

**AGREEMENT BETWEEN
CITY OF ROCHESTER, MINNESOTA
AND
<ARTIST NAME>
REGARDING
PUBLIC ART AT MAYO CIVIC CENTER**

This Agreement is made on _____, 2016 between The City of Rochester, Minnesota (the "Owner"), and <Artist & Address> (the "Artist") for the following project:

Mayo Civic Center – Convention Center Expansion.

WHEREAS, the Owner is implementing a public art program in connection with the design and construction of the Mayo Civic Center Expansion, 30 Civic Center Drive, Rochester, MN 55904, (the "Project"), and

WHEREAS, the Artist was selected by the Owner, to design, execute, fabricate, construct, and install art (the "Work") into the Project for the Owner that complements and is integrated harmoniously into the Project; and

WHEREAS, all parties wish to promote and maintain the integrity and clarity of the Artist's ideas and statements that are approved by the Owner as specified in this Agreement; and

WHEREAS, the Artist will produce the Work in a professional manner;

WHEREAS, all parties are in agreement that the Artist, Project Architect, Owner, General Contractor, and the Art Task Force Committee shall establish a close and cooperative relationship that will be maintained throughout the project, so as to best integrate their respective contributions to the Project in a cost effective way; and

WHEREAS, THEREFORE, the Owner and the Artist, for the consideration and under the conditions hereinafter set forth, agree as follows:

SECTION 1. SCOPE OF WORK

1.1 GENERAL

1.1.1. The Artist shall provide all services and furnish all supplies, materials and equipment as necessary for the design, engineering, execution, fabrication, construction, transportation, unloading, and installation of the approved Work at the Project site, unless otherwise agreed to in writing by both parties.

1.1.2. The Artist shall coordinate her work with that of the Joint Venture and Construction Manager for the Project.

- 1.1.3. The Artist shall consult, and work in a collaborative manner with the Project Architect, Construction Manager, Owner and others as identified by the Owner.

1.2 DESIGN PROPOSAL

- 1.2.1 The design proposal is Phase One of the design process. As promptly as possible after the execution of this Agreement, a meeting will be held at the Mayo Civic Center in order for the Artist to carry out reasonable site inspections, consultations, interviews and research as may be necessary, including meetings and interviews with the Owner, Project Architect, General Contractor, Art Task Force Committee, and users of the building. The intent of the meeting is to provide the Artist information and input from all affected parties of the Project in order for the Artist to prepare schematic design proposals of the Work (the "Schematic Design Proposal") based on established project goals. The Owner shall make available to the Artist necessary background materials and information on matters affecting the Project and site including, if applicable, the construction documents for the Project. Additional meetings may be scheduled if mutually agreed to by the Artist and the Owner.
- 1.2.2 Following the meeting and consultations specified in Section 1.2.1, the Artist shall prepare a Schematic Design Proposal(s) for the Owner. The Schematic Design Proposal(s) for the Work shall be original, unique, and designed specifically for the Project. The Schematic Design Proposal(s) shall include the following at a minimum:
 - A. A written statement describing the Work, concept drawings, a three-dimensional model or other documentation to present a meaningful representation of the proposed Work, material list and samples of materials.
 - B. Provide dimensioned drawings depicting unique detailing and including all necessary specifications as required for certification, inspection and approval prior to fabrication and installation.
 - C. A preliminary description of potential maintenance issues and requirements.
 - D. A preliminary statement of changes that will need to be made to the existing building or site to accommodate the Work, including but not limited to, lighting, structure, mechanical or electrical impacts.
 - E. Preliminary timeline schedule (includes design development, preparation of construction and bid documents, fabrication, construction and installation).
 - F. Preliminary cost estimate for the Work (includes design, engineering, fabrication, materials, labor, transportation, installation, insurance, and Artist fees and expenses, construction contingency of 5% to 10%, including all sub-contractors of the Artist). The Artist shall estimate the most reasonable and cost-effective rates for air transportation, auto rental fees and lodging. Under no circumstances shall the Artist include liquor, hospitality, or entertainment expenses in estimated travel expenses. Meal expenses are allowed only for the person in travel status.

G. Participate in value engineering efforts required during the course of the design process to bring the project within budget.

1.2.3 The Design Proposal(s) shall be presented and explained by the Artist at a second meeting in Rochester, Minnesota which shall include the Owner, Art Task Force Committee and others determined by the Owner. The Design Proposal must relate to the criteria outlined in the Request for Proposal .

A. The Owner shall, within thirty (30) days of the second meeting notify the Artist as to whether the Design Proposal is approved as presented, approved subject to agreed revisions or further refinement, or disapproved. During this period the Artist shall be available within reason to meet with the Owner in person, or via a phone or video conference meeting to discuss the Design Proposal.

B. If the Owner should determine that the Design Proposal is unacceptable, the Artist shall be provided a written statement of the reasons for such disapproval. In such event, the Artist shall be afforded an opportunity either to submit a second Design Proposal within a reasonable period of time specified by the Owner, or to terminate this Agreement.

C. If the Design Proposal is approved by the Owner, for historical purposes, all drawings, sketches, models and all other related materials developed for the Design Proposal shall become the property of the Owner and the originals shall be delivered to the Owner prior to the final payment for the Work.

D. A copy of the Design Proposal shall be given to the Owner prior to commencement of the Works Construction Documents.. In the event the Agreement is terminated, the Artist shall retain ownership of the Design Proposal and all related materials, and all compensation therefore paid, neither party shall be under any further obligation to the other in respect of the subject matter thereof.

1.3 DEVELOPMENT OF DESIGN, PREPARATION OF CONSTRUCTION DOCUMENTS, AND INSTALLATION OF WORK

1.3.1 Upon approval of the Design Proposal, the Artist shall prepare Work Design Development and Construction Documents. The Artist shall, during preparation of the Construction Documents, provide in-progress drawings to the Owner for the Work and other information as may reasonably be requested by the Owner in order to permit the Owner to carry out an engineering and maintenance review, ascertain that the Work is in compliance with applicable statutes, ordinances and regulations. The Work Construction Documents must relate to and be compatible with construction documents developed by the Project Architect for the Project.

1.3.2 CAD generated drawings of the Work are preferred but not mandatory.

1.3.3 The Work Construction Documents shall include written narrative descriptions relating elements and details that elaborate on and further explain the ideas expressed in the approved Design Proposal (such as size and scale of elements, materials, colors, etc.).

- 1.3.4 The Owner reserves the right to require the Artist to submit additional information deemed relevant regarding the Work Construction Document. Upon request by the Artist, the Owner and Project Architect shall promptly furnish information, materials and assistance required by the artist in connection with said submission. The Owner and Artist will work together to achieve compatible details for incorporation of the Work into the Project.
- 1.3.5 Within thirty (30) days after receipt of the Artist's final Work Construction Document submission pursuant to this Section 1.3.1, the Owner shall notify the Artist of the approval (or disapproval) of such a submission (or submissions) and of all revisions made in the Work Construction Documents as a result thereof. Revisions made pursuant to this Section 1.3.1 shall become part of the Work.

1.4 EXECUTION OF THE WORK

- 1.4.1. Within thirty (30) days after written approval of the Work Construction Document, and revisions made to pursuant to Section 1.3, the Artist shall furnish to the Owner , with a good knowledge of the construction schedule, a final schedule for completion of fabrication or construction of the Work and its assembly, erection or installation at the Project site (the "Work Schedule). If the Work is to be integrated with the construction of the Project, the Work Schedule shall also include relevant information as to the schedule for the Project's construction contractor and coordination and integration with work of the Project. After written approval of the Work Schedule by the Owner, the Artist or their designate(s) shall fabricate, transport and construct assemble, erect or install the Work in accordance with the Work Schedule. The Work Schedule may be amended by written agreement between the Owner and the Artist.
- 1.4.2. The Owner shall have the right to review the progress of the Work at reasonable times during the fabrication or construction thereof. The artist shall submit to the Owner monthly progress reports in accordance with the Work Schedule provided for this Section 1.4.
- 1.4.3. The Artist shall complete the fabrication and assembly, and the erection, installation or construction of the Work in substantial conformity with the Work Construction Documents and Work Schedule approved by the Owner.
- 1.4.4. The Artist shall present in writing, and in advance to the Owner for review and approval by the Art Task Force Committee, any significant changes in the Work that would not be in substantial conformity with, or otherwise permitted by, the Work Construction Documents approved by the Owner. A significant change would include change in the size, scope, scale, design, color, material, texture, method of fabrication, construction, erection, or a change in the location of the Work which affects construction, installation, scheduling, site preparation or maintenance of the Work, or a change in the concept of the Work as represented in the Work Construction Document approved by the Owner. Circumstances of any such proposed change shall not cause this Work to exceed the total budget stipulated in Section 2 of this Agreement.

1.5 FINAL ACCEPTANCE. The Artist shall advise the Owner in writing when all services required including those described in Section 1.4 have been completed. The Owner shall notify the Artist within 30 days and in writing of its final acceptance of the Work. Final acceptance shall be determined solely by the

Owner and shall constitute the Owner's acknowledgement that the Work has been completed and installed according to the terms of this Agreement. Title of ownership to the Work shall pass to the Owner upon final acceptance.

1.6 OWNERSHIP OF DOCUMENTS AND MODELS. Upon final acceptance, originals of all studies, drawings, designs, maquettes and models prepared and submitted under this Agreement for the Design Proposal, Work Construction Documents and Work shall be provided to the Owner and shall belong to the Owner for historical documentation of the Project, except as may be determined under Section 12 of this Agreement.

1.7 DOCUMENTATION OF THE WORK. Within six (6) months after completion or installation of the Work, the Artist, in coordination with the Project Architect, shall furnish the Owner with the following documentation materials of the Work as installed on the Site:

- 1.7.1. Two (2) sets of reproduction quality 35mm or 4 x 5 inch color transparencies of the completed Work as installed, taken from at least each of three different viewpoints, and labeled as follows: holding each slide right-side up with the correct left-to-right orientation, mark an "x" in the upper right-hand corner; write the Artist's name, last name first, on the bottom of each slide; write the medium in the top margin of each slide, on the reverse side, write the title of the Work in the top margin and the dimensions (height x width x depth) and date of completion in the bottom margin; and
- 1.7.2. Two (2) sets of reproduction quality 8 x 10 inch glossy black and white prints of the transparencies required in Section 1.7a.
- 1.7.3. Full written narrative description of the Work (A minimum of one page in length) for use on the Council's website and in printed publications.
- 1.7.4. Written instruction for appropriate maintenance and preservation of the Work.

SECTION 2: COMPENSATION AND PAYMENT SCHEDULE

2.1. The Owner shall pay the Artist a fixed fee of \$ _____ (_____ and No Cents) which shall constitute full compensation for all services and materials to be performed and furnished by the Artist under this Agreement including all fees, services, expenses, materials, travel, freight taxes and any other costs associated with providing this artwork.

2.2 Compensation will be paid after services are performed. The Owner does not make regular payments based upon the passage of time, but only pays for services performed or work delivered after it is accomplished. Payments for work completed to date will normally be made after completion of the following:

- Upon completion of first visit to Rochester, MN
- Upon completion of the Schematic Design Proposal Phase.

- Upon completion of the Construction Documents.
- During fabrication and installation for materials procured and work completed, as justified with actual receipts and payrolls. Invoiced amounts shall be based upon and include Contractors' Application for Payment and Artist's Invoice.
- Upon final acceptance of the work by the Owner and receipt of all Design Proposal Materials, Work Construction Documents, and Documentation identified in Section 1.7 by the Owner.

2.3 Payment is only made after the submission of an authorized invoice .

2.4 Invoices and all attachments and reports shall be addressed to the City of Rochester c/o Mayo Civic Center, 30 Civic Center Drive, Rochester, MN 55904. After review and approval by the Owners, all invoices shall be paid to the Artist by the Owner.

2.5 ARTIST'S EXPENSES. All expenses incurred by the Artist are included in the Artist's Fee. The Artist shall be responsible for the payment of all mailing or shipping charges on submissions and other mailed correspondence to the Owner, and all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement. The Artist shall seek the most reasonable and cost-effective rates for air transportation and auto rental fees.

SECTION 3. TIME OF PERFORMANCE

3.1 DURATION. The services to be required of the Artist shall be performed substantially completed by March 15, 2017. Services will be provided per the schedule submitted and approved during the Design Proposal Phase per Section 1.2.

Construction and installation dates will be mutually agreed upon and scheduled between the Artist and the Owner. It is anticipated the Work will be installed before the first event in the building (anticipated to be April, 2017).

3.2 TIME EXTENSIONS. The Owner shall grant a reasonable extension of time to the Artist in the event there is a delay on the part of the Owner in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Likewise, the Artist shall grant a reasonable extension of time to the Owner in the event there is a delay on the part of the Artist in performing his obligations under this Agreement, or if conditions beyond the Owner's control or Acts of God render timely performance of the Owner's obligations under this Agreement impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided such obligations shall be suspended only for the duration of such condition.

SECTION 4. WARRANTIES

4.1 WARRANTIES OF TITLE. The Artist represents and warrants that: (a) the Artist's Design Proposal and Work are solely the result of the artistic effort of the Artist; (b) except as otherwise disclosed in writing to the Owner, the Artist's Design Proposal and Work are unique and original and they do not

infringe upon any copyright; (c) the Artist's Design Proposal and Work or a duplicate thereof has not been accepted for sale elsewhere; and (d) the Artist's Design Proposal and Work are free and clear of any liens from any source whatever.

4.2 **WARRANTIES OF QUALITY AND CONDITION.** The Artist represents and warrants, except as otherwise disclosed to the Owner in writing in connection with submission of the Proposal pursuant to Section 1.2, that (a) the execution and creation of the Work will be performed in a workmanlike manner; (b) the Work, as created and installed, will be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and (c) reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist to the Owner hereunder.

4.3 **LENGTH OF WARRANTIES FOR QUALITY AND CONDITION.** The Warranties described in Section 4.2 shall survive for a period of one year after the final acceptance of the Work. The Owner shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the Owner, and at no cost to the Owner, 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 (including, for example, cure by means of repair or refabrication of the Work).

SECTION 5. PERFORMANCE BONDS

The Artist shall not be required by the Owner to post any performance bonds or similar undertakings, and any requirement of any other authority for performance bonds shall be the responsibility of the Owner.

SECTION 6. REPRODUCTION RIGHTS

6.1 **GENERAL.** The Artist retains all rights under the *Copyright Act of 1976, 17 U.S.C., 101 et. Seq.*, and all other rights in and to the Artist's Design Proposal and Work except ownership and possession, and with the exception of rights limited by this Section 6.1. In view of the intention that the Artist's Design Proposal and Work in its final dimension shall be unique, the Artist shall not make any additional duplicate reproductions of it except for promotional and marketing purposes, nor shall the Artist grant permission to others to do so except with the written permission of the Owner. The Artist grants to the Owner and its assigns a royalty-free, irrevocable license to make reproductions of the Artist's Design Proposal and Work for non-commercial, educational and/or museum purposes, including but not limited to reproductions used in advertising, calendars, posters, brochures, , media, publicity, catalogues, museum, educational and development projects, or other similar publications, provided these rights are exercised in a professional manner, which license shall be assigned by the Owner without the consent of the Artist.

6.2 **NOTICE.** All reproductions by the Owner shall contain a credit to the Artist and a copyright notice substantially in the following form: _____. Commissioned by the City of Rochester for the Mayo Civic Center.”.

6.3 **CREDIT TO THE OWNER.** The Artist shall use his best efforts to give a credit that reads substantially, "Commissioned by the City of Rochester for the Mayo Civic Center." in any showing under the Artist's control of reproductions of the Work.

6.4 COPYRIGHT REGISTRATION. The Artist shall be responsible for registering with the United States Register of Copyrights, a copyright in the Work in the Artist's name.

6.5 IDENTIFICATION. The Artist shall, at his expense, prepare and install at the Site, pursuant to approval of the Owner, didactic panels or plaques identifying the Artist, the title and the year of the completed Work and all its components, and an explanation of the Work and its components. The Owner shall reasonably maintain such didactic panels and plaques in good repair against the ravages of time, vandalism and the elements.

SECTION 7. ARTIST'S RIGHTS

7.1 MAINTENANCE. The Owner recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The Owner shall reasonably assure that the Work is properly maintained and protected, taking into account the instructions of the Artist provided in accordance with this Agreement and shall reasonably protect and maintain the Work against the ravages of time, vandalism and the elements.

7.2 REPAIRS AND RESTORATION. The Owner shall have the right to determine, after consultation with appropriate professionals, when and if repairs and restorations to the Work will be made. During the Artist's lifetime, the Artist shall have the right to approve all repairs and restorations, provided, however, that the Artist shall not reasonably withhold approval for any repair or restoration of the Work. The Artist shall have the first right to perform recommended treatment or repair at a fair and mutually agreed upon rate. If a rate cannot be agreed upon, the Owner shall have the right to seek a qualified conservator or specialist to perform repair or treatment. However, if the Artist cannot be contacted or fails to respond or accept the indicated first right to treat or repair the artwork in a timely fashion, the Owner may make necessary repairs without the Artist's approval or consultation. If maintenance or repairs cannot be made in accordance with Artist's specifications, or if Artist has provided insufficient information to the Owner, the Owner may use its best judgment to effect such maintenance and repair. All repairs and restorations shall be made in accordance with recognized principals of maintenance and conservation of public art.

7.3 ALTERATION or removal OF THE WORK. The Owner reserves the right to alter the Work and related site as necessitated by site and campus development and planning.

7.3.1 The Owner agrees that it will not intentionally damage, alter, modify or change the Work without the prior consultation with the Artist. Removal from Display: While it is the Owner's intent to permanently retain and publicly display artwork it has acquired, circumstances may arise that would make it necessary or prudent for the Owner to permanently remove the artwork from public display. In that event, the owner shall make a good faith effort to notify the Artist in writing ninety (90) days in advance of such Removal at the notification address for the Artist provided in the Agreement. In this event, the Artist shall be given the first right to retrieve the artwork at the Artist's own expense, in which case title to the artwork shall be transferred to Artist or Artist's designee. If circumstances arise that would make it necessary or prudent to temporarily remove the artwork from public display or relocate it, the Owner shall make a good faith effort to consult with the Artist prior to undertaking removal or relocation of the artwork, and Artist shall have the right to consult on the manner and means of removal and/or the choice

of alternative sites, such conservation and consulting services at a fair and mutually agreed upon rate. If a rate cannot be agreed upon, the Owner has right to seek a qualified conservator or specialist to perform repair or treatment.

7.3.2 Nothing in this Section shall preclude any right of the Owner (1) to remove the Work from public display, (2) de-accession the Work, or 3) destroy the Work.

7.4 PERMANENT RECORD. The Owner shall maintain on permanent file a record of this Agreement and of the location and disposition of the Work.

7.5 ARTIST'S ADDRESS. The Artist shall notify the Owner of changes in his address. The failure to do so, if such failure prevents the Owner from locating the Artist, shall be deemed a waiver by the Artist of the right to subsequently enforce those provisions of this Section that require the express approval of the Artist. Notwithstanding this provision, the Owner shall make every reasonable effort to locate the Artist when matters arise relating to the Artist's rights.

7.6 SURVIVING COVENANTS. The covenants and obligations set forth in this Article 7 shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest, and the Owner's covenants do attach and run with the Work and shall be binding to and until twenty (20) years after the death of the Artist. However, the obligations imposed upon the Owner by Sections 7.3(a) and 7.6 shall terminate on the death of the Artist. The Owner shall give any subsequent owner of the Work notice in writing of the covenants herein, and shall cause each such owner to be bound thereby.

7.7 ADDITIONAL RIGHTS AND REMEDIES. Nothing contained in this Article 7 shall be construed as a limitation of such other rights and remedies available to the Artist under the law which may now or in the future be applicable.

SECTION 8. INSURANCE

8.1 The Artist and all employees of the Artist shall each effect and maintain insurance to protect the Artist from claims under workers compensation acts; claims for damages because of bodily injury including personal injury, sickness, disease, or death of any of their employees or of any person other than their employees; and from claims for damages because of injury to or destruction of tangible property, including loss of use resulting therefrom, and from claims arising out of their performance of professional services caused by errors, omissions or negligent acts for which the Artist is legally liable.

8.2 The Consultant will indemnify and hold the Owner, Minnesota Department of Employment and Economic Development, Commissioner of Management and Budget, and the State of Minnesota, harmless from and against demands, alleged damages or injuries, and expenses arising directly or indirectly from the Consultant's negligent acts, errors, omissions, or breach of contract and of those persons for whom the Consultant is legally responsible.

8.3 To the extent that may be necessary to indemnify either party under ARTICLE 8.2, both parties expressly waive in favor of the other only any immunity or exemption from liability that exist under any worker compensation law.

ARTICLE 9. ARTIST AS INDEPENDENT CONTRACTOR

The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the Owner. The Artist shall not be supervised by any employee or official of the Owner, nor shall the Artist exercise supervision over any employee or official of the Owner.

ARTICLE 10. ASSIGNMENTS, TRANSFER, SUBCONTRACTING

10.1 ASSIGNMENTS OR TRANSFERS. Neither this Agreement nor any interest herein shall be transferred or assigned by the Artist. Any such transfer shall be null and void and shall be cause to annul this Agreement.

10.2 SUBCONTRACTING BY THE ARTIST. The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the Owner prior to hiring any subcontractor. If the Owner does not approve the hiring of any subcontractor, another subcontractor must be submitted for approval by the Owner.

SECTION 11. NON-DISCRIMINATION. In carrying out the performance of the services designated, the Artist shall not discriminate as to race, creed, religion, sex, age, national origin or the presence of any physical, mental or sensory handicap, and the Artist shall comply with the equality of employment opportunities.

ARTICLE 12. TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate, specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If it is not cured, this Agreement shall terminate.

In the event of default by the Owner, the Owner shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the Owner's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the Owner and the Owner shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination or, at the Artist's election, the Artist shall refund all amounts paid by the OWNER in exchange for all finished and unfinished related Art Works.

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

In the event that project funding for this project is deappropriated, the Owner shall give written notice as soon as possible to the Artist documenting deappropriation of funds. Owner shall have the right to terminate this Agreement in the event that funding is deappropriated and Artist shall be reimbursed for services and material provided prior to termination of this Agreement.

ARTICLE 13. COMPLIANCE

The Artist shall be required to comply with Federal, State, County, and City statutes, ordinances and regulations applicable to the performance of the Artist’s services under this agreement.

ARTICLE 14. DISPUTE RESOLUTION

Both parties may exercise those legal remedies in District Court as may be available to them in connection with any dispute arising out of disagreement which cannot be settled by the parties by change order. The venue for any proceedings is hereby agreed to be Olmsted County unless otherwise specifically agreed. The Consultant shall carry on the work and maintain the progress schedule during any proceedings unless otherwise agreed to by both parties in writing.

ARTICLE 15. ENTIRE AGREEMENT

This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other Agreements and understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

ARTICLE 16. MODIFICATION

No alternation, change or modification of the terms of the Agreement shall be valid unless made in writing and signed by both parties hereto and approved by appropriate action of the Owner.

ARTICLE 17. REPRESENTATIVES

The Owner has designated a representative authorized to act on the Owner’s behalf with respect to the project. The Owner’s authorized agent is CPMI, Inc. All communications shall be through the Owner, except for scheduling work. The General Building Contractor will contact Consultant to schedule work. Contractors shall not direct Consultant's on-site personnel. TSP, Inc. is the architect/engineer of record.

ARTICLE 18. NOTICES

All notices, requests, demands and other communications which are required or permitted to be given under this agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

- (a) If the OWNER, to: Name
201 4th Street SE
Rochester, MN 55904

- (b) b. If the Artist, to: Artist Name
Address
City, State, Zip
Phone
Email:

ARTICLE 19. OTHER

19.1 E-Verify Certification (In accordance with Minn. Stat. §16C.075)

By submission of a proposal for services in excess of \$50,000, Artist certifies that as of the date of services performed on behalf of the Owner, contractor and all its subcontractors will have implemented or be in the process of implementing the federal E-Verify program for all newly hired employees in the United States who will perform work on behalf of the State. In the event of contract award, contractor shall be responsible for collecting all subcontractor certifications and may do so utilizing the E-Verify Subcontractor Certification Form available at <http://www.mmd.admin.state.mn.us/doc/EverifySubCertForm.doc>. All subcontractor certifications must be kept on file with contractor and made available to the Owner upon request.

19.2 Contractor Registration

The following applies to the contractors and sub-contractors performing work on the site, and to the Artist if they are going to install any part of the Work: Minnesota Stat 181.723 as amended (Minn. Laws, chapter 295) requires Contractors and Subcontractors that provide commercial or residential building construction or improvement services in Minnesota to be registered with the Minnesota Department of Labor and Industry (DLI) by September 15, 2012, unless they are already licensed, certified or registered by the Minnesota Department of Labor and Industry.

- a. Building construction contractors, including independent contractors, subcontractors, and business entities providing public or private sector commercial or residential building construction or improvement services are required to be registered with the Department of Labor and Industry
- b. The registration requirement does not apply to workers and businesses that are already licensed, registered or certified with DLI, nor does it apply to employees.
- c. No fee will be charged for initial registration.
- d. Registration shall be done online and requires information about the business and its owners and officers. This information is critical to enforcement activities of DLI, DEED, and Revenue and is the same information currently required for licensed residential building contractors, electrical contractors, and plumbing contractors.
- e. General or Prime Contractors will be able to verify that subcontractors are registered on the searchable Department of Labor and Industry Contractor Look-Up web site.
- f. The law provides for penalties for failure to register, hiring unregistered contractors, misclassifying employees and coercing others to form a business entity. The penalty for failing to register will be forgiven if registration is achieved within 30 days, during the pilot project.

- g. The Building Construction Contractor Registration replaces the Independent Contractor Exemption Certificate program (ICEC).
- h. For additional information and to register go to www.dlimn.gov/register or contact DLI at 651.284.5074 or email: dli.register@state.mn.us.

19.3 Project Labor Agreement (PLA)

The general contractor, Knutson Construction, and their subcontractors and vendors are signatory to a Project Labor Agreement for this project.

19.4 State Prevailing Wage Requirements

The following applies to the Artist's contractors and sub-contractors performing work on the site, and to the Artist if they are going to install any part of the Work: This project will require compliance with Minnesota's Prevailing Wage Laws and will require submittal of payroll reports to the Owner. The commercial prevailing wage rates on any given date are available on the Department of Labor and Industry website: <http://www.dli.mn.gov/LS/PrevWage.asp>. A copy of the wage rates, current at the time the Project was issued for proposals, is included in the Specifications. It is the Contractors responsibility to make sure they are implementing the most current wage rates.

Prevailing Wage Reporting will be required on this project. Form and requirements are located at <http://www.mmd.admin.state.mn.us/mn02000.htm#prevwage>.

Forms are to be submitted to the City of Rochester through the Owner's Representative.

Additionally, the prevailing hours of labor may not be more than eight (8) hours per day or more than 40 hours per week. Pursuant to Minnesota Statutes 177.43, "No laborer or mechanic employed directly on the project work site by the Contractor or any subcontractor, agent or other person doing or contracting to do all or a part of the work of the project, is permitted or required to work more hours than the prevailing hours of labor, unless paid for all hours in excess of the prevailing hours at a rate of at least 1 ½ times the hourly basic rate of pay."

19.5 Jobs Reporting Requirements

The following applies to the Artist's contractors and sub-contractors performing work on the site, and to the Artist if they are going to install any part of the Work: All contractors are required to report on jobs created to complete the work on this project. Pursuant to M.S. Sec 16A.633m subd. 4, which was added during the 2012 legislative session, the Owner is required to report the number of jobs created or retained by the Project. To enable the Owner to comply with M.S. Sec. 16A.633, subd. 4 the Contractor must submit job reports for the Project through Project completion. Reporting shall be in the format prescribed, on the form provided to the successful Vendor.

19.6 American Made Steel

This project will require the use of American-made steel per Minnesota Laws, 2014, Chapter 295, Section 21 (the "Act"). Contractor shall submit documentation to the Owner pursuant thereto as reasonably required by the State.

19.7 Records Keeping and Reporting

The Artist shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Contract; the accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's accountants, auditors and agents shall be afforded access to all of the Artist's records, books, correspondence, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to this Project, and the Artist shall preserve these for a period of six years from the date that the Project is fully completed and placed into operation, or for such longer period as may be required by law, provided, however, that if a claim, suit, action or demand arising out of the Contractor's performance hereunder is asserted during said six year period, the Artist shall retain all such books, records, documents and accounting procedures until the claim, suit, action or demand has

been resolved. The Owner and its accountants, auditors and agents shall have the right, exercisable from time to time upon notice to the Artist, to inspect, examine and reproduce any such books, records, documents or accounting procedures.

19.8 Non Discrimination

The City of Rochester hereby notifies all Respondents:

In accordance with the Minnesota Human Rights Act, Minnesota Statute 363A.08 Unfair discriminatory Practices, it will affirmatively assure that on any project constructed pursuant to this advertisement equal employment opportunity will be offered to all persons without regard to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local commission, disability, sexual orientation, or age;

In accordance with the Minnesota Human Rights Act, Minnesota Statute 363A.36 Certificates of Compliance for Public Contracts, and 363A.37 Rules for Certificates of Compliance, it will assure that appropriate parties to any contract entered into pursuant to this advertisement possess valid Certificates of Compliance;

If you are not a current holder of a compliance certificate issued by the Minnesota Department of Human Rights and intend to bid on any job in this advertisement you must contact the Department of Human Rights immediately for assistance in obtaining a certificate.

The following notice from the Minnesota Department of Human Rights applies to all contractors'

"It is hereby agreed between the parties that Minnesota statute, section 363A.36 and Minnesota Rules, parts 5000.3400 to 5000.3600 are incorporated into any contract between these parties based on the specification or any modification of it. A copy of Minnesota Statute 363A.36 and Minnesota Rules, parts 5000.3400 to 5000 3600 is available upon request from the contracting agency"

"It is hereby agreed between the parties that this agency will require affirmative action requirements be met by contractors in relation to Minnesota Statute 363A.36 and Minnesota Rule 5000 3600 Failure by a contractor to implement an affirmative action plan or make a good faith effort shall result in renovation of its certificate or revocation of the contract (Minnesota Statute 363A .36,Subd. 2 and 3)"

19.9 Equal Pay Certification - Women's Economic Security Act (WESA)

If the contract amount could be in excess of \$500,000, the Responder must obtain an Equal Pay Certificate from the Minnesota Department of Human Rights (MDHR) or claim an exemption prior to contract execution. A responder is exempt if it has not employed 40 or more full-time employees on any single working day during the previous 12 months in Minnesota or the state where it has its primary place of business. Please contact MDHR with questions at: 651-539-1095 (metro), 1-800-657-3704 (toll free), 711 or 1-800-627-3529 (MN Relay) or at compliance.MDHR@state.mn.us. Forms and information are available at http://mn.gov/mdhr/about/press_7-30-14_equal_pay_cert.html Reference: MN Statute §363A.44. See Attachment #8 of this RFP.

19.10 Responsible Contractor, Minimum Requirements

The following applies to the Artist's contractors and sub-contractors performing work on the site, and to the Artist if they are going to install any part of the Work: The responsible contractor law is applicable to construction contracts estimated to exceed \$50,000 (and to resulting subcontracts at any dollar level).

- a. This applies to solicitations issued on January 1, 2015 or after, will contain minimum criteria specified in statute for a prospective responder to be considered a responsible contractor and eligible to be awarded a contract.
- b. Specified criteria include compliance with various existing obligations, including those relating to prevailing wage, workers' compensation, unemployment insurance and targeted or disadvantaged businesses.
- c. Effective January 1, 2015, prospective vendors must certify compliance under oath to the contracting agency and must obtain comparable certifications from its subcontractors. The contracting agency may accept these sworn statements as sufficient evidence of compliance. Certification forms are in ATTACHMENT #10 of this RFP.
- d. Details of these changes are at Laws 2014, Chapter 253:
<https://www.revisor.mn.gov/laws/?year=2014&type=0&doctype=Chapter&id=253&format=pdf>

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year first written above.

**Owner,
City of Rochester
201 4th Street SE
Rochester, MN 55904**

By: _____ Date _____

(printed name)

(title)

**Artist,
<Contract>**

By: _____ Date _____

(printed name)

(title)