

PUBLIC ART COMMISSION AGREEMENT

THIS PUBLIC ART COMMISSION AGREEMENT (“Agreement”) is entered into this _____ day of _____, 20____, by and between the **SOUTH SUBURBAN PARK AND RECREATION DISTRICT** (“District”), a quasi-municipal corporation and political subdivision of the State of Colorado, and [_____]

[_____ Artist’s name or d/b/a Business Name _____] (“Artist”) whose business address is [_____], Telephone Number [_____] and email address [_____] [_____]. The District and Artist may hereinafter collectively be referred to as the “Parties” and singularly as a “Party.”

RECITALS

WHEREAS, the Board of Directors of the District has determined that art in District-owned/managed parks and other public places provides an aesthetic enhancement to the quality of the parks and/or other public places for the beneficial enjoyment of the community; and

WHEREAS, the Artist has submitted a proposal to design, fabricate, install or construct and convey to the District the following particular piece of art (“Artwork”) at the following described location (“Site”)

[_____] ; and

WHEREAS, the Artist’s Artwork Proposal dated _____, attached hereto as Exhibit A submitted in response to the District’s Request for Proposals, attached hereto as Exhibit B, have been accepted by the District based upon and subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, the District and Artist agree as follows:

1. **Scope of Services.** The Artist shall perform all services and furnish all supplies, materials and/or equipment and labor necessary for the design, fabrication, installation or construction of the Artwork at the Site (“Services”). The Services shall be performed in a professional manner and in strict compliance with this Agreement, the RFP (Exhibit A), the Proposal (Exhibit B), and any schedule, addendum or exhibit attached hereto or incorporated herein by reference (“Contract Documents”). Any change in the Contract Documents, including, but not limited to, the design, color, size, material or texture of the Artwork from that contained in the Contract Documents must be by written agreement of both Parties. In the event of a conflict or inconsistency between the terms and provisions of this Agreement and any other document that is a part of the Contract Documents, this Agreement shall control, unless otherwise agreed in writing.

2. **Compensation and Payment Schedule.** For the satisfactory performance of the Services under this Agreement, the District shall pay the Artist a fixed fee of _____ Dollars (\$_____) which shall constitute full compensation for all Services performed under this Agreement, including all fees, services, expenses, materials, travel, and any other costs associated with providing the Artwork. Compensation shall be paid as follows:

- i) One-third (1/3) upon execution of this Agreement (“First Payment”); and
- ii) One-third (1/3) upon inspection that the Artwork fabrication is fifty percent (50%) complete, as determined by the District (“Second Payment”). Inspection may include a visit to the Artist’s studio to physically inspect the Artwork or photographic document of Artwork provided by Artist. The method of inspection shall be determined by the District.
- iii) One-third (1/3) within twenty (20) calendar days after Final Acceptance of the Artwork by the District (“Final Payment”). Final Payment shall be made only after the submission of an invoice. Invoices and all attachments and reports shall be addressed to Mike Braaten, Deputy Executive Director, South Suburban Park and Recreation District, 6631 S. University Boulevard, Centennial, CO 80121.

3. **Design Approval.** The Proposal includes the Artist’s design (“Design”) for the Artwork which the District hereby approves (“Approved Design”) and Artist is authorized to proceed with the fabrication, installation or construction of the Artwork unless the Approved Design contains a construction drawing requirement as described in the following paragraph.

If the Approved Design includes a construction drawing requirement, Artist shall prepare and submit construction drawings detailing the physical features of the construction of the Artwork and its integration with the Site (“Construction Drawings”) within ten (10) calendar days after this Agreement is executed by both Parties.

4. **Construction Drawing Review/Notice to Proceed.** Within ten (10) calendar days after submittal of the Construction Drawings, the District shall either: (i) approve the Construction Drawings and issue a Notice to Proceed with construction of the Artwork; or (ii) issue a notice identifying what deficiencies in the Construction Drawings need to be addressed (“Notice of Deficiency”) and specify a reasonable time period within which the deficiencies must be corrected and the Construction Drawings resubmitted to the District. Once the Construction Drawings are acceptable to the District, it shall issue a Notice to Proceed; provided, however, if the Artist has not submitted Construction Drawings acceptable to the District within thirty (30) calendar days after the issuance of a Notice of Deficiency, the District shall be entitled to a refund of the First Payment.

5. **Refund of First Payment and Waiver of Rights.** If the District is entitled to a refund of the First Payment made to the Artist, the Artist shall make such refund within ten (10) calendar days from the date a written request for a refund is made by the District. If the Artist does not refund the First Payment, Artist understands that Artist automatically waives all of Artist's rights in and to the Artwork set out in or otherwise granted by the Visual Artist's Acts Right of 1990, 17 U.S.C. 106A(a) or 113, *et seq.*, as amended, or otherwise in the nature of "Droit Moral" under which artists claim an interest in their work. Artist understands and agrees that, as to his or her rights in the Artwork, the provisions of this waiver shall control over the provisions of the Visual Artist's Acts Right of 1990, as amended as well as the provisions of any other copyright laws, including any other section of Title 17 of the United States Code or any state, statutory or common law. Further, if Artist does not refund the First Payment, District shall be entitled to pursue all legal remedies against the Artist available to District under Colorado law.

If the Artist does refund the First Payment within ten (10) calendar days of the request by the District, this Agreement shall terminate and the Parties shall be under no further obligation to each other as of the date of such termination.

6. **Installation.** Within _____ days, the Artist shall complete the fabrication, installation or construction of the Artwork in accordance with the Approved Design and approved Construction Drawings. The District shall have the right to review the progress of the Artwork at reasonable times during the fabrication, installation or construction thereof.

7. **Final Acceptance.** The Artist shall advise the District in writing when the Artwork has been completed. The District shall inspect the Artwork and notify the Artist within five (5) days thereafter and provide the Artist with either (i) notice that the Artwork is accepted ("Final Acceptance"); or (ii) notice that the Artwork is not complete, together with a list of items that need to be completed. If the Artist receives a notice that the Artwork is not complete, the Artist shall have fifteen (15) days to complete the Artwork unless otherwise agreed in writing by the Parties. If the Artwork is not completed within said period of time, Final Payment will not be made and the District shall be entitled to a refund of the First and Second Payment. If Artist does not refund the First and Second Payment within ten (10) calendar days of a request to do so by the District, the District shall be entitled to pursue all legal remedies against Artist allowed under Colorado law and Artist waives all of Artist's right, title and interest in and to the Artwork, including all of Artist's rights in and to the Artwork as described in Paragraph 5 above.

If Artist does refund the First and Second Payment within ten (10) calendar days of the request by the District, this Agreement shall terminate and the Parties shall be under no further obligation to each other as of the date of such termination.

8. **Final Payment.** Within twenty (20) calendar days after Final Acceptance by the District, Final Payment will be made to Artist. Upon Final Payment, title to the Artwork shall be transferred to the District free and clear of all liens and encumbrances from any source whatsoever and without any restriction as to the use, placement or future disposition of the Artwork. Further, in exchange for Final Payment, Artist shall deliver to District a bill of sale for the Artwork in substantially the form attached hereto as Exhibit C, together with Artist's signed Visual Artist's Rights Act Waiver using a form of waiver acceptable to the District, together with instructions for the maintenance and preservation of the Artwork, including a maintenance schedule, as appropriate.

9. **Risk of Loss.** The Artist acknowledges that until Final Payment has been made and a bill of sale delivered to the District for the Artwork, the risk of loss or damage to the Artwork shall remain with and be the sole responsibility of the Artist, accept for any loss or damage to the Artwork caused by except for any loss or damage to the Artwork caused by District personnel, visitors or others that are beyond the control of the Artist.

10. **Insurance.** Neither the Artist or any sub-contractor, agent or any employee thereof shall perform any Services under this Agreement until the following minimum insurance coverages have been obtained:

10.1 **Workers' Compensation Insurance.** The Artist and each sub-contractor, if any, shall carry workers' compensation insurance to cover liability under the laws of the State of Colorado in connection with the Services performed pursuant to this Agreement. Artist and each sub-contractor, if any, shall carry separate policies. In the alternative, Artist, if it/he or she has no employees, may opt out of the requirement for workers' compensation insurance by reason of the certifications made to the District in Paragraphs 16, 17 and 18 below, certifying to the District that Artist is an independent contractor and is not entitled to any workers' compensation benefits in the event of injury, is obligated to pay all federal and state income tax on any monies earned while performing Services for the District and is required to provide workers' compensation insurance for all workers that he or she hires.

10.2 **Commercial General Liability Insurance.** The Artist and each sub-contractor, if any, shall carry commercial general liability insurance, which shall include blanket contractual liability insurance. Such insurance shall be in an amount specified in the Colorado Governmental Immunity Act §24-10-101, *et seq.*, C.R.S., as may be amended from time to time (currently \$350,000.00 per person, \$990,000.00 per occurrence for bodily injury and property damage).

10.3 **Automobile Liability Insurance.** The Artist and each sub-contractor, if any, shall carry automobile liability insurance to include owned, non-owned and hired vehicles used in the performance of Services under this Agreement. Such insurance shall be in the amounts specified in the Colorado Governmental Immunity Act

§24-10-101, *et seq.*, C.R.S., as it may be amended from time to time (currently \$350,000.00 per person, \$990,000.00 per occurrence for bodily injury and property damage).

Prior to commencing any Services under this Agreement, Artist shall provide District a certificate of insurance evidencing the policies required by this paragraph, as well as the amounts of coverage for the respective types of coverage required. The Artist shall not allow any sub-contractor, agent or an employee to commence work until appropriate certificates of insurance have been obtained and approved by District. The required commercial general liability and automobile policy shall: (i) name the District as an additional insured for coverage only, with no premium payment obligation; and (ii) provide that coverage for the District shall not be impaired by the Artist's or any sub-contractor's failure to comply with any of the terms or conditions of the policy.

The coverages specified in each certificate of insurance shall not be terminated, reduced or modified without providing at least thirty (30) prior written days' notice to the District.

11. Compliance with Laws/Illegal Aliens. In performing this Agreement, Artist shall comply with all applicable laws, rules and regulations, including but not limited to, all federal, state and local laws. By way of explanation and not limitation, Artist certifies that Artist shall comply with the provisions of §8-17.5-101, *et seq.*, C.R.S. Artist shall not knowingly employ or contract with an illegal alien to perform Services under this Agreement, or enter into a contract with a sub-contractor or sub-consultant that knowingly employees or contracts with an illegal alien. Artist represents, warrants and agrees that: (i) it has confirmed the employment eligibility of all employees who are newly hired for employment to perform Services under this Agreement through participation in either the E-Verify Program or the Department program described in §8-17.5-101, C.R.S. Artist shall not use either the E-Verify Program or the Department program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed. If the Artist obtains actual knowledge that a sub-contractor performing Services under this Agreement knowingly employs or contracts with an illegal alien, the Artist shall (i) notify the sub-contractor and District within three (3) days that Artist has actual knowledge that a sub-contractor is employing or contracting with an illegal alien; (ii) terminate the sub-contract with the sub-contractor if within three (3) days of receiving such notice, the sub-contractor does not stop employing or contracting with the illegal alien, unless the sub-contractor provides information to establish that the sub-contractor has not knowingly employed or contracted with an illegal alien. Artist shall comply with all reasonable requests made in the course of an investigation by the Colorado Department of Labor and Employment. If Artist fails to comply with any requirement of §8-17.5-102(2) C.R.S., the District may terminate this Agreement for breach and Artist shall be liable for actual damages to District. If the

Artist participates in the Department program, Artist shall provide the affirmation required under §8-17.5-102(5)(e)(III) C.R.S., to District.

12. **Indemnification.** The Artist shall defend and indemnify the District, its officers, agents and employees from any claims arising out of the breach of this Agreement or any negligence of Artist, or anyone for whom Artist is legally responsible, which occurs during the performance of this Agreement by the Artist.

13. **Warranties of Title.** The Artist represents and warrants to District that the Artwork is solely the result of the artistic effort of the Artist; that, except as otherwise disclosed in writing to the District, the Artwork is unique and original and does not infringe upon any copyright or other rights of any person; the Artwork has not been accepted for sale elsewhere; 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 to the District pursuant to this Agreement.

These representations and warranties shall survive the termination of this Agreement.

14. **Termination for Convenience.** The District reserves the exclusive right to terminate or suspend all or a portion of the Services under this Agreement by giving ten (10) days' written notice to the Artist. If any portion of the Services shall be terminated or suspended, the District shall pay the Artist equitably for all Services properly performed pursuant to this Agreement.

15. **Remedies.** If, at any time, a Party's performance or conduct under this Agreement is found by either Party to be in breach of this Agreement, the non-breaching Party may elect to: (a) terminate the Agreement and seek damages; (b) treat the Agreement as continuing and require specific performance; or (c) avail itself of any other remedy at law or equity.

16. **Independent Contractor.** In the performance of the Services, Artist shall be and hereby certifies to District that Artist is, for all purposes, an independent contractor and not an employee or agent of the District. Artist and its employees and sub-contractors, if any, shall in no way represent themselves to third Parties as agents or employees of the District.

17. **No Unemployment Insurance or Workers' Compensation Benefits.** Artist agrees and hereby certifies to District that Artist is not entitled to unemployment insurance or workers' compensation benefits as a result of the performance of Services for District. Artist is required to provide workers' compensation and unemployment insurance benefits for its employees and/or sub-contractors as required by law.

18. **Payment of Taxes.** Artist hereby agrees and certifies to District that Artist is solely liable for any federal, state and local income and withholding taxes, unemployment taxes, FICA taxes and workers' compensation payments and premiums applicable to the performance of the Services under this Agreement. Artist shall indemnify District for any liability resulting from non-payment of such taxes and sums.

19. **District is Tax Exempt.** The District is a tax exempt quasi-municipal corporation in the State of Colorado and, therefore, no sales tax will be applied to the sale of the Artwork to the District. Further, with respect to any materials purchased by Artist in connection with the installation and construction of the Artwork, it is agreed that District shall not pay or be charged sales tax. District's tax exempt number is available upon request.

20. **Assignment.** 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 terminate this Agreement.

21. **Entire Agreement.** This Agreement constitutes the entire Agreement between the District and Artist and replaces all prior written or oral agreements and understandings. It may be altered, amended or repealed only by a duly executed written instrument.

22. **Notices.** All notices, requests, demands and other communications which are required or permitted under this Agreement to District shall be in writing and shall be delivered by the Artist by Certified Mail, Return Receipt Requested, postage prepaid to:

Mike Braaten, Deputy Executive Director
South Suburban Park and Recreation District
6631 S. University Boulevard
Centennial, CO 80121

All notices, requests, demands and other communications which are required or permitted under this Agreement to Artist shall be in writing and shall be delivered by the District by Certified Mail, Return Receipt Requested, postage prepaid to:

23. **Term.** Unless sooner terminated in accordance with the provisions of Paragraph 5, 7, 14 or 15, this Agreement shall remain in effect until the Services are fully performed or _____, 20_____, whichever occurs first, at which time this Agreement.

shall terminate and be of no further force and effect, except as to those provisions which survive termination, including, but not limited to, Paragraphs 4, 12, 13, 15, 16, 17 and 18.

24. **Force Majeure**. The Parties shall not be responsible for any failure or delay in the performance of any obligations under this Agreement caused by acts of God, flood, fire, war or public enemy.

25. **No Third Party Beneficiaries**. This Agreement is intended to benefit only the Parties and neither Artist or any sub-contractors of Artist or any other person or entity is intended by the Parties to be a third party beneficiary of this Agreement.

26. **Governing Law**. This Agreement shall be governed by and construed under laws of the State of Colorado.

27. **Effective Date**. This Agreement shall be effective on the date it is signed by all Parties.

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IN WITNESS WHEREOF, the Parties have executed this Agreement in duplicate original as of the date set forth above.

SOUTH SUBURBAN PARK AND
RECREATION DISTRICT:

ARTIST:

(Signature)

(Signature of Artist)

Rob Hanna

(Print name)

(Print name)

Executive Director

(Title)

(Title, if applicable)

(Date)

(Date)

(Social Security# or Federal ID#)

If Artist is a minor:

Signature of Parent or Guardian

Date