

**INDEPENDENT ARTIST AGREEMENT FOR CITY OF AURORA SCULPTURE PARK**

THIS CONTRACT is entered into this 17th day of August, 2023, by and between the City of Aurora, hereinafter referred to as “City” and Edra Soto, hereinafter referred to as “Artist.”

Whereas, the Artist has been selected pursuant to procedures adopted by the City to design, fabricate, deliver, and install a work of art, on such terms and conditions as follows:

Now, therefore, the parties agree as follows:

**1. Duties**

Artist agrees to design, fabricate, deliver and install a work of art, generally described as Graft: Aurora. The work of art is intended to be installed at the Sculpture Park located adjacent to the David L. Peirce Art & History Center at 20 E. Downer Place, Aurora, IL (hereinafter called “Site”). A more detailed description of Artist’s duties is located in section 2, Scope of Work. For purposes of this Agreement, the specific work of art created by Artists shall be referred to as the “Work” and the range of duties required of Artist under this Agreement to design, fabricate, deliver, and install the Work shall be referred to as the “Work.”

**2. Scope of work**

Phase I – Proposal – Conceptual Design of Artwork

Artist shall deliver a Conceptual Design for the Work (“Proposal”). “Conceptual Design” shall mean drawings (in plan and elevation) and/or 3-dimensional models, a written description, proposed materials and samples, and a written description of the Work in sufficient detail that Artist’s design intent is clearly expressed. The information provided in Conceptual Design shall be complete enough to fully illustrate the design intent from the Work.

The Artist is to sign an agreement for Scope of Work. This was signed on February 7, 2023. The proposal submitted shall include a budget for the cost of the design, fabrication, and transportation of the Work, as well as a schedule for estimated dates of fabrication completion and installation.

This was submitted on: April 28, 2023

Phase II – Design Development Documents

If requested by the Director of Public Art, as a result of the nature of the Work, Artist shall deliver design development documents, which shall incorporate the further development and refinement of the Proposal, and continue to express the artistic intent of the Proposal. “Design Development Documents” shall mean presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Work and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, and feasibility studies. When used in reference to the proposed Work, Design Development Documents shall fix and describe the size and character of the Work with respect to its relationship to the Site, including architectural, structural, mechanical and electric systems, materials and other elements as appropriate.

The Design Development Documents must be approved by July 15, 2023.

Due Dates. Detailed illustrations shall be provided to the within four (4) weeks of contract approval. The Detailed illustrations must show how the sculptures will be constructed (including any reinforcement), how the sculpture(s) will be attached, and how the sculpture(s) will be installed at the Site. Additional Design Development Documents may be required at a future date to be determined by the Director of Public Art.

#### Phase III – General Maintenance Plan

Artist shall deliver a General Maintenance Plan for the Work. Artist shall deliver all information necessary for the City to property care for and maintain the Work, including information regarding the physical make-up of the Work, methods and materials, and information about the artistic intent of the Artist.

The General Maintenance Plan must be approved by August 1, 2023.

Due Date. The General Maintenance Plan is due on or before the completion of the project.

#### Phase IV. Construction Documents (As Needed)

If requested in writing to do so by July 15, 2023, as a result of the nature of the Work, Artist shall deliver Construction Documents. Construction Documents shall describe and fix the location, size, materials, and character of the Work with respect to architectural, structural engineering, mechanical and electrical systems, materials, colors, methods of attachment and fabrication methods, and other such elements as may be appropriate. Construction documents must be signed and stamped by design professionals licensed in the State of Illinois.

The Construction Documents must be approved by August 1, 2023.

Artist shall deliver Mock-ups and Samples, if required by September 1, 2023.

Due Date. Construction Documents are due on or before: Forty-five (45) days prior to installation of the Work at the Site.

#### Phase V. Fabrication of Artwork

Artist shall fabricate the Work in conformance with the Proposal, Design Development Documents (if any) and Construction Documents (if any). The fabricated Work may not deviate in size, design or material from the Proposal, Design Development Documents (if any) and Construction documents (if any) unless the Director of Public Art has given prior approval of any such deviation in writing.

The final fabricated Work must be approved by the Director of Public Art, and Artist shall allow the Director of Public Art reasonable access to the Work during fabrication for purposes of inspection.

Due Date. Fabrication of the Work shall be completed on or before: prior to installation of the Work at the Site.

#### Phase VI. Delivery and Installation of Artwork

Artist shall deliver the Work to the Site. Artist shall prepare the Work for transportation in accordance with customary industry standards for the transportation of fine works of art.

Artist shall, in conjunction with the Director of Public Art, determine the optimal time for the delivery of the Work. Any change in the agreed-upon time for delivery shall require two weekswritten notice by either party.

Photographic Documentation. Artist shall deliver photographic images of the Work in progress, as well as images of the completed Work, for the City’s archives, with the invoice for the payment.

Subcontracts. Artist shall delivery subcontracts of all or any Work, as well as documentation establishing that employees, subcontractors and suppliers have been paid in a timely manner.

Due Date. Transportation and Installation are due on or before: Date to be determined by October 30, 2023.

### 3. Compensation

In consideration for Artist accomplishing said result, City agrees to pay Artist \$100,000.00. Payment shall be made as set forth below. It is understood that total compensation for all services, deliverables and travel in this Contract shall not exceed \$ 100,000.00. All request for payment must be accompanied by a detailed invoice and submitted to:

Artist’s Address: Edra Soto c/o Navillus Woodworks LLC  
2100 N Major Ave  
Chicago IL 60639

City agrees to exercise due diligence in the payment of invoices received from Artist provided no claims have been made against the Work. If a claim(s) has/have been filed against the Work within 45 days of acceptance, final payment will be withheld until City can ascertain the basis and amount of said claim. City will consider and determine the claim(s) and it will be the responsibility of the Artist to furnish information and details as may be required by the City to determine the facts or contentions involved in the claim(s). Failure to provide such information within 60 days of being notified by the City will be sufficient action for denying final payment. Furthermore, the City may use final payment and any other contract funds not yet disbursed to Artist to pay any outstanding claim(s).

#### Payment Schedule

- a. Payment 1 – Contract Execution
  - i. Upon Approval of the Agreement by the City: \$65,000.00 (sixty-five thousand dollars).
- b. Payment 2 – Work Fabrication

- i. Upon completion of all shop fabrication and approval by City, Artist may invoice City (Artist must supply support documentation as outlined in contract) for the following amount: \$25,000.00 (twenty-five thousand dollars).
- c. Payment 3 – Installation and Final Acceptance
  - i. Upon completion of installation and acceptance of the Work by the City, Artist may invoice (must supply support documentation as outlined in contract) for final payment: \$10,000.00 (ten thousand dollars).
  - ii. Entire Contract total: \$100,000.00 (one-hundred thousand dollars).

#### **4. Term**

The term of this Contract shall be completed to December 31, 2023, until the Work described herein is completed and installed as indicated in Section 2 of this agreement. If there are delays, a written extension may be allowed to June 30, 2024.

#### **5. Right, Title and Interest to the Work, Risk of Loss**

- a. All work produced under this Contract shall be the property of the City. All documents including, but not limited to, reproducible copies of tracings, drawings, estimates, field notes, investigations, design analysis and studies which are prepared in the performance of the creation of the Work are to be and remain the property of the City and are to be delivered to Director of Public Art.
- b. Upon final payment to Artist, all right, title and interest in the Work shall become vested in the City. Artist will retain all right, title and interest to any designs that are rejected by the City.
- c. Artist bears the risk of damage to or loss of the Work until title passes to the City, and shall take all necessary measures to protect the Work from loss or damage until title passes. Artist, at Artist's own expense, shall rebuild, repair, restore and make good all damage to any portion of the Work that occurs prior to title passing to the City. However, Artist is not responsible for damage occurring during installation of the Work through the sole negligence of City or City's general contractor.

#### **6. Intellectual Property and Publicity Rights**

- a. Copyright. Subject to usage rights and licenses granted to City hereunder, Artist shall retain all 17 U.S.C. §106 copyright shall not extend to predominantly utilitarian aspects of the Work, such as landscaping elements, furnishings, or other similar objects. If Artist is comprised of two or more individual persons, the individual persons shall be deemed joint authors of the Work.
- b. City's Intellectual Property License. Artist grants to City and to City's agents, authorized contractors, and assigns, an unlimited, non-exclusive and irrevocable license to do the following with respect to the Work, the Work, and any original works of authorship created under this Agreement, whether in whole or in part, in all media (including electronic and digital) throughout the universe:

- i. Implementation, Use and Display. City may use and display the Work to the extent the Artist's Work under this Agreement involves design elements that are incorporated by City into the design of the Site, City may implement such elements at the Site.
- ii. Reproduction and Distribution. The City may make, display and distribute, and authorize the making, display and distribution of, photographs and other 2-dimensional reproductions. City may use such reproductions for any City-related purpose, including advertising, education and promotional materials, brochures, books, flyers, postcards, print, broadcast, film, electronic and multimedia publicity, documentation of City's public art collection, and catalogues or similar publications. The City shall ensure that such reproductions are made in a professional and tasteful manner, in the sole and reasonable judgment of the City. Any proceeds from the sale of any such reproductions shall be used to maintain and support City's public art collection or for any other public purposes that the City deems appropriate. The license granted hereunder does not include the right to create reproductions on 3-dimensional items such as tote-bags, t-shirts, coffee mugs and similar merchandise. Such reproductions may only be created pursuant to separate license agreements with Artist.
- iii. Public Records Requests. Any documents provided by Artist to City are public records and City may authorize third parties to review and reproduce such documents pursuant to public records laws, including the State of Illinois Freedom of Information Act.
- iv. Third Party Infringement. The City is not responsible for any third party infringement of Artist's Copyright and is not responsible for protecting the intellectual property of Artist.
- v. Credit. Artist agrees that all formal references to the Work and any reproductions of the Work in any form shall include the following credit: "Collection of the City of Aurora." The City shall credit Artist for the Work upon publication of any two dimensional reproductions of the Work.
- vi. Publicity. City shall have the right to use Artist's name, likeness, and/or biographical information in connection with the display or reproduction and distribution of Work, including all advertising and promotional materials regarding City. Artist shall be reasonably available to attend any inauguration or presentation ceremonies relating to the public dedication of the Work.
- vii. Trademark. In the event that the City's use of the Work creates trademark, service mark or trade dress rights in connection with the Work, City shall have an exclusive and irrevocable right in such trademark, service mark, or trade dress.
- viii. Unique. Artist warrants that the design of the Work as expressed in the Proposal is an edition of one, and that neither Artist nor Artist's agents will execute or authorize another to execute another work of the same or substantially similar image, design, dimensions and materials as the Work. Artist may create works that utilize or incorporate various individual art elements that compromise the Work, so long as the work utilizing or incorporating such individual elements (1)

does not consist predominantly of such elements (2) is not the same or substantially similar in image, design, dimensions and materials as the Work, and (3) is not displayed in an environment that is the same or substantially similar to the environment in which the Work is to be displayed at the Site. This warranty shall continue in effect for a period consisting of the life of the Artist plus 70 years or the duration of the Work's copyright protected status, whichever is longer, and shall be binding on Artist and Artist's heirs and assigns. Recognizing that City has no adequate remedy at law for Artist's violation of this warranty, Artist agrees that, in the event Artist breaches this warranty, City shall be entitled to enjoin Artist's breach. Nothing hereunder shall be construed to constrain Artist from creating posters, notecards, or other reproductions of the Work.

- ix. Resale Royalty. If City sells the Work as an individual piece, separate or itemized as part of a real property transaction, City shall pay to Artist a resale royalty to the extent required by law, based upon the sale price of the Work. If City sells the Work as a fixture to real property, and if the resale value of the Work is not itemized separately from the value of the real property, the parties agree that the resale price of the Work shall be presumed to be less than the purchase price paid by the City under this agreement. Thus, the City has not obligation to pay resale royalties.

## **7. Instructions for Maintenance**

Unless specifically provided in this Agreement, Artist shall not be responsible for ongoing maintenance of the Work. Artist shall provide the City a General Maintenance Plan for the Work, generally describing anticipated maintenance requirements; a recommended maintenance schedule; anticipated and required care and/or replacement of any part of the Work and associated moving parts or equipment; and written instructions and manufacturer's specifications for reasonably foreseeable maintenance and preservation activities relating to the Work. The Work must be durable, taking into consideration that the Site may be an unsecured public space that may be exposed to the elements such as weather, temperature variations, snow accumulation, salt from the public right of ways (sidewalks and road), water run-off, and considerable movement of people and equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense.

Although City strives to maintain its public art collection in good repair and condition, City is not required by this Agreement to maintain the Work to any particular standard. City may determine to allow the Work to deteriorate in accordance with the Work's temporary life span, if deemed appropriate by City or if City lacks sufficient funds for required maintenance and/or conservation. If the Work suffers deterioration, City shall have sole discretion to determine whether to remove the Work from display as a result of deterioration, or whether to maintain the Work on display despite its deteriorated condition.

## **8. Artist's Warranties**

- a. Warrant of Title. Artist represents and warrants that Artist is the sole author of the Work and that Artist is the sole owner of any and all copyrights pertaining to the Work. Artist further represents that the Work is free and clear of any liens and that there are no outstanding disputes in connection with property rights, intellectual property rights, or any other rights in the Work or any parts of the Work.
- b. Warranty of Workmanship. Artist represents and warrants that, for a period of three years after final acceptance, the Work will be free of defects in workmanship or materials, including Inherent Defects, and that the Work will be executed in permanent, non-fugitive materials that will not tend to degrade or fade over long-term installation at the Site. "Inherent Defect" refers to a quality within the material or materials, which, either alone or in combination, results in the tendency of the Work to destroy itself. "Inherent Defect" does not include any tendency to deteriorate that is specifically identified in writing and approved by the City. Artist shall, at Artist's sole cost and expense, remedy any defects in workmanship or materials that appear within a period of three years from the date of final acceptance of the Work by City.
- c. Warrant of Public Safety. Artist represents and warrants that the Work will not contain sharp points or edges or otherwise pose a danger to public health or safety in view of the possibility of misuse, if such misuse is in a manner that was reasonably foreseeable at any time during the term of this Agreement. Artist warrants that the Work will comply with any applicable requirements of the City of Aurora building codes. Artist agrees to cooperate with City in making or permitting adjustments to the Work if necessary to eliminate hazards or code violations that become apparent after the Work is finally accepted by the City.
- d. Acceptable Standard of Display. Artist represents and warrants as follows:
  - i. General routine cleaning and repair of the Work and any associated working parts and/or equipment will maintain the Work within an acceptable standard of public display;
  - ii. Foreseeable exposure to the elements and general wear and tear will cause the Work to experience only minor repairable damages and will not cause the Work to fall below an acceptable standard of public display; and
  - iii. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Work will not experience irreparable conditions that do not fall within an acceptable standards of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.
  - iv. Manufacturer's Warranties. To the extent the Work incorporates products covered by manufacturer's warranty, Artist shall provide such copies of such warranties to City.

## **9. Artist's Moral Rights; City's Ownership Rights**

The City, having expended considerable public funds to commission the Work, and pursuant to its governmental responsibilities, intends to display at the Site the Work, as originally created by Artist, and to maintain the Work in good condition. Public artworks commissioned by the City

are sometimes integrated into their sites, such that they become an integral, permanent and site-specific part of the building's architecture or landscaped environment and removal of the Work would result in significant changes to the Work and the building's architecture. City, however, must preserve complete file TO OPERATE AND MANAGE City property in the public's interest. Therefore, City retains the absolute right to Alter the Work in the City's sole judgment. For example, City may Alter the Work to eliminate hazard, to comply with the disabled access laws, to otherwise aid City in the management of its property and affairs, or through neglect or accident. If, during or after the term of this Agreement, City finds the Site to be inappropriate, City has the right to install the Work at an alternate location that City chooses in its sole discretion. If the Work is free-standing such that it can be removed without significant damage to the Work or the Site, and if the City authorizes the removal of the Work, the City shall take reasonable precautions to minimize Alteration of the Work during removal.

With respect to the Work produced under this Agreement, and in consideration of the procedures and remedies specified in this Agreement, Artist waives any and all claims, arising at any time and under any circumstances, against City, its officers, agents, elected officials, employees, successors and assigns, arising under the federal Visual Artist Rights Act (17 U.S.C. §§106A and 113(d)), and any other local, state, federal, or international laws that convey rights of the same nature as those conveyed under §106A, or any other type of moral right protecting the integrity of works of art.

If the City intends to take any action with respect to the Site or the Work that would Alter the Work, other than routine cleaning and maintenance, the following procedures shall apply:

- a. Notice. Where time permits, City shall make reasonably good faith efforts to notify Artist at least 20 calendar days prior to authorizing any Alteration of the Work, at the last phone number or address provided by Artist to the Director of Public Art. Where time does not permit prior to Alteration of the Work, for example, in cases of public hazard, accident or unauthorized Alteration, City shall notify Artist within 30 calendar days after such Alteration.
- b. Consultation. After receiving such notice, Artist shall consult with City to determine whether the Work can be restored, relocated and to attempt to come to a mutually agreeable plan for disposition of the Work. Such consultation shall be without charge by Artist unless otherwise specifically agreed in writing. If City intends to remove the work, Artist shall consult regarding methods to minimize or repair any Alteration to the Work caused by such removal and the potential costs of such removal.
- c. Restoration. If the Work is altered, with or without prior notice to Artist, and City intends to maintain the Work on display, City shall make a reasonable good faith effort to engage Artist in the restoration of the Work and to compensate Artist for Artists' time and efforts at fair market value, which may be subject of a future Agreement between Artist and City. However, City has no obligation under this Agreement to restore the Work to its original condition, to compensate Artist for any restoration work, or to maintain the Work on display. If Artist fails or refuses to negotiate with City in good faith with respect to any restoration, City may contract with any other qualified art conservator or artist for such restoration.



- d. Removal by Artist. Where time permits, if City intends to take action that will destroy or significantly Alter the Work, such as destruction of all or part of the Site, and City determines that it will not remove the Work itself, City shall allow Artist to remove the Work at Artist's expense within 60 days of notice from the City of the need to remove the Work, in which case title shall revert to Artist. If Artist fails to remove the Work within that 60 day period, City may Alter the Work in any manner, at City's sole discretion.
- e. Remedies. If City breaches any of its obligations under this Section, Artist's remedies shall be limited as follows: If City inadvertently fails to provide required prior notice of Alteration, City will provide notice as soon as it discovers the omission, and before Alteration of the Work if that remains possible. If the City alters the Work without providing Artist a required prior notice of Alteration, Artist shall be give the first right of refusal to restore the Work a the same location and City shall make reasonable efforts to provide funding for the restoration. If City funds cannot be made available after reasonable efforts are made to secure such funding, Artist may, but is not obligated to, restore the Work at Artist's expense. If Artist elects not to restore the Work, City may retain another artist or conservator to restore it, or may Alter the Work in any manner, at County's sole discretion.

Accordingly, nothing herein shall prevent Artist from pursuing a claim for Alteration of the Work against a third party who is not an officer, employee, agent, contractor, elected official, successor or assign of the City. City has no obligation to pursue claims against third parties to remedy or prevent Alteration of the Work. However, as owner of the Work, City may pursue claims against third parties for damages or to restore the Work if the Work has been altered without the City's authorization.

- f. Definition. For purpose of this Agreement, the terms "Alter" or "Alteration" shall mean, with respect to the Work, to alter, repair, modify, remove, relocate, sell, dispose of, distort, destroy, mutilate, or deface, as those terms are understood within the context of laws protecting Artist's rights to the integrity of their artwork.

#### **10. Access to Disabled**

Artist acknowledges that, pursuant to the ADA, programs, services and other activities provided by a public entity to the public, whether directly or through Artist, may be required to be accessible to persons with disabilities. Artist shall provide the services specified in this Agreement in a manner that complies with the ADA. Artist shall cooperate with City and allow the City to take reasonable steps to ensure that the Work is accessible to the disabled, with respect to the elimination of both architectural and programmatic barriers. Such cooperation shall include assisting with modifications to the Work, or preparing or authorizing tactile models, reproductions, or other materials necessary to provide access to the Work. If requested by City, Artist shall engage a consultant, as part of the project budget, to review the Work for compliance with the ADA.

#### **11. Additional Services**

If authorized by the City, Artist will provide additional services or items (those provided beyond the basic Work or services as described herein) which shall be paid by a negotiated fee for such item(s) or service(s).

## **12. Early Termination**

Either party hereto may terminate this contract at any time by giving 30 days' written notice to the other party. In the event Artist abandons the Work, defaults on any terms of this Contract or otherwise causes it to be terminated without cause prior to final acceptance of the Work, Artist shall not be owed or paid any further compensation by the City, and shall remit to the City all sums of money previously paid under the terms of this Contract, with the exception of those sums of money previously paid for the fabrication of the Work, if Artist turns over a completed Work to the City for installation. In the event the City terminates this Contract without cause, the City shall only pay Artist for work completed and materials purchased towards fabrication of the Work up to the effective date of the termination.

## **13. Indemnification for Damages, Taxes, and Contributions**

Artist shall exonerate, indemnify, defend, and hold harmless the City (which for the purpose of this Agreement shall include, without limitation, its officers, agents, employees, elected officials, and volunteers) from and against:

- a. Any and all claims, demands, losses, damages, defense costs, other legal costs, or liability of any kind or nature which City may sustain or incur or which may be imposed upon it at any time for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the Artist's performance under the terms of this Contract, excepting any liability arising out of the sole negligence of the City. Such indemnification includes any damage to the person(s), or property(ies) of Artist and third persons.
- b. Any and all federal, state, and local taxes, charges, fees, or contributions required to be paid with respect to Artist and Artist's officers, employees, and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

## **14. Insurance**

Artist, at their sole cost and expense, for the full term of this Contract (and any extensions thereof), shall obtain and maintain, at a minimum, compliance with all of the following insurance coverage(s) requirements. Such coverage shall be primary coverage as respects City and any insurance or self-insurance maintained by City shall be considered in excess of Artist's insurance coverage and shall not contribute to it. If Artist normally carries insurance in an amount greater than the minimum amount required by City for this Contract, the greater amount shall become the minimum required by the City for this Contract, that great amount shall become the minimum required amount of insurance for purposes of this Contract. Therefore, Artist hereby acknowledges and agrees that any and all insurances carried by it shall be deemed liability coverage for any and all actions it performs in connection with this Contract.

If Artist utilizes one or more subcontractors in the performance of this Contract, Artist shall obtain and maintain Contractor's Protective Liability insurance as to each subcontractor or otherwise provide evidence of insurance coverage from each subcontractor equivalent to that required of Artist in this Contract, unless Artist and City both initial here:

EBN / \_\_\_\_\_  
Artist Director of Public Art

a. Types of Insurance and Minimum Limits

- i. Worker's Compensation Insurance in the minimum statutorily required coverage amounts. This insurance shall be required unless the Artist has no employees and certifies to this fact by initialing here:

EBN  
Artist's initials

- ii. Automobile Liability Insurance for each of Artist's vehicles used in the performance of this Contract, including owned, non-owned (e.g. owned by Artist's employees), leased or hired vehicles, in the minimum amount of \$500,000.00 combined single limit per occurrence for bodily injury and property damage. This insurance coverage is required unless Artist does not drive a vehicle in conjunction with any part of the performance of this Contract and Artist and City both certify the fact by initialing here:

EBN / \_\_\_\_\_  
Artist's initials Director of Public Art initials

- iii. Comprehensive or Commercial General Liability Insurance coverage at least as broad as the most recent ISO Form CG 00 01 with a minimum limit of \$1,000,000.00 per occurrence/\$2,000,000.00 in the aggregate, including coverage for: (a) products and completed operations, (b) bodily and personal liability injury, (c) broad form property damage, (d) contractual liability, and (e) cross-liability.
- iv. Fine Arts Insurance or other insurance against loss in the minimum amount of \$ \_\_\_\_\_, to cover the fair market value of the Work and obtain such insurance prior to commencing fabrication of the Work, if, and only if, this subparagraph is initialed by Artist and City here:

\_\_\_\_\_ / \_\_\_\_\_

b. Other Insurance Provisions

- i. All policies of Comprehensive or Commercial General Liability Insurance shall be endorsed to cover the City of Aurora, its officials, elected officials, employees,

agents, and volunteers as additional insureds with respect to liability arising out of the work or operations and activities performed by or on behalf of Artist, including materials, parts or equipment furnished in connection with such work or operations.

- ii. All required insurance policies shall be endorsed to contain the following clause: “This insurance shall not be cancelled until after thirty (30) days’ prior written notice (10 days for nonpayment of premium) has been given to:

City of Aurora  
c/o Law Department; Corporation Counsel  
44 E. Downer Place  
Aurora, IL 60507

Should Artist fail to obtain such an endorsement to any policy required hereunder, Artist shall be responsible to provide at least thirty (30) days’ notice (10 days for nonpayment of premium) of cancellation of such policy to the City as a material term of this Contract.

- iii. Artist agrees to provide its insurance broker(s) with a full copy of these insurance provisions and provide City on or before the effective date of this Contract with Certificates of Insurance and endorsements for all required coverages. However, failure to obtain the required documents prior to the work beginning shall not waive the Artist’s obligation to provide them. All Certificates of Insurance and endorsements shall be delivered or sent to:

City of Aurora  
c/o Director of Public Arts  
44 E. Downer Place  
Aurora, IL 60507

- iv. Artist hereby grants to City a waiver of any right of subrogation which any insurer of said Artist may acquire against the City by virtue of the payment of any loss under such insurance. Artist agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from insurer.

## **15. Independent Contractor Status**

Artist and City have reviewed and considered the principal test and secondary factors below and agree that Artist is an independent contractor and not an employee of the City. Artist is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. Artist is not entitled to any employee benefits. City agrees that Artist shall have the right to control the manner and means of accomplishing the result contracted herein.

Principal Test: The contractor rather than the City has the right to control the manner and means of accomplishing the result contracted for.

Secondary Factors:

- a. The extent of control which, by agreement, City may exercise over the details of the work is slight rather than substantial;
- b. Contractor is engaged in a distinct occupation or business;
- c. In the locality, the work to be done by Contractor is usually done by a specialist without supervision, rather than under the direction of an employer;
- d. The skill required in the particular occupation is substantial rather than slight;
- e. The Contractor rather than the City supplies the instrumentalities, tools and work place;
- f. The length of time for with Contractor is engaged is of limited duration rather than indefinite;
- g. The method of payment of Contractor is by the job rather than by the time;
- h. The work is part of a special or permissive activity, program, or believe they are creating an independent contractor relationship rather than an employer-employee relationship;
- i. The City conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors that indicate that Artist is an independent contractor.

**16. Non-Assignment or Transfer**

The personal skill, judgment and creativity of Artist are essential elements of this Contract. Therefore, although the parties recognize that Artist may employ qualified personnel to work under Artist's supervision, Artist shall not assign, transfer or subcontract the creative and artistic portions of the Work to another party without the prior written consent of the City.

**17. Acknowledgement**

Artist shall acknowledge in all reports and literature that the City of Aurora has provided funding to Artist.

**18. Successors and Assigns**

The City and Artist each binds themselves, partners, successors, assigns, and legal representatives to the other party to this Contract and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants of this Contract. Neither the City no Artist shall assign, sublet or transfer an interest in this Contract without the written consent of the other. In no event shall any contractual relation be created between any third party and the City.

**19. Retention and Audit of Records/Freedom of Information Act**

Artist shall retain records pertinent to this Contract for a period of not less than five (5) years after final payment under this Contract or until a final audit report is accepted by the City, whichever occurs first. Artist hereby agrees to be subject to the examination and audit by the City Auditors if necessary.

**Illinois Freedom of Information Act.** Aritst acknowledges the requirements of the Illinois Freedom of Information Act (FOIA) and agrees to comply with all requests made by the City of Aurora for public records (as that term is defined by Section 2(c) of FOIA in the undersigned's possession and to provide the requested public records to the City of Aurora within two (2) business days of the request being made by the City of Aurora. The undersigned agrees to indemnify and hold harmless the City of Aurora from all claims, costs, penalty, losses and injuries (including but not limited to, attorney's fees, other professional fees, court costs and/or arbitration or other dispute resolution costs) arising out of or relating to its failure to provide the public records to the City of Aurora under this agreement.

**20. Presentation of Claims/Venue**

Presentation and processing of any or all claims arising out of or related to this Contract shall be heard in the Sixteenth Judicial Circuit, Kane County, Illinois.

By their signatures to the Contract, each of the undersigned certifies that it is his or her considered judgment that Artist engaged under this Contract is in fact an independent contractor.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

Artist



Edra Soto, Artist

City of Aurora



Richard C. Irvin, Mayor

Per City of Aurora Resolution: \_\_\_\_\_