installation Date.

3.6 CONSTRUCTION DELAY

If, when the Artist completes fabrication of the Artwork and notifies the Society that the Artwork is ready for installation, the Artist is delayed from installing the Artwork by the Projected Completion Date or the Extended Installation Date as a result of the preparation of the construction site not being sufficiently completed, and if the Artist cannot reasonably extend storage and insurance, the City will reimburse the Artist for reasonable additional transportation, insurance, storage, or other related costs incurred for the period between the Project Completion Date, or Extended Installation Date and the date upon which the construction site is sufficiently complete to permit installation of the Artwork.

3.7 SUBCONTRACTING

- (a) The Artist may subcontract portions of the services at the Artist's expense, provided that the subcontracting will not affect the design, appearance or visual quality of the Artwork; will be carried out under the personal supervision of the Artist; will comply with applicable laws, and provided that the Artist indemnifies and holds harmless the City and Society against any costs, damages, claims, suits or losses in respect of such subcontracted work.
- (b) The parties further agree that such subcontracting shall not, by itself, modify in any way the amount payable under this Agreement or the representations, warranties, covenants and agreements made by the Artist.
- (c) The Artist further acknowledges and agrees that the Artist is solely responsible for any work performed by third parties for the Artist and that the Artist remains solely responsible for compliance with this Agreement.
- (d) The Artist shall provide the Society on request with copies of all agreements and/or understandings between the Artist and their consultants, subcontractors or other third parties rendering direct services under this Agreement in which the Society is not a party.

3.8 REVIEW AND REPORTING OF WORK IN PROGRESS

- (a) The Society, or its representative, shall have the right at reasonable times to review the progress of the Work and the Artwork itself, in order to monitor and evaluate performance, compliance, and/ or quality assurance under this Agreement.
- (b) The Artist shall allow representatives of the Society to view the Work as requested.
- (c) The Artist shall keep the Society's designated agent advised of the status of the production of the Artwork during all phases of the design and production.
- (d) The Artist shall submit to the Society written interim reports and/or production images in accordance with Schedule "C", for the Society to determine the completion of the phases of Work prior to payment.

3.9 ADDITIONAL DOCUMENTATION

If requested by the Society, the Artist shall prepare and present to the Society maquettes, detailed drawings, response to conservation review, and/ or other documents including stamped drawings to scale and/ or analysis by a licensed engineer, to describe the size and character of the Artwork and/ or its installation. Such items shall by this reference, be incorporated into this Agreement.

3.10 CHANGES TO WORK PRIOR TO COMPLETION

- (a) A significant change from the original concept of the Artwork includes any change in the artistic expression, concept, scope, design, colour, size, dimensions, materials, texture or location of the Artwork and those that affect installation, scheduling, site preparation, maintenance and preservation of the Artwork.
- (b) Prior to execution of any significant changes, the Artist must provide to the Society for review and approval, a written, detailed description and/or images as relevant of any significant changes in the concept, design, execution, fabrication, transportation, delivery or installation of the Artwork not permitted by or not in conformity with the original proposal or final approved Design Development document.
- (c) Written approval shall be issued stating the approved change(s), and by this reference, be incorporated into this Agreement.
- (d) If the Society does not approve the proposed change(s), the Artist shall continue to design, execute, fabricate and install the Work in conformity with the approved proposal for the Work.
- (e) The Artist shall not perform any altered or additional services without prior written permission from the Society's delegate. Any adjustments to the budget resulting from approved changes are the sole responsibility of the Artist. No extra payments will be allowed as a result of changes unless otherwise agreed in writing.

3.11 ACCEPTANCE OF THE WORK

- (a) The Artist shall advise the Society in writing when the Artwork has been completed and installed in conformity with the approved design and the Artist has completed all obligations, services and deliverables under this Agreement and all modifications.
- (b) The Society will, within thirty (30) days of receiving the notice of completion, advise the Artist in writing that either: (i) the City accepts the Artwork, or (ii) the City does not accept the Artwork.
- (c) If the City does not accept the Artwork, the Society shall send a **Notice of Response** (the "NOR") identifying in writing any obligations, services or deliverables that the Artist has not satisfactorily met, any defects in the Artist's performance, and the requirements for the Artist to cure any such default, at the Artist's own costs.
 - The Artist shall have 30 days from the date of the NOR to cure any defects in the Artist's performance identified in the NOR. The Artist will advise the Society in writing when the Artist has corrected such deficiencies.
 - Should the Artist be unable to complete cure of defects within thirty (30) days, the Artist shall provide a schedule to the Society that is approved by the Society indicating when completion will occur.

- (d) Final Acceptance of the Artwork by the Society shall be constituted when :
- The Society promptly and reasonably determines that all defects are cured; and
 - A Notice of Acceptance is issued to the Artist by the Society; and
 - The Completion Package, provided by the Society, is completed and signed by the Artist, and is accepted by the Society and City.

3.12 FINAL PROJECT DOCUMENTATION

- (a) **Completion Package**
The Artist shall prepare and deliver all information necessary for the Society to properly care for, maintain and conserve the Artwork in the form of the Completion Package as detailed in Schedule “C”, including information regarding the physical make-up of the Artwork, methods and materials and information about the artistic intent of the Artist in the design, fabrication, and installation of the Artwork, and the type and source of replacement parts, as well as recommended methods to maintain and repair the Artwork.
- (b) As part of the Completion Package the the Artist will provide a biography, artistic statement, and any other materials required for communication, education and conservation of the Artwork as stipulated by the Society.

3.13 RISK OF LOSS

- (a) The risk of loss or damage to the Artwork will remain with and be borne by the Artist until Final Acceptance (3.11(d)) of the Artwork by the City and the Society and transfer of title to the Artwork to the City as per 8.1 TITLE. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage during the creation, storage, transportation, delivery of the Artwork, and through completion of installation of the Artwork.
- (b) The Artist shall provide a policy of insurance to cover the risk of damage to or loss of the Work until Final Acceptance and Title transfer of the Artwork.
- (c) In the event of any physical loss or damage to the Artwork prior to the acceptance of the Artwork, the Artist shall immediately notify the Society and rectify the loss and damage by repair, restoration, replacement or other appropriate means at no additional cost to the Society or City. The Artist shall properly document the process and report to the Society.

3.14 WORK SITE SAFETY

- (a) The City shall provide a safe site to enable the Artist and all agents or servants of the Artist to deliver and install the Artwork safely.
- (b) The Artist and all of the Artist’s subcontractors, suppliers, agents, and employees will respect, conform and comply with all safety rules, codes of conduct and

protocols of the City's Prime Contractor, if any, while completing work on a job site.

- (c) Failure of the Artist to comply with any City of Edmonton safety policies may result in an immediate suspension of this Agreement, until the unsafe situation is resolved. Associated costs for associated delays/resolutions will be carried by the Artist.

3.15 COMPLIANCE WITH LAWS

- (a) The Artist shall fully comply with all applicable laws and ensure that the Work complies with all relevant federal, provincial and municipal legislation, codes, bylaws and regulations as well as City policies and procedures. Where there are two or more laws, bylaws, regulations or codes applicable to the Work, the more restrictive shall apply.
- (b) It is the responsibility of the Artist to ensure that all subcontractors, suppliers, agents, and employees employed by the Artist in the performance of this Agreement are aware of and conform to all applicable Federal, Provincial and local safety legislation, regulations and rules.
- (c) The Artist shall obtain and pay for all necessary permits or licenses required for the execution of the Work.
- (d) If the Artist performs the Work contrary to any laws, bylaws, regulations, codes and orders of any authority having jurisdiction, the Artist shall be responsible for and shall correct any violations thereof and shall bear all resulting costs, expenses, penalties and damages.
- (e) If the City and Society are required to do anything or take any steps or pay any sums to rectify such non-compliance, the City and Society may subtract the cost of such rectifications from any monies owed to the Artist. Such action shall not be deemed a waiver of any action that the City and Society may pursue to collect any monies paid that exceed the monies owed to the Artist.

ARTICLE 4 ARTIST'S REPRESENTATION AND WARRANTIES

4.1 WARRANTIES OF TITLE AND COPYRIGHT

The Artist represents and warrants that:

- (a) The Artwork is original to the Artist and does not violate any copyright of any other person. The Artist shall indemnify and hold harmless the Society, and the City, its partners, employees, agents, servants and contractors for any and all losses, claims,

demands, suits, actions, judgments or costs that may arise from the allegation that the Artwork is not original to the Artist.

- (b) Upon Final Acceptance of the Artwork and final payment to the Artist, subject to Section 2.2(D) and 2.3, the City of Edmonton shall acquire Title to the Artwork.
- (c) The Artwork, or duplicate thereof, has not been sold or transferred to a third party;
- (d) The Artwork is free and clear of any claims, liens, encumbrances or charges from any source whatsoever;
- (e) The Artist has not made, and will not make, any agreement, assignment or license which will conflict with or impair the complete enjoyment of the title transferred and the rights and privileges granted to the City.
- (f) The Artist has and will not sell or reproduce the Artwork or allow others to do so without the prior written consent of the City and Society. The Artist will not create an identical Artwork for any other purpose.

The warranties described in this Section shall survive the expiration or termination of this Agreement.

4.2 WARRANTIES OF QUALITY AND CONDITION

The Artist represents and warrants that:

- (a) Any materials used in the Artwork, as fabricated and installed, will be free of defects in material and construction, including any qualities which cause or accelerate deterioration of the Artwork;
- (b) The Artwork shall conform in all respects to the terms of this Agreement;
- (c) The Artwork shall be fit and suitable and perform satisfactorily for the purposes and under the conditions made known to the Artist by the Society or which were reasonably inferable.

4.3 WARRANTIES AGAINST DEFECTS

- (a) The Artist warrants and represents that the Work shall comply with the appropriate stamped engineering documents and be free from defective or inferior materials and/ or inferior or faulty fabrication and installation techniques, and is designed to withstand the elements and conditions of the Place of Installation.
- (b) At the Society's option, the Artist shall remedy and/ or pay for any loss or damage resulting from a breach of the warranties and representations set out in 4.3(a) above

or from specialty parts, which occurs or appears within the specified warranty period after the acceptance of the Artwork.

- (c) Warranty of the work and all components shall survive the date of Final Acceptance of the Artwork for the time as specified and defined as Warranty Period in Schedule “B”.

4.4 BREACH OF WARRANTIES AND CURE

- (a) The Society will give notice to the Artist of any observed breach of warranty with reasonable promptness. The Artist will, at the request of the Society, and at no cost to the City and the Society, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards and executed in a manner approved by the City and Society.
- (b) The Artist acknowledges and agrees that the representations and warranties of this Section apply equally to any cure executed by the Artist and shall survive for the same period of warranty immediately thereafter in relation to such cure.
- (c) The responsibility for the determination of the Artist’s liability for faults or defects in the Work during the warranty period shall be solely that of the Society.
- (d) The granting of any payment by the City or the Society, or the receipt thereof by the Artist, shall in no way lessen the liability of the Artist to replace unsatisfactory work, equipment, or materials.

4.5 ARTIST OTHER RESPONSIBILITIES

- (a) **Coordination with the Society and its Agents**
The Artist agrees to cooperate in good faith with the Society and to be available as reasonably necessary for consultation with the Society, project team or third parties during all stages of the Work.

The Artist shall attend construction coordination meetings with the Society and the City’s general contractor, architect and other parties as appropriate to communicate about the Work and to coordinate appropriate integration and/ or installation of the Work. The Artist shall be present to oversee installation and review of deficiencies as required until the Work is accepted.

- (b) **Minimum Interference**
The Artist and Artist’s agents shall cause minimal interference with the City’s operations and the operations of other artists or contractors on the premises and, upon completion of services, leave the premises clean and free of all tools, equipment waste, material and garbage.
- (c) **Public Events**

The Artist shall participate in at least one public event relating to the Work, such as an opening, dedication ceremony, public presentation, or other educational outreach. The Artist shall be available for the public event(s) at such time(s) as may be mutually agreed upon by the City, Society, and the Artist.

- (d) Contact information
In the performance of services, the Artist shall, where applicable, provide contact information for the Artist or Artist's representative to the City Project Manager through the Society's Public Art Project Officer.

ARTICLE 5 INSURANCE

- 5.1** Upon signing of this Agreement, the Artist shall provide the following insurance coverage:
- (a) General liability insurance in adequate quantity to protect against legal liability arising out of contract activity but not less than Two Million (\$2,000,000) Dollars per occurrence for personal injury and for property damage. Such insurance should be in a form that is sufficient to cover all exposure arising from the Work and Artwork at each stage of the Work;
 - (b) Automobile liability insurance on all vehicles owned, operated or licensed in the name of the Artist, to be used for the Project, in an amount not less than one million dollars (\$1,000,000); and
 - (c) Property insurance on an All Risk basis for the full value of the Work and Artwork stock and equipment (as applicable).
- 5.2** The insurance policy shall be maintained in full force and effect during the term of this Agreement, through the design, production, installation, deficiency review of the Work and until the Artwork is accepted and the title of the Artwork is transferred to the City,
- 5.3** Such insurance policy shall name "The City of Edmonton" and the "Edmonton Arts Council Society" as additionally insured under the insurance policy. All policies shall be primary to any other valid and collectable insurance.
- 5.4** The Artist shall be responsible for the payment of all premium and deductible amounts relating to the insurance policies.
- 5.5** The aforementioned insurance coverage shall be in a form and with insurers acceptable to the City and Society and such policies shall be endorsed to provide the Society with thirty (30) days prior written notice of cancellation or material change.
- 5.6** The Artist shall provide proof of insurance satisfactory to the City and Society and a copy of the renewal or continuance of the insurance prior to the expiry of each certificate.

- 5.7** The Artist is responsible for ensuring that any subcontractors provide adequate insurance coverage for the activities arising out of subcontracts.
- 5.8** It is understood and agreed that the amounts of required insurance do not in any way define or limit the liability of the Artist to indemnify the City and Society, nor does the City and Society make any representations as to adequacy of said amounts or scope of insurance coverage in the event of injury or damage.

ARTICLE 6 INDEMNITY

- 6.1** The Society shall indemnify and hold harmless the Artist from all claims, costs, damages, or expenses arising out of the negligence of the Society.
- The City shall indemnify and hold harmless the Artist from all claims, costs, damages, or expenses arising out of the negligence of the City.
- 6.2** The Artist shall indemnify and hold harmless the City, the Society and their agents, servants, contractors and employees from and against any and all losses, claims, demands, payments, suits, judgments, charges, expenses, actions, causes of action and costs arising out of or in consequence of:
- (a) the willful actions of the Artist or Artist's employees, agents, or subcontractors, including, but not limited to, trespass or nuisance;
 - (b) the negligent performance of the Artist's services;
 - (c) any physical deficiencies or deformities or structural failures of the Work and Artwork; or
 - (d) the violation or infringement of any copyright.
- 6.3** This Indemnity shall survive this Agreement.
- 6.4** The Artist further covenants to indemnify both the City, the Society and the occupier of the lands on which the Work and Artwork shall be situated, from and against all liens, claims, actions, costs and damages which may arise during the fabrication or installation of the Artwork.
- 6.5** The City and Society may set off any sums owed by the Artist to the City pursuant to this indemnity from any sums still owing to the Artist. This right of set-off is in addition to any other remedies available to the City and Society under the laws of Alberta.
- 6.6** The City and Society will not be liable or responsible for any bodily or personal injury or property damage of any nature that may be suffered by the Artist, its employees, agents or sub-contractors in the performance of this Agreement, except to the extent of any negligence or misconduct on the part of The City or Society.

ARTICLE 7 MAINTENANCE AND CONSERVATION

- 7.1** The City will, subject to the will of City Council and the availability of funding:

- (a) reasonably assure that the Artwork is properly maintained and protected; and
 - (b) will reasonably protect and maintain the Artwork against the ravages of time, vandalism and the environmental elements.
- 7.2 The City agrees to keep the Artwork in a clean condition, free of debris or banners or signage which defaces the Artwork, all to the level which the Society considers to be appropriate and in accordance with the maintenance manual to be approved by the Society.
- 7.3 The reasonable maintenance of the Artwork will not require procedures substantially in excess of those recommendations described in the Design and the Completion Package submitted by the Artist as described in Schedule “C”.
- 7.4 With the exception of the Warranty period outlined in Section 4 and Schedule “B”, and with the exclusion of the maintenance criteria set out in the manual submitted by the Artist, in the event that the Artwork shall require repairs subsequent to the date of acceptance arising from normal weathering and “wear and tear”; then in such event the City and Society will have the right to determine, after consultation with the Artist and Society’s conservator, when and if repairs and restorations to the Artwork will be made.
- 7.5 In determining qualified individuals to implement a conservation plan for the Artwork, the Society will consider the Artist who created the Artwork, specialized service providers, and City or Society staff. Any work and material expense undertaken by the Artist in the context of conservation work shall be compensated by the Society unless such work results from a design or production flaw in the Artwork within the Warranty period.

ARTICLE 8 TITLE AND OWNERSHIP RIGHTS

- 8.1 Title
- Title to the Artwork will pass to the City automatically upon acceptance of the Artwork by the City pursuant to Section 3.11. Upon such acceptance, the Artist shall promptly deliver to the City the transfer of title document attached as Schedule “D”, duly executed by the Artist (the “**Transfer**”) and the final invoice.
- 8.2 The maquette for the commissioned artwork will be property of the City (Edmonton Civic Art Collection) unless otherwise negotiated by the Artist.
- 8.3 The City and Society shall have the right to remove the Artwork from the site and/or de-accession the Artwork from the City’s art collection at any time for the following reasons:
- (a) Endangerment of public safety;
 - (b) Excessive repairs or maintenance, or repair is not feasible;
 - (c) Public accessibility is no longer available;
 - (d) Demolition of a structure incorporating the Artwork or redevelopment of a site incorporating the Artwork;
 - (e) Expiry of lifespan of the Artwork; or

- (f) Any other reason set out in City Policy C458D, Public Art to Enhance Edmonton's Public Realm, or its replacement/successor policy.

without violating or infringing the Artist's moral rights in relation to the Artwork.

- 8.4** The City shall have the right to donate or sell the Artwork at any time.
- 8.5** The City also agrees to exhibit the Artwork in its original and complete format subject to the principle of portability of the Artwork to another site deemed by the City to be appropriate in circumstances where the municipal authority or occupier of the lands calls on the Society to relocate the Artwork or upon the expiry of the license of use held by the Society for the lands as a Place of Installation for the Artwork. The Artist shall have the right to remove their name from the Artwork in the event of their disapproval. Any costs of relocation of the Artwork shall be the responsibility of the City and/or Society.

ARTICLE 9 COPYRIGHT

- 9.1** The Artist retains all rights under the *Copyright Act* of Canada except as modified by this Agreement or otherwise agreed and confirmed in writing. Notwithstanding, the Artist agrees not to make an identical three-dimensional Artwork.
- 9.2** The City and the Society shall not make any three-dimensional reproductions of the Artwork without the prior written consent of the Artist.
- 9.3** The Artist grants and licenses to the City and the Society the following rights:
- (a) the exclusive right to exhibit the Artwork in public in perpetuity.
 - (b) the Artist authorizes the City and Society, or any person, firm or corporation acting on the City's behalf, or with the City's authorization the non-exclusive right to photograph, draw, film or videotape the Artwork, or the Work-in-Progress as the case may be, and to reproduce, publish and distribute copies of such photographs or cinematographic works in perpetuity, throughout the world and by any and all means and in any and all media and formats, whether now known or hereafter devised. The Artist agrees that no compensation will be payable to the Artist by the City or any other person for the exercise of these rights.
 - (c) the Artist retains the right to have the Artist's name associated with the Artwork in photographs, drawings or other reproductions of the Artwork by the Society and the City of Edmonton.
 - (d) the Artist authorizes the Society and the City to use the Artist's names, likenesses, and biographical information in connection with the display or reproduction and distribution of the Artwork and in the promotion and advertising of the City of Edmonton's Percent for Art Policy, or any other not-for-profit promotion and educational purposes.

9.4 Except to the extent permitted in subsection 9.3 above or elsewhere in this Agreement, the City and Society agree to not intentionally modify the Artwork without first obtaining the Artist's written consent.

9.5 Assignment of Title and Copyright in the Event the Work is not Completed by the Artist

Notwithstanding Section 9.1, in the event of any death or incapacity of the Artist before the complete installation of the Artwork, or, if, for any reason the Artist does not complete the work required for any phase of the services, that portion of the work completed prior to the Artist ceasing production of the Work (the "Work in Progress") shall be assigned to the City, at the City's option.

The City shall be vested with Title to the unfinished Artwork upon paying the Artist, their personal representatives, administrators, executors or executrix a sum in the direct proportion of the percent of the Artwork completed to that date as determined by the City. The Artist, or the Artist's heirs, executors or permitted assigns, as the case may be, will, within ninety (90) days of the Artist ceasing production of the Work, complete the Transfer in respect of the Work in Progress and will execute and deliver the Transfer to the City.

ARTICLE 10 MORAL RIGHTS

10.1 The Artist acknowledges and agrees that the Artwork, by nature of its composition and location, will be subject to the ravages of nature, pollution, vandalism and time, and that the City may in future use the site of an Artwork for civic purposes requiring the Artwork's removal or relocation.

10.2 While the Society and the City will reasonably seek to maintain the Work according to the Artist's original intent, the Society and the City must retain the right to remove or relocate the Artwork if the site of an Artwork is required for purposes deemed necessary or expedient by the Society or the City. At any time such removal or relocation is in the opinion of the Society or the City deemed necessary, the Artist may decide the Artwork is no longer the Artwork as originally intended and the Artist may request that all signs and acknowledgments linking the Artwork to the Artist be removed. The Artist agrees that such removal or relocation shall not violate the Artist's moral rights in relation to the Artwork. The Society will, by notice to the Artist, endeavour to consult with the Artist on the Artwork's removal, relocation or maintenance, or changes to the Site location which impacts the Artwork.

ARTICLE 11 CREDIT AND PUBLICITY

11.1 Preapproval of Public Release written Materials

The Artist will consult the Society prior to approving media opportunities or the release or distribution by the Artist of any written materials or press releases regarding the Artwork.

The Society will make reasonable efforts to consult with the Artist prior to the release by the City or Society of any written materials or press releases regarding the Artwork until the Artwork is accepted into City's Art collection.

11.2 Credit to the Artist

- (a) The City and the Society agree to use reasonable best efforts to give credit to the Artist as creator of the Artwork in all photographs and cinematographic works and any copies thereof embodying the Artwork that are made or authorized by the City or the Society. The placement, form, type and size of such credit shall be at the City or the Society's sole discretion, as appropriate. Casual or inadvertent failure by the City, the Society, or any third party to comply with this provision shall not constitute a breach of this Agreement.
- (b) The Society shall provide a permanent plaque in keeping with the quality and type of the Artwork, which will identify at a minimum, the name of the Artist, the name of the Artwork and the year of the Artwork.

11.3 Credit to the City

- (a) The Artist agrees to use reasonable best efforts to give credit to the City as the owner of the Artwork, and to "the City of Edmonton Public Art Program"
- (b) All exhibitions by the Artist that include the Artwork will contain a credit reading substantially, "an original work owned by the City of Edmonton and commissioned through the City of Edmonton Public Art Program."

ARTICLE 12 FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY

- 12.1** The Artist agrees that all data, information and material provided to the Artist by the City will be confidential, both during and after the term of this Agreement. The Artist acknowledges that this is a fundamental term of this Agreement.
- 12.2** The Artist acknowledges that, in adherence to the Freedom of Information and Protection of Privacy Act, R.S.A. 2000, c. F-25 ("FOIP"), the Artist is required to comply with the provisions of FOIP pertaining to all information and records relating to, obtained, generated, collected or provided under or pursuant to this Agreement.

ARTICLE 13 ARTIST AS INDEPENDENT CONTRACTOR

- 13.1** The parties acknowledge that the Artist and the Artist's subcontractors are independent contractors and are not employees, or agents or under control of the Society or the City.
- 13.2** The Artist is responsible for payment of all costs related to the Work, including but not limited to subcontractors, required materials, supplies, equipment, labor of assistants,

insurance, communications, studio space, travel, lodging, sustenance, transportation, storage, rentals, installation, deficiency cures, documentation, and Artist participation in a public event related to the Work.

13.3 WORKERS COMPENSATION

The Artist shall provide to the Society evidence satisfactory to the City of compliance with the Workers' Compensation Act, R.S.A. 2000, c. W-15 (the "WC Act") upon notice by the Society to provide such information, for the Artist and for any of the Artist's contractors, agents, or employees. If the Artist is from a jurisdiction other than Alberta whose workers are not eligible to receive benefits under the WC Act and a subcontractor or other company is not carrying such coverage on the Artist's behalf, then the Artist will provide written verification that the workers' compensation plan of its jurisdiction will provide comparable workers' compensation benefits to its workers while working in Alberta within two (2) days of receiving notice by the City to provide such information. Alternatively, at the City's sole discretion, the Artist will provide evidence that the General Liability Insurance requirement contained in Article 5.1(a) of this Agreement has been endorsed to provide employers' liability coverage for the duration of the Agreement.

ARTICLE 14 ASSIGNMENT, TRANSFER AND TERMINATION

14.1 NONASSIGNABILITY OF AGREEMENT

No assignment of this Agreement may be made by the Artist without prior written consent of the City and the Society.

14.2 The City and Society may terminate this Agreement immediately by giving the Artist notice in writing, if the Artist:

- (a) In the opinion of the City and Society, fails to satisfactorily complete the Work or any portion thereof within the time stated in this Agreement for such completion, or
- (b) Becomes insolvent, or
- (c) Commits an act of bankruptcy, or
- (d) Abandons the Project, or
- (e) Assigns this Agreement without the required written consent, or
- (f) Fails to observe, perform or complete any of the provisions of this Agreement, or
- (g) Fails to comply with safety policies, or
- (h) Has any conflict of interest, which may, in the opinion of the City, have an adverse effect on the Project.

14.3 If the Agreement is terminated for any of the reasons set out in Section 14.2, the Artist shall pay the City upon demand an amount equal to all loss or damage suffered, both directly and indirectly by the City as a result of the non-completion of the Work by the Artist. If the Artist fails to pay the City for any such loss or damage on demand, the City and Society shall be entitled to deduct the same from any payments due and payable to the Artist as well as exercise any other remedies available to the City.

- 14.4** The City and Society may terminate this Agreement by giving the Artist fourteen (14) days advance notice in writing of the date on which the Agreement is terminated if funds are not available for completion of the Work or Project, or if the City abandons the Project.
- 14.5** The City and Society may terminate this Agreement following submission of Design Development if, in their sole discretion, they find that the revised Artwork is in substantial nonconformance with the original proposal and on that basis that they do not wish to proceed. In this event, the Artist shall retain the Design Development payment, and neither party shall have any obligation to the other.
- 14.6** Subject to Section 14.3, the City and Society shall, in the event of termination of this Agreement, pay to the Artist all reasonable fees and disbursements incurred by the Artist in accordance with this Agreement up to the date of termination. The City and Society shall have no further liability of any nature whatsoever to the Artist for any loss of profit or any other losses suffered, either directly or indirectly, by the Artist as a result of the termination of this Agreement.
- 14.7** Either Party may terminate this Agreement immediately for material breach of its terms. The nonbreaching party will have the right to terminate this Agreement by giving written notice to the defaulting party.
- 14.8** In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, maquettes, titles and other work products prepared and submitted or prepared for submission by the Artist under this Agreement will, at the City's option, become its property. Within fourteen (14) business days of receipt of the City's notice of termination, the Artist will submit to the City a Transfer for the Work-in-Progress and, if required, the preliminary work. The Society will, within thirty (30) days from the Transfer, compensate the Artist for the services satisfactorily performed by the Artist prior to termination.

Notwithstanding the foregoing, the Artist will not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

- 14.9** Termination of the Work if the Artist is Unable to Proceed
If the Artist is unable, for any reason beyond the Artist's control (such as illness, disability or death), to complete the Work pursuant to this Agreement, the Society may, at its sole option, complete the Work or cause the Work to be completed using any balance remaining of the Artist's fee which is not due and owing to the Artist. The City shall obtain the title as per section 9.5.

ARTICLE 15 GENERAL PROVISIONS AND CONDITIONS

15.1 RECORDS AND AUDIT

To support all charges invoiced to the City and the Society with respect to services performed, the Artist, for a period of seven (7) years after the performance of such services, shall maintain a true and correct set of records pertaining thereto which shall include, without limiting the generality of the foregoing: the date and time worked, the location of the services and the type of services; invoices issued to The City and ledgers and similar books of record, and shall allow the City to audit such records upon reasonable request, PROVIDED HOWEVER, that the Artist shall have the right to exclude any trade secrets, formulas, or processes from such audit.

15.2 CONFLICT OF INTEREST

- (a) During the term of the Agreement, the Artist must not engage in or provide to any other person, company or entity, any service or act which could be reasonably perceived to be in conflict with the interest of the City in respect of the services being provided by the Artist to the City.
- (b) The Artist represents and warrants that it has provided written disclosure to the City and Society of any and all interests that a City employee or a City employee's spouse, children, parents, or spouse's parents may have in the Artist or this Agreement, either directly or as a shareholder, manager, director or officer of the Artist.
- (c) If the Artist enters a contract with the City in breach of this Section, the City and Society may terminate that contract and seek damages or indemnity from the Artist.

15.3 FORCE MAJEURE

Neither party shall be responsible for any failure to comply with or for any delay in performance of the terms of this Agreement including but not limited to delays in delivery, where such failure or delay is directly or indirectly caused by or results from events of force majeure beyond the control of the party sought to be charged. These events shall include, but not be limited to fire, earthquake, accident, civil disturbances, war, rationing, allocation of embargoes, strikes or labor problems or delays in transportation, inability to secure necessary materials, parts or components, delay or failure of performance of any supplier or subcontractor, acts of Nature or acts of Government.

15.4 INDEPENDENT LEGAL ADVICE

The Artist acknowledges having been advised of the Artist's right to obtain independent legal advice with respect to the terms of this Agreement prior to its execution, and further acknowledges that the Artist understands the terms, the Artist's rights and obligations under this Agreement, and signs this Agreement as Artist's own free act.

15.5 ENTIRE AGREEMENT

This Agreement and schedules attached form the entire agreement between parties and shall supersede all prior communications, representations and agreements either oral or written with respect to the subject matter.

15.6 MODIFICATION

The parties may alter or vary the terms of the signed Agreement, provided mutual consent is obtained in writing after execution of this Agreement.

15.7 WAIVER

Unless otherwise provided in this Agreement, no waiver of any provision of this Agreement will be binding or valid unless the waiving party agrees to it in writing.

15.8 SEVERABILITY

Should any provision of this Agreement be determined at any time by a court of competent jurisdiction to be invalid, illegal or unenforceable for any reason, such provision shall be considered separate and severable from the remaining provisions of this Agreement and the remainder of this Agreement shall remain in force and be binding as though such provision had not been included.

15.9 GOVERNING LAW AND JURISDICTION

The parties agree that the laws of the Province of Alberta shall govern this Agreement and the Courts in Alberta have jurisdiction of the dispute.

15.10 DISPUTE RESOLUTION

The Artist and the City and Society agree to use their best efforts to resolve any disputes arising between them as efficiently and cost effectively as possible. Whenever a clause gives a party the right or obligation to exercise its discretion or judgment, that party shall act reasonably.

At all relevant times, the Artist and the City and Society shall:

- (a) Make bona fide efforts to resolve all disputes by amicable negotiations, and
- (b) Provide frank, candid and timely disclosure of all relevant facts, information and documents to facilitate those negotiations.

The Artist and the City and Society agree that any efforts to resolve their dispute by amicable negotiation or with the assistance of a mediator, at any time during or after the performance of the services, does not suspend the expiration of any time limitation for taking any act under the Agreement unless the parties have specifically agreed in writing to waive or vary that time requirement.

15.11 NOTICES

Any notice or payment required to be given pursuant to this Agreement shall be sufficiently given if personally delivered or sent by registered mail, or electronic mail as follows:

To the Society at:

Sanjay Shahani
Executive Director
Edmonton Arts Council Society
10440 108 Avenue
Edmonton, Alberta T5H 3Z9
sshahani@edmontonarts.ca

To the City at:

XXX

To the Artist at:

XXX

Or to such other address as the parties may convey to each other in writing.
It is deemed that notice is received seven (7) days after the mailing of any notice or upon delivery, if personally delivered.

15.12 TIME IS OF ESSENCE

Time is of the essence in this Agreement.

15.13 PDF AND COUNTERPARTS

This Agreement may be executed in any number of counterparts, and may be delivered originally or by Portable Document Format (“PDF”) and each such original, or PDF copy, when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

IN WITNESS THEREOF the parties have duly executed this Agreement as at the date and year first above written.

As to form: _____
XXX

As to content: _____
XXX / PROJECT MANAGER / COE

THE CITY OF EDMONTON as represented by the Acting Deputy City Manager, Community Services

Per: _____
XXX / DEPUTY CITY MANAGER / COMMUNITY SERVICES

EDMONTON ARTS COUNCIL SOCIETY

Per: _____
SANJAY SHAHANI / EXECUTIVE DIRECTOR

As to content: _____
DAVID TURNBULL / DIRECTOR OF PUBLIC ART AND CONSERVATION

ARTIST

Per: _____
XXX

Draft

SCHEDULE “A”

Description of Work (Artist to Complete after 2nd payment)

1. Artist concept or description of work
2. Size
3. Materials
4. Fabrication
5. Research or Community Engagement if applicable
6. Place of Installation

SCHEDULE “B”

Revisions / Recommendations - (EAC to complete)

1. Selection Committee Review Recommendations as of DATE
 - None

2. City of Edmonton Recommendations as of DATE
 - None

3. Society Recommendations as of DATE
 - None

4. Warranty Period:
 - For general materials - 2 years;
 - For workmanship - 2 years;
 - For specialty parts - 2 years.

SCHEDULE “C”

ARTIST DELIVERABLES:

<ul style="list-style-type: none"> ▪ Phase A - Design Development Package (20%) 	
<ul style="list-style-type: none"> a) First Payment (\$XXX): 10% <ul style="list-style-type: none"> ✓ Contract: signed, returned ✓ Invoice #1: signed, received 	Date: XXX
<ul style="list-style-type: none"> b) Second Payment (\$XXX): 10% <ul style="list-style-type: none"> ✓ In person, phone or video meeting with City Project Team, the Society, and stakeholders. ✓ Site visits and neighbourhood visits. ✓ Present the proposal in a document including written and graphic information, material samples, budget, and a maquette and/or digital rendering of the artworks. Estimates from relevant consultants and subcontractors for work such as engineering and fabrication are required. Include engineering drawings for foundations, if determined necessary by the team. ✓ Provide a research document that describes methodology, contributors, people involved, findings, and relevance to the proposed artwork. ✓ Feedback will be provided by Edmonton Arts Council and the Project Team, then responded to by the artist(s). ✓ Invoice #2: signed, received. 	Projected Completion Date: XXX
Phase B- Fabrication (60%)	
<ul style="list-style-type: none"> a) Third Payment (\$XXX): 20% <ul style="list-style-type: none"> ✓ Fabrication Plan approved, including but not limited to: <ul style="list-style-type: none"> ○ Process of Fabrication Plan with Schedule, ○ Metal Spray Cards if applicable, ○ Schedule for progress reports with images, ○ Schedule for potential artist studio visits by Society ○ Subcontractors: confirmed ○ Schedule for Site Meetings ✓ Schedules approved ✓ Invoice #3: signed, received 	Projected Completion Date: XXX Extended Installation Date as per project construction plan. To be adjusted if required by Capital Project Schedule.
<ul style="list-style-type: none"> b) Fourth Payment (\$XXX): 20% <ul style="list-style-type: none"> ✓ Fabrication underway ✓ Progress Reports: approved ✓ Schedule Updates 	

<ul style="list-style-type: none"> ✓ Budget Updates ✓ Invoice #4: signed, received 	
<p>b) Fifth Payment (\$XXX) 20%</p> <ul style="list-style-type: none"> ✓ Fabrication complete ✓ Progress Report: approved ✓ Schedule Update ✓ Budget Update ✓ Installation Plan: complete, including but not limited to: <ul style="list-style-type: none"> ○ Install Process described ○ Transportation/delivery plan ○ On-site or other extenuating storage plan ○ Overall schedule for installation ✓ Install Plan approved ✓ Ready for installation mobilization ✓ Invoice #5: signed, received 	<p>Projected Completion Date: XXX</p> <p>Extended Installation Date: XXX</p>
Phase C – Installation (20%)	
<p>a) Sixth Payment (\$XXX): 5%</p> <ul style="list-style-type: none"> ✓ Installation completed ✓ Notice of Response issued by Society ✓ Spare Materials for Maintenance and Conservation: received, approved (if applicable) ✓ Cure for Defects, if any, initiated ✓ Invoice #6: signed, received 	<p>Projected Completion Date: XXX</p> <p>Extended Installation Date: XXX</p>
<p>b) Seventh (\$XXX): 10%</p> <ul style="list-style-type: none"> ✓ Any defects cured and approved ✓ Completion Package signed, returned by Artist, approved ✓ Transfer of Title signed by Artist ✓ Notice of acceptance issued to Artist ✓ Invoice # 7 for final payment: signed, received 	
Holdback	
<p>c) Eighth and Final Payment (\$XXX): 5%</p> <ul style="list-style-type: none"> ✓ Up to 90 days from completion package signed and returned by Artist 	

SCHEDULE "D"

TRANSFER OF TITLE

WHEREAS the City of Edmonton (the "City") and _____ (the "Artist") have entered into an agreement dated _____ of _____, 20__ (the "Agreement") for the Artist to create, design, execute, fabricate, transport, deliver and install an original Artwork (the Artwork);

AND the City has accepted the Artwork pursuant to Section 3.11(d) of the Agreement and requires an executed copy of this Transfer of Title as further assurance of the City's ownership of the Work;

THEREFORE IN CONSIDERATION of the sum of one Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Artist hereby unconditionally and irrevocably transfers to the City ownership and title in and to the Artwork.

The Artist further hereby acknowledges and agrees that, in the event that the Artist has failed to complete the Artwork according to the terms and conditions of the Agreement, this Transfer of Title shall apply to that portion of the Work completed prior to the Artist ceasing production of the Artwork.

IN WITNESS WHEREOF the Artist has executed this Agreement as of the _____ day of _____, 20__.

Artist's name (please print or type)

Artist's Signature

Date Signed

Witness' name

Witness' signature

Date Signed

