

PUBLIC ART AGREEMENT

THIS AGREEMENT, (the "Agreement") is entered into this ____ day of _____, 20____, by and between the City of Manassas hereinafter the "City"), _____ (hereinafter the "Artist") with offices at _____, each a "Party", together, the "Parties."

WHEREAS, the City is seeking the display of artwork in public places; and

WHEREAS, the Artist was selected by the City to design, execute, fabricate and/or install artwork (the "Artwork"), as described in **Exhibit 1**, in a public space as described therein, hereinafter the "Site" subject to the terms and conditions described herein; and

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the Parties agree as follows:

ARTICLE 1 SCOPE OF SERVICES

1.1 Artist's Obligations

a) The Artist shall perform all services and furnish all supplies, material and equipment as necessary for the design and fabrication of the Artwork at the Site in accordance with the schedule as referenced in **Exhibit 1**. Artist's work shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.

b) The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the City as set forth in this Agreement. The Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, or safety devices at the Site.

c) Prior to entering into this Agreement, the Artist has prepared the design concept and submitted the same with the City for approval. The Artist agrees to make the Artwork consist with the approved design concept attached hereto as **Exhibit 1**.

1.2 City's Obligations

a) The Artwork shall be located on property owned by the City. The Artwork shall be painted, fabricated, or placed directly on the designated Site or attached thereto as specified by the City in **Exhibit 1**. The Artist shall obtain approval from the City for the materials, medium and techniques to be used insofar as they may affect any public property upon which the Artwork will be attached or created. Artist shall only be liable for damage to said public property if Artist deviates from said approval.

b) The City shall be responsible for compliance with all zoning and architectural review board approvals, and shall explain any limitations imposed by such laws and/or regulations to the Artist, prior to the installation of the Artwork.

1.3 Timing of Display and Promotion of the Artwork

The City reserves the right to change the location where the Artwork will be displayed at any time, before or after delivery. The City makes no commitments with regard to promotion of the Artwork.

ARTICLE 2 REPRESENTATIONS AND WARRANTIES

2.1 Representations and Warranties

The Artist agrees, represents and warrants that:

a) The Artist expressly waives any rights the Artist may have under applicable law relating to the ownership, display and copyright including but not limited to the Visual Artists Rights Act of 1990, 17 U.S.C. § 106A (VARA). This waiver provision is for the specific Artwork described in **Exhibit 1** hereto and is intended to include within the scope of the waiver all rights including but not limited to the right to decide when and in what form the Artwork should be presented to the public. Artist specifically agrees that the City may remove or destroy the Artwork at any time in its sole discretion. However, the City may not substantially modify the Artwork without Artist's prior written consent; and

b) The Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement; and

c) The Artwork shall be free and clear of any liens from any source whatsoever.

The representations and warranties contained in this Agreement shall survive the termination of this Agreement.

ARTICLE 3 OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

3.1 Title. Title to the Artwork shall pass to the City as the Artwork is created.

3.2 Ownership of Documents. The City shall own all materials prepared and submitted under this Agreement.

3.3 Copyright Ownership. The Artist hereby transfers all rights under the Copyright Act of 1976, 17 USC § 101 et seq., as the sole author of the Artwork, to the City.

3.4 Original Work of Art. Artist represents and warrants the Artwork will be an original work of art and Artist will be the sole creator of the Artwork. If such Artwork is based in whole or in part on the Artist's prior work, Artist shall disclose such facts in writing to City prior to executing this Agreement. In the event that the Artwork is based upon a prior work of art by Artist, Artist hereby: (a) grants City a license to display such artwork to the extent it is embodied in the Artwork described in **Exhibit 1**; and (b) confirms that Artist has reproduction rights to such prior art.

3.5 Reproduction Rights. All reproductions by the City shall contain a credit to the Artist.

3.6 Commercial Use. Notwithstanding the aforesaid, the City agrees it will not use the Artwork for commercial use without the written consent of the Artist, except in connection with promotion of tourism through advertising.

ARTICLE 4 ARTIST AS AN INDEPENDENT CONTRACTOR

4.1 Artist as an Independent Contractor. The Artist agrees to perform all Artwork under this Agreement as a contractor and not as an agent or employee of the City. The Artist acknowledges and agrees that the

Artist shall not hold himself or herself out as an authorized agent of the City with the power to bind in any manner. The Artist shall have the right to attach his or her name to the Artwork in a form approved by the City.

ARTICLE 5 NONDISCRIMINATION

5.1 Nondiscrimination. The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

ARTICLE 6 ASSIGNMENT OF ARTWORK

6.1 Assignment of Artwork

a) The Artwork and services required of the Artist are personal and shall not be assigned, sublet or transferred. The City shall have the right to assign or transfer any and all of the City's rights and obligations under this Agreement, subject to the Artist's consent.

ARTICLE 7 MISCELLANEOUS

7.1 Waiver. The Parties agree that a waiver of any breach, violation, or any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term of condition.

7.2 Amendments / Modifications. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

7.3 Conflicts of Law / Choice of Law / Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel or mediation procedure to be in conflict with the laws, rules, and/or regulations of the United States or the State of Virginia, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect. This contract shall be governed by the laws of the State of Virginia both as to interpretation and performance. The Parties hereby expressly submit to the exclusive jurisdiction of Virginia, more specifically, to a court of competent jurisdiction in Prince William County, or in the case of a federal matter, the closest court of competent jurisdiction in proximity thereto.

7.4 Entire Agreement. This Agreement, including the exhibits, comprises all of the covenants, promises, agreements, and conditions between the Parties. No verbal agreements or conversations between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligations.

7.5 Captions / Gender, Plural. All captions and headings in this Agreement are for the convenience of the Parties only and shall not be construed to either limit or amplify the provisions of this Agreement. Feminine or neuter provisions shall be substituted for those of the masculine form, and the plural shall be substituted for the singular number, and vice versa, in any place herein in which the context may require such substitution.

7.6 Successors and Assigns. The provisions of this Lease shall be binding upon, and shall inure to the benefit of, the Parties hereto, their respective heirs, executors, administrators, successors and permitted assigns. City may freely and fully assign its interest hereunder.

7.7 No Partnership. Nothing contained in this Agreement shall be construed to create a partnership, joint venture, or other relationship between the Parties hereto.

Signatures:

City

Date

Artist

Date

EXHIBIT 1

Name of Artist: _____

Description of the Proposed Artwork:
(attach the approved design concept with a label of "Exhibit 1-A")

The Site: _____

The Schedule for Fabrication and Installation of the Artwork: _____

Anticipated Delivery Date: _____

Method of Attachment:

Artist is granted the rights to reproduce the Artwork: _____ yes _____ no