

Appendix D

ARTIST AGREEMENT

The following information is included for information only. It is a sample of a typical artist agreement that will serve as the basis for the contractual agreement between the *Successful Artist* and the City of Hamilton.

ARTIST AGREEMENT

This Agreement made as of the ___ day of _____ 201_.

BETWEEN:

CITY OF HAMILTON,
as represented by Planning and Economic Development

(hereinafter the "City")

-and-

(hereinafter the "Artist")

WHEREAS:

1. The City held a competition to choose an artist to produce a work of art (the "Artwork") for the _____ Project which involves the creation of a work of art to be installed on _____
2. The City has chosen the Artist to produce the Artwork.

IN CONSIDERATION of the mutual covenants herein contained, the parties agree as follows:

1. The Artwork

- (a) The Artwork will be fabricated and delivered to the site by the Artist for installation.
- (b) The design of the Artwork, the particulars of its composite materials, and the rest of the Artist's submission to the competition are collectively attached hereto as Schedule "A" and form an integral part of this Agreement.

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- (c) The Artist acknowledges and agrees there may be other artwork produced and installed on or for _____ and therefore he/she will not be the exclusive artist for _____. The City will or may enter into agreements with other artists for art work for _____

2. Term

This Agreement shall take effect as of the date first above written. The Artist shall complete all the work and services contemplated by this Agreement on or before _____, unless this Agreement is terminated earlier as set out herein (the "Term").

3. Artist's Obligations

- (a) The Artist agrees to provide all labour and all materials for the production of the Artwork and its delivery to the installation site. The City will be responsible for installing the Artwork to the site.
- (b) The Artist agrees to provide to the City stamped engineering drawings and specifications for the design of all foundations, attachments, methods and other requirements for the installation for the Artwork to satisfaction of the Director of Tourism and Culture or his/her designate.
- (c) The Artist will collaborate with all persons engaged in the Project of which the Artwork is to be a part, and to exercise skill and diligence in producing and executing the Artwork.
- (d) The Artist is responsible for all necessary safety measures while executing, completing and transporting the Artwork.
- (e) The execution of the Artwork is solely the responsibility of the Artist. Some limited assistance with execution may be provided by maintenance staff of the City.
- (f) Upon completion of the Artwork, the Artist will clean the Artwork and eliminate all dirt, imperfections and remove all extraneous material such as debris and remove all protective devices and structures.
- (g) The Artist will provide written documentation at the end of the project outlining maintenance recommendations and a description of all primary and secondary materials used in the fabrication of the artwork including commercial names and suppliers of those materials.
- (h) Up to and including the time of delivery of the Artwork to the site for installation, the Artwork will be the responsibility of and at the risk of the Artist. Upon delivery of the Artwork, the Artwork will be the responsibility of and at the risk of the City.

- (i) Upon request, the Artist will provide the City with information regarding the Artist's professional history, working process, concept and biography. The Artist hereby consents and authorizes the City to use and disclose such information, including the Artist's name, in the City's publicity, promotion and advertisement of the Project, Artwork and related activities, as the City deems necessary or desirable.
- (j) The Artist acknowledges and agrees that the City will be responsible for all publicity, promotion and advertisement of the Project and related administrative activities.
- (k) The Artist will be available at all reasonable times, upon reasonable notice by the City, to attend any related events, presentations, celebrations or necessary meetings for the creation, execution and publicity of the Artwork.
- (l) The Artist will not directly or indirectly disclose or use, at any time, any confidential information acquired in the course of this Agreement.
- (m) The City reserves the right to suspend work in the event of an emergency.

4. Payment

The *Successful Artist* will be awarded \$315,000 (excluding HST) for fabrication and transportation to the site of the work of art as per the following payment schedule:

- 1) \$30,000 upon the Successful Artist's provision of any drawings, studies or reports as required by and to the satisfaction of the Executive Director (HWT) / Director of Tourism and Culture or his / her designate (e.g. Engineering drawings).
- 2) \$95,000 when the work is approximately 40% complete
- 3) \$95,000 when the work is approximately 80% complete
- 4) \$95,000 upon delivery to the site.

Installation will be handled on site by the Hamilton Waterfront Trust.

5. Intellectual Property

- (a) The Artist represents, warrants and agrees that the Artwork, including any alterations which may be agreed to by Artist and the City, does not breach any existing copyright or other intellectual property rights.
- (b) Subject to the rights given to the City pursuant to this Agreement, the Artist will retain the copyright and other intellectual property rights relating to the Artwork.

- (c) The Artist hereby grants to the City, a perpetual, world-wide, exclusive, irrevocable, transferable, royalty-free, fully paid-up right and licence: (a) to use, reproduce and distribute, in any form, the Artwork or any part thereof for public display, community promotion, and non-commercial or educational purposes; and (b) to authorize other persons, including representatives, agents, contractors or sub-contractors, to do any of the former on behalf of the City. However, said licence does not give the City the right to create replica models of the Artwork.
- (d) The Artist acknowledges that the Artwork was created specifically for the City's Project, and therefore, the Artist agrees to not sell or licence the design of the Artwork to any other party.
- (e) The Artist reserves the right to be identified as creator of the Artwork. The City will give credit to the Artist as creator of the Artwork in such manner as the City deems appropriate in its sole discretion.
- (f) As of delivery of the Artwork to the site, the City has the sole right to move, de-accession or dispose of the Artwork, in whole or in part, for the remainder of the Term and at any time after the Term, as it deems necessary or desirable.

6. Termination

This Agreement may be terminated by the City:

- (i) at any time upon written notice to the Artist. The Artist will be reimbursed in direct proportion to the percentage of the Artwork completed at the time notification was received in writing; and/or
- (ii) in the event the Artist breaches any of his/her obligations under this Agreement, provided that the City has first notified the Artist of the breach and given him/her an opportunity to remedy the breach on such terms and within such time frame as reasonably stipulated by the City.

7. Indemnity and Insurance

- (a) The Artist will defend, indemnify and save harmless the City, its officials, officers, employees, directors, representatives, contractors and agents (collectively the "City Indemnitees") against and from any and all actions, causes of action, interest, claims, demands, penalties, fines, costs, damages (including indirect, special and consequential damages), expenses (including defence costs) and loss, which the City Indemnitees may bear, suffer, incur, become liable for or be put to by reason of any damage to or loss of property or injury or death to persons by reason of, arising out of or in consequence of:

- (i) any breach, violation or non-performance of any provision of this Agreement by the Artist;
- (ii) any willful misconduct or negligent act or omission of the Artist;
- (iii) any infringement or alleged infringement of intellectual property rights associated with the Artwork; and
- (iv) anything in connection with this Agreement;

and this indemnity will survive the expiry or earlier termination of this Agreement.

- (b) The Artist will obtain and maintain the following insurance:

Commercial General Liability Insurance, written on IBC Form 2100 or its equivalent, including but not limited to bodily and personal injury liability, property damage, and non-owned automobile and having an inclusive limit of not less than \$2,000,000 per occurrence and endorsed to include the City of Hamilton as additional insured. The Artist shall deposit with the City a certificate of insurance prior to commencing work. Certificate shall provide that at least 30 days' prior written notice shall be given to the City by the insurer before the insurer or Artist takes any steps to cancel, terminate, fail to renew, amend or otherwise change or modify the insurance or any part thereof. Certificate Holder will be addressed as the City of Hamilton, City Hall, 71 Main Street West, Hamilton, Ontario L8P 4Y5 Attn: Planning and Economic Development, Tourism & Culture. All certificates, cancellation, nonrenewal or adverse change notices should be mailed to this address.

8. Workplace Safety Insurance

The Artist will comply with the Workplace Safety and Insurance Act, 1997, S.O. 1997, c.16, Schedule A. The Artist will, upon request, either:

- (i) submit to the City a valid clearance certificate from the Ontario Workplace Safety and Insurance Board and will provide additional certificates with respect to such coverage as often as the City deems necessary during the term of this Agreement to ensure continued good standing with the Workplace Safety and Insurance Board; or
- (ii) furnish proof in a form satisfactory to the City from the Workplace Safety and Insurance Board that the Artist does not require Workplace Safety and Insurance Board insurance, but in such a case, if the Artist changes his/her status during the term of this Agreement so that such coverage is required, the Artist will immediately provide the City with the certificate required under clause (i).

9. General Terms

- (a) In the case of serious disrepair or serious vandalism to the Artwork which the City elects to repair, the City will make reasonable effort to contact and consult with the Artist about the restoration. If restoration is required, the City will pay the Artist for the restoration at a fee negotiated at that time by the Artist and City. If the City is unable to contact the Artist after making reasonable effort, the City will have sole discretion regarding the manner and provider of restoration.
- (b) If a section or part or parts of a section in this Agreement be illegal or unenforceable, it or they shall be considered separate and severable from the Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall be binding upon the parties as though such section or parts or parts thereof had never been included in this Agreement.
- (c) Any notice required or desired to be given by any party hereunder shall be in writing and may be personally delivered or sent by prepaid registered mail or facsimile transmission to the other party at its address for service or at such other address as either party may so notify to the other. Every such notice shall be deemed to be received, if personally delivered, on the date of delivery; or if mailed as aforesaid in Ontario, on the fourth (4th) business day after its mailing date; or if sent by facsimile transmission, on the date of successful transmission, and if such date is not a business day, then on the first business day thereafter. Addresses for service shall be as follows:

To: the Artist

[insert address]

To: City of Hamilton
Community Services
77 James Street North, Suite 305
Hamilton, Ontario L8R 2K3
Attention: Art in Public Places Coordinator

- (d) Any information which is collected by City under this Agreement is subject to the rights, obligations and safeguards provided for in the *Municipal Freedom of Information and Protection of Privacy Act*, R.S.O. 1990, c. M.56.
- (e) Time shall be of the essence of this Agreement and of every part hereof and no extension or variation of this Agreement shall operate as a waiver of this provision.
- (f) This Agreement constitutes the entire agreement between the parties hereto with respect to all the matters herein and its execution has not been induced by, nor do any of the parties hereto rely upon or regard as material, any representations or writings whatsoever not incorporated herein and made a part hereof.

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- (g) This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, and the courts of such Province sitting in Hamilton shall have exclusive jurisdiction to ascertain any action in connection with this Agreement.
- (h) A reference to any act, by-law, rule, regulation or policy or to a provision thereof shall be deemed to include a reference to any act, by-law, rule, regulation or policy or provision enacted in substitution therefor or amendment thereof.
- (i) In this Agreement, wherever the singular and masculine are used, they shall be construed as if the plural or the feminine or the neuter had been used, where the context or the party or parties so requires, and the rest of the sentence shall be construed as if the grammatical and the terminological changes thereby rendered necessary have been made.
- (j) This Agreement shall ensure to the benefit of and be binding upon the parties hereto and their respective heirs, executors, successors and permitted assigns.
- (k) None of the terms or obligations of this Agreement shall be assigned by the Artist without the express prior written consent of the City.
- (l) No term or provision of this Agreement shall be deemed waived and no breach consented to, unless such waiver or consent is in writing and signed by an authorized representative of the party claimed to have waived or consented.
- (m) The headings to each section are inserted for convenience of reference only and do not form part of the Agreement.
- (n) This Agreement shall not be construed to constitute an agency, partnership or joint venture between the parties hereto.
- (o) All obligations of the Artist shall expressly, or by their nature, survive termination or expiration of this Agreement (including but not limited to those relating to intellectual property rights and indemnity) until, and unless, they are fulfilled, or by their nature expire.
- (p) Each of the parties hereto will promptly do, make, execute or deliver, or cause to be done, made, executed or delivered, all such further acts, documents and things as the other party hereto may reasonably require from time to time for the purpose of giving effect to this Agreement, and will use reasonable efforts and take all such steps as may be reasonably within its power to implement to their full extent, the provisions of this Agreement.
- (q) The Artist will disclose to the City, without delay, any situation that a reasonable person would interpret as either an actual, potential or perceived conflict of interest,

and will comply with any terms and conditions that the City may reasonably prescribe as a result of the disclosure. The Artist represents and warrants that as at the date of execution of this Agreement, he/she has no actual, potential or perceived conflict of interest with the City or the Project, and there is no reason why the City would not want to enter into this Agreement with the Artist.

10. Artist's Acknowledgement

The Artist acknowledges that he/she has read this Agreement, understands the terms and conditions and the Artist's rights and obligations under this Agreement and agrees to be bound by same. The Artist acknowledges and agrees that this Agreement is being executed voluntarily. The Artist also acknowledges that he/she has been given an opportunity to consult his/her own lawyer with respect to the terms of this Agreement prior to signing this Agreement and has either sought out or declined such consultation.

IN WITNESS WHEREOF this Agreement has been duly signed by the parties hereto.

Witness

[insert Artist's name]

**CITY OF HAMILTON, as represented by
Planning and Economic Development**

Per: _____

Name:

Title: