

AGREEMENT FOR FABRICATION

AGREEMENT made this the ___ day of _____ day of 20___, by and between _____ ("ARTIST") and _____ ("FABRICATOR").

WHEREAS, Artist is a recognized professional artist and has designed a work for _____; and

WHEREAS, the parties acknowledge CITY commissioned the Work by Artist to be installed in downtown _____, _____, at _____ (the "Site") and shall be known as " _____"; and

WHEREAS, Fabricator shall make, assemble, manufacture, fabricate and install the Work; and

WHEREAS, the parties wish to have the fabrication of the Work for the _____ governed by the mutual obligations, covenants and conditions herein;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, receipt being acknowledged, the parties agree as follows:

- 1. Date: _____
- 2. Fabricator: _____
Telephone: (Business) _____
(Home) _____
(Pager) _____
- 3. Address: _____
Street _____

City State Zip Code
- 4. Job Number: _____
- 5. Name of Artist(s) creating or designing the Art Work(s) to be fabricated ("Work"): _____
- 6. Title or Description of Work to be fabricated: _____
- 7. Anticipated Date of Completion of Fabrication: _____
- 8. Date of Installation of Work: _____

9. Installation Site: _____

10. Fabrication Description: _____

11. (a) Fabricator will provide the following materials, hardware, supplies, etc.:

(b) ARTIST will provide the following materials, hardware, supplies, etc.:

(c) _____ will provide the following technical assistance:

12. Fees: \$

(a) For Fabrication Services: \$ _____

(b) For Installation Services: \$ _____

(c) For Transportation Services: \$ _____

(d) For Consulting Services: \$ _____

(e) For Additional Services: \$ _____

13. Payment Schedule:

\$ _____ : On signing this Agreement

\$ _____ : On completion of fabrication

\$ _____ : On completion at site

Additional Charges: _____

The undersigned Fabricator and "ARTIST" agree to the terms and conditions above and below.

Fabricator: _____ Date: _____

Artist: _____ Date: _____

TERMS AND CONDITIONS:

1. **Fabrication.** The Fabricator will make, assemble, manufacture, fabricate, transport and install the Work, or have the Work installed, in a good and workmanlike manner, in accordance with the terms and conditions of this Agreement and subject to the provisions of any agreement between Artist and CITY.

2. **Warranty.** The fabrication is warranted against defects in material or workmanship for a period of one (1) year from the date the fabricated Work is completed. If, after the Work has been installed, the installation is found to be defective because of improper material or workmanship, excluding normal wear, tear, and weathering, the Fabricator, at their own expense, will provide the service and material necessary to correct the failure, provided that written notice of the alleged improper material or workmanship is provided to the Fabricator by CITY within the aforesaid warranty period. Notwithstanding the above warranty made by the Fabricator, it is hereby understood and agreed that the Fabricator shall not be liable for any loss or damage resulting from the negligence of CITY or from the failure to maintain and care for the Work by CITY. Nor shall the Fabricator be liable or have any responsibility whatsoever for any loss or damage sustained as a result of defects in or failure of the work for any materials, hardware, and the like used in fabricating the Work which the Fabricator did not provide, supply, or otherwise approve.

3. **Revisions and Changes.** Revisions and changes in the fabrication of the Work or in the installation site may be made with the written consent of the Fabricator and CITY. Notwithstanding the preceding sentence, changes in completed stages of the fabrication of the Work resulting from structural or mechanical exigencies may be made in the discretion of CITY. In the event of any changes or revisions, the Fabricator's fees will be adjusted as agreed upon by the parties hereto at the times the changes or revisions are made.

4. **Force Majeure/Impossibility of Performance.** In no event shall the Fabricator be liable for anything that happens beyond reasonable control; and any and all obligations of the Fabricator hereunder shall be waived or delayed to the extent that Fabricator is unable to carry out the same as a result of casualty or accident, or inability to obtain necessary supplies or materials, or satisfactory substitutes, used in the fabrication of the Work, acts or regulations of public authorities or labor interruption or delay of transportation service or unsafe job-site conditions, or of acts of God, or any other cause, happening, event, or occurrence (whether or not of the same general character as those specifically enumerated) beyond the Fabricator's reasonable control.

5. **Insurance.**

(a) **Insurance of the Work.** The Fabricator will provide all risk insurance on the Work up to the amount of \$1,000,000.00 if the Fabricator is responsible under this Agreement for transporting the Work to the installation site. The Fabricator agrees to provide all risk insurance on the Work up to the amount of \$1,000,000.00 during

installation of the Work and while the Work is at the installation site. The parties understand and agree that, in the event of damage, destruction, theft, or loss of the Work, or any part thereof, recovery shall be limited to such amount, if any, as may be paid by the insurer; and the Fabricator, its agents and employees, are hereby released from liability for any and all claims arising out of any damage, destruction, theft, or loss.

(b) **Other Insurance.** The Fabricator will carry liability and property damage insurance covering the installation work in amounts not less than \$1,000,000.00. Insurance shall insure both the Artist, the Fabricator and CITY as may be required.

(c) **Worker's Compensation Insurance.** The Fabricator will pay for and carry Worker's Compensation Insurance for any and all of Fabricator's employees performing work on said Work, and shall provide CITY with proof of coverage upon request.

6. **Independent Contractor.** In performing the services specified in this Agreement, the Fabricator is acting as an Independent Contractor. Nothing contained in this Agreement shall be construed to constitute the Fabricator as a partner, employee, or agent of CITY.

7. **Use of Artist's Name.** The Artist and CITY give the Fabricator permission to use the Artist's name, in connection with the fabrication of the Work, provided said use shall not reflect unfavorably on Artist or CITY and subject to prior written approval.

8. **Copyright and Derivative Work.** The parties agree that the work fabricated pursuant to this Agreement shall be a work made for hire; the parties agree the Artist and/or the copyright claimant grant to Fabricator only that right and license to fabricate the Work as a reproduction or as a derivative work, and Fabricator hereby irrevocably assigns and agrees to assign and transfer any and all right, title and interest in any copyright resulting from the fabrication of the Work as a reproduction or derivative work throughout the world for the entire term of copyright to Artist or copyright claimant. Fabricator agrees to sign and execute any documents reasonably required to effectuate the purposes of this provision, and further, fabricator grants to Artist or copyright claimant by execution of this Agreement the specific power of attorney and to act as attorney in fact to execute an assignment or other documents on behalf of fabricator reasonably necessary to transfer and assign any copyright in reproduction or derivative work accruing to Fabricator and the right to register the copyright in Artist 's or copyright claimant's own name. Further, should any rights arise pursuant to the Visual Artists Rights Amendment to the Copyright Law of the United States, Fabricator specifically waives all rights in the reproduction or derivative work specifically for the work being fabricated and produced and for any and all uses it is intended as a work of public art, which may arise or be conferred by subsection (A) of Section 106A of the United States Copyright Act, 17USC Section 101, et sec, as provided by Section 106A(e)(1); all rights of copyright in the underlying work, specifically including but not limited to the design, maquette, models, drawing or other documentation shall remain with the Artist or copyright claimant.

9. **CITY's Final Acceptance of the Work.** Fabricator shall coordinate with the CITY for schedule of installation. The installation of the Work shall be considered complete, and the Work shall be considered accepted by CITY, following Fabricator's installation of the Work, removal of Fabricator's and/or installer's equipment, site debris, excess materials, etc., and CITY's verification, confirmation and acceptance by written notice to Fabricator to that effect.

10. **Compliance.** Fabricator shall comply with all federal, state and local laws, regulations, and ordinances applicable to the Work and this Agreement, including, without limitation, the Americans with Disabilities Act (ADA), the National Fire Protection Association (NFPA) requirements, and the Occupational Safety and Health Act (OSHA).

11. **Heirs and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of ARTIST, Fabricator and their respective heirs, personal representatives, successors and permitted assigns.

12. **Notices.** Any notice 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 to City: _____

B. If to Fabricator: [FABRICATOR NAME AND ADDRESS]

12. **Other.**

A. **Project Title.** Parties agree the Work shall be referred to as _____

_____.

B. **Voluntariness.** The parties acknowledge that they are executing this Agreement voluntarily; that they have read and are familiar with the provisions herein contained before signing and have weighed all the facts and circumstances likely to influence their judgment; that they have sought and obtained independent advice; that they have each been duly advised and appraised of their questions pertaining to this Agreement with such questions being fully and satisfactorily answered and they each represent and warrant that they clearly understand and consent to all the provisions

herein.

C. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties relating to the subject matter contained in it and supersedes all prior and contemporaneous representations, oral or written agreements or understandings between the parties respecting its subject matter.

D. **Binding Agreement.** This Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, heirs, successors and assigns. Whenever in this instrument a reference to any party is made, the reference shall be deemed to include a reference to the legal representatives heirs, successors and assigns of any party hereto.

E. **Amendment.** No amendment, modification, change or supplement of this Agreement shall be binding unless executed in writing by the parties hereto.

F. **Waiver.** No consent or waiver, express or implied, of any one provision of this Agreement shall constitute a waiver of any other provision, nor shall any one waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party against whom the waiver is asserted.

G. **Most Favorable Terms.** If one party shall, during the term of this Agreement, enter into or modify the Agreement with more favorable terms or benefits, then the other party shall automatically become entitled to all more favorable terms.

H. **Governing Law.** Agreement shall be construed and interpreted in accordance with, and governed by the laws of the State of Georgia.

I. **Interpretation.** If any provisions in this Agreement is held by a Court of competent jurisdiction to be invalid or unenforceable, the remainder of the Agreement shall remain in full force and shall in no way be impaired.

J. **Remedies.** In the event of a breach or threatened breach of the provisions of this Agreement, either party shall be entitled to any specific legal or equitable remedy available unless provisions hereinafter providing for arbitration shall apply.

K. **Mediation.** Any controversy or claim arising out of or relating to this Agreement, or the breach of this Agreement, is subject to mediation. A party desiring mediation shall give notice (containing a general description of the controversy) to the other party and designating by name and address a Mediator. The other party shall accept or designate a Mediator within five (5) days from the date of said notice by giving notice including the name and address of the Mediator. Other than this selection of Mediator, controversial claims shall be settled in accordance with the rules of the American Arbitration Association. Judgment on any award rendered by the Arbitrator(s) may be entered in any Court having jurisdiction thereof.

L. **Headings.** The subject headings of the paragraphs of this Agreement are included for purposes of convenience only and shall not effect interpretation of the paragraphs.

M. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders. The singular shall include the plural or vice versa.

N. **Counterparts.** This Agreement may be executed in two or more counterparts each of which shall constitute an original Agreement as against the party who had signed it, but which in the aggregate shall constitute one and the same instrument.

O. **Time.** Time is of the essence of this agreement.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the date first set forth above.

FABRICATOR:

CITY:

[FABRICATOR'S NAME]

[TITLE]

Date

Date