

**ASSIGNMENT OF INTEREST AND DONATION AGREEMENT**

**THIS ASSIGNMENT OF INTEREST AND DONATION AGREEMENT** is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the **CITY AND COUNTY OF DENVER** (the "City"), and **SCIENTIFIC AND CULTURAL FACILITIES DISTRICT**, a Colorado political subdivision of the State (the "Assignor"), whose address is 899 Logan Street, #500, Denver, Colorado 80203.

**WITNESSETH:**

**WHEREAS** the Assignor entered into an agreement with artist Patrick Marold (the "Artist") for artwork ("Work") a depiction of which is attached as Exhibit A, which agreement is dated April 16, 2010 (the "Artist Agreement"), attached hereto as Exhibit B and incorporated herein by this reference, to perform the Work;

**WHEREAS**, Assignor and the City agree that the Work will be installed at the Denver Performing Arts Complex (the "Site") owned by the City;

**WHEREAS**, the Artist Agreement has been performed and the Work has been completed and accepted by Assignor;

**WHEREAS** the Assignor and the City have agreed to the acceptance of the conveyance of the Work;

**WHEREAS**, the City is ready willing and able to accept the Work into its public art collection and accept the assignment of the Artist Agreement and ownership of the Work for the City.

**NOW, THEREFORE**, in consideration of the premises herein, and other good and valuable consideration, the adequacy of which is acknowledged, the parties agree as follows:

1. **ASSIGNMENT OF MATERIALS**: Assignor is the current owner of the Work and affirmatively warrants and represents to the City that there are no liens upon or claims of any kind to the Work. The Assignor does hereby convey, donate, assign, deliver, and forever relinquish to the City for the use and benefit of the people of Denver, and the City does hereby assume, the Artist Agreement, ownership of the Work and all of Assignor's rights, title and interest in and to the Work, including its rights under the Artist Agreement which Assignor now owns or may hereafter acquire for the purposes of this Assignment of Interest and Donation Agreement ("Agreement") or

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otherwise, except as otherwise specified herein. The Parties acknowledge that the intent of the Work is to honor current and future recipients of the Assignor's Rex Morgan Awards and that the Assignor retains the right to approve an annual inscription upon the Work in a location approved by the Artist, and the Assignor, as set forth in the Artist Agreement. The cost of the inscriptions being placed on the Work and the cost for maintaining the inscriptions on the Work shall be the responsibility of the Assignor. The City shall permit reasonable access to the Work to allow for the inscription. The Assignor shall coordinate access for inscription work with the Director of Theaters and Arenas. Additionally, the City licenses back to the Assignor the right to make two dimensional reproductions of the work for non-commercial purposes as set forth in the Artist Agreement and the right to make three dimensional replicas of the Work solely for the purpose of use as awards for honorees under the Rex Morgan Program.

It is understood and agreed by Assignor that the City may display, store, move, relocate, dismantle, remove from public display, deaccession or demolish the Work, at its sole discretion, and the Assignor disclaims any right or interest in the Work, including but not limited to, inscription rights, in that event. The Assignor shall provide within thirty (30) days of the execution of this Agreement, complete and legible copies or originals of any and all documentation, designs, plans, materials lists, maintenance records, installation contracts, correspondence and any and all other documentation of whatever nature in Assignor's files related to the Artist Agreement and the Work.

The Assignor further donates funds to be applied by the City toward maintenance of the Work, exclusive of maintenance of the inscriptions, in the amount of Two Thousand Dollars (2,000.00). The donation of maintenance funds shall be made within thirty (30) days of final execution of this Agreement.

The parties intend that all property rights to any and all materials, text, logos, documents, booklets, manuals, references, guides, brochures, advertisements, music, sketches, drawings, photographs, specifications, software, data, products, ideas, inventions, or any other work or recorded information created pursuant to the Artist Agreement and conveyed to the City pursuant to this Agreement, in preliminary or final form and on any media whatsoever (collectively "Materials") shall belong to the Assignor with a copy to be provided the City to have a perpetual and irrevocable license to use the Materials as the City in its sole discretion deems appropriate.

**2. TERM OF AGREEMENT:** The term of the Agreement shall commence upon

completed execution of this Agreement and remain in effect perpetually.

3. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any act performed by either party hereunder constitute or be construed to be a waiver by other party of any breach of term, covenant, or condition or any default which may then exist on the part of the defaulting party, and any act or failure to act by either party when any such breach or default shall exist shall not impair or prejudice any right or remedy available to either party with respect to such breach or default; and no assent, expressed or implied, to any breach of any one or more terms, covenants, or conditions of this Agreement shall be construed as a waiver of any succeeding or other breach.

4. **TAXES, PERMITS AND LICENSES:** The Assignor represents that it has no knowledge that any lien, mortgage, judgment or execution exists on the Work for any taxes, excises, licenses fees or permit fees of whatever nature. The Assignor further agrees to cooperate with the City in any action for lien, mortgage, judgment, or execution to be filed which will in any way impair the rights of the City under this Agreement, to the extent that such action alleges facts occurring prior to the effective date of this Agreement.

5. **VENUE, GOVERNING LAW:** Each and every term, condition, or covenant herein is subject to and shall be construed in accordance with the provisions of Colorado law, any applicable federal law, the Charter of the City and County of Denver and the ordinances, regulations, and Executive Orders enacted and/or promulgated pursuant thereto. Such applicable law, together with the Charter, Revised Municipal Code and regulations of the City and County of Denver, as the same may be amended from time to time, is hereby expressly incorporated into this Agreement as if fully set out herein by this reference. Venue for any action arising hereunder shall be in the Denver County or Denver District Court in the City and County of Denver, Colorado.

6. **INDEMNIFICATION AND INSURANCE:** Both the Assignor and the City are subject to the "Colorado Governmental Immunity Act., § 24-10-101, *et seq.*, C.R.S., as now or hereafter amended ("Immunity Act"), and no term or condition shall be deemed a waiver of any provision of the Immunity Act. The parties understand and agree that the liability of the Assignor, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of the Immunity Act.

Assignor shall provide the City with copies of insurance certificates related to the Work or to the Artist Agreement, if any, with liability limits.

7. **CONFLICT OF INTEREST:** The parties agree that no official, officer or employee of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and the Assignor further agrees not to hire or contract for services any official, officer or employee of the City or any other person which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter Sections 1.2.9 and 1.2.12.

8. **NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Assignor, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the City and the Assignor that any person or entity other than the City or the Assignor receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

9. **DISPUTES:** All disputes of whatsoever nature between the City and Assignor regarding this Agreement shall be resolved by administrative hearings pursuant to the procedure established by Denver Revised Municipal Code 56-106. For the purposes of that procedure, the City official rendering a final determination shall be the City's Director of the Denver Office of Cultural Affairs.

10. **EXAMINATION OF RECORDS:** Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any directly pertinent books, documents, papers and records of the Consultant, involving transactions related to the Agreement until the latter of three (3) years after the final payment under the Agreement or expiration of the applicable statute of limitations.

11. **TAXES, CHARGES, AND PENALTIES:** The City shall not be liable for the payment of taxes, late charges or penalties of any nature except as required by the City's Revised Municipal Code.

12. **PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and

provisions hereof.

13. **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 certified mail, return receipt requested, postage prepaid, as follows:

If to the City: Denver's Office of Cultural Affairs  
201 West Colfax, Dept 1007  
Denver, Colorado 80202

If to the Assignor: The address first above written.

14. **SEVERABILITY**: It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the Courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

15. **SURVIVAL OF CERTAIN AGREEMENT PROVISIONS**: The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

16. **AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS**:

A. The parties assure and guarantee that the signatory possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

B. The person or persons signing and executing this Agreement on behalf of the parties, do hereby warrant and guarantee that he/she or they have been fully authorized by the respective party to execute this Agreement on behalf of the party and to validly and legally bind the party to all the terms, performances and provisions herein set forth.

17. **COUNTERPARTS OF THIS AGREEMENT**: This Agreement shall be executed

in two (2) counterparts, each of which shall be deemed to be an original of this Agreement.

*(Remainder of page left intentionally blank.)*

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

CITY AND COUNTY OF DENVER

ATTEST:

STEPHANIE Y. O'MALLEY  
Clerk and Recorder, Ex-Officio  
Clerk of the City  
and County of Denver

By \_\_\_\_\_  
MAYOR

RECOMMENDED AND APPROVED:

By: \_\_\_\_\_  
Director, Denver's Office of Cultural Affairs

By: \_\_\_\_\_  
Director, Theaters and Arenas

APPROVED AS TO FORM:  
City Attorney for the City and  
County of Denver

By \_\_\_\_\_  
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By: \_\_\_\_\_  
Auditor  
Contract Control No. XC00368

"CITY"

SCIENTIFIC AND CULTURAL  
FACILITIES DISTRICT

By: Peg Long  
Peg Long  
Name (print)

Title: Executive Director

APPROVED AS TO FORM:

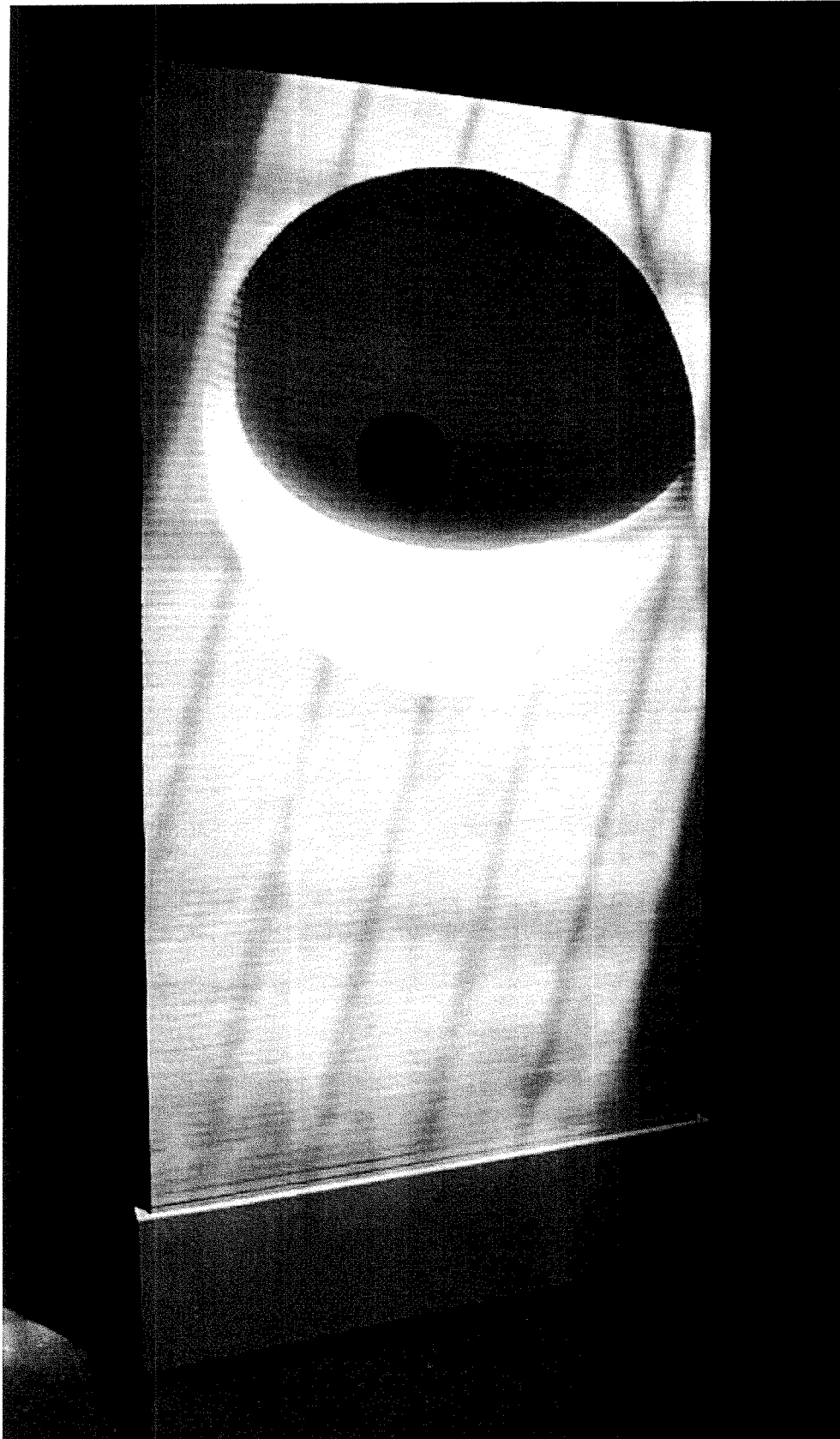
[Signature]  
Alan D. Pogue, General Counsel, SCFD

"ASSIGNOR"

Exhibits A and B







Scale Model of the Rex Morgan Tribute Sculpture.  
42" wide, 22" deep and 87" high  
This model, fabricated in fiber board will be used to transfer the details into glass layers. This model will also give everyone an accurate representation of scale and form.



This is an example of how the names will be laid out and sized. It is important to remember that they will be sandblasted or etched, and will not appear as bold as they do on paper. I want to overlay and allow the names to intersect, creating a more whole composition and singular body of names, calling attention to the collective contribution of the individuals. The quote and explanation for the SCFD is still a very rough draft and I am hoping to refine this with the input and responses provided by the committee. The letters used will range in size from 1.5"- 2", and the largest title letters may be as much as 3-4".

# REX MORGAN CITIZEN VOLUNTEER AWARD

1993 NANCY PARKER  
1994 WILBUR HAASBERRY  
2000 HARRY CHAWAN  
2000 HARRY LEWIS  
2000 A. BARRY AND  
2003 ARIEN BIRSCHNEIDERS  
2003 EDWARD P. COCKINORS  
2003 ROSALEE KEOLES  
2003 JOHN E. HAYLES  
2007 MARUCA SALAZAR  
2008 BOB GREENLEE  
2008 GULLY STANFORD

IN 1988 REX MORGAN CHAMPIONED A VISION THAT THE PEOPLE OF COLORADO EMBRACED TO PRESERVE AND NURTURE SCIENCE AND CULTURAL PROGRAMS: THE SCIENTIFIC AND CULTURAL FACILITIES DISTRICT. BY CULTIVATING VITAL RELATIONSHIPS AND MAKING IT POSSIBLE FOR EVERYONE TO ACCESS THESE COLLECTIVE CONTRIBUTIONS OF THE HUMAN SPIRIT AND MIND, THE SCFD ENRICHES US ALL.

I am certain that after the dust of centuries has passed over cities, we... will be remembered not for victories or defeats in battle or in politics, but for our contribution to the human spirit.

John F. Kennedy



# REX MORGAN CITIZEN VOLUNTEER AWARD

1998 NANCY PARKER

1999 JANE HANSBERRY

2000 WILBUR FLACHMAN

2001 HARRY T. LEWIS

2002 A. BARRY AND

ARLENE HIRSCHFELD

2003 EDWARD P. CONNORS

2004 ROSALIE KEITH

2005 MIKE MOORE

2006 JOHN E. HAYES

2007 MARUCA SALAZAR

2008 BOB GREENLEE

2009 GULLY STANFORD



While the information in both the quote and the explanation contain the foundation of what I think should be communicated, I do wish to refine and edit this down into a more concise and memorable body of text. With the input of the committee and further work, I will determine what will be placed on the opposite side of where the names will be read.

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VISION THAT THE PEOPLE OF COLORADO  
EMBRACED TO PRESERVE AND NURTURE  
SCIENCE AND CULTURAL PROGRAMS:  
THE SCIENTIFIC AND  
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to the human spirit.

John F. Kennedy

3/4/30 1676



PUBLIC ART PROGRAM AGREEMENT

THIS AGREEMENT is made and entered into this 16 day of April, 2010, by and between THE SCIENTIFIC AND CULTURAL FACILITIES DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado, hereinafter referred to as "SCFD," and Patrick Marold Studios, Inc. whose address is 4335 Cherokee St., Denver, CO 80216, hereinafter referred to as the "Artist."

RECITALS

1. The SCFD is the trustee and fiscal agent of donated funds restricted in use for a piece of public art to be produced by the Artist for installation at a site within the Denver Performing Arts Complex, hereinafter referred to as the "Site." Ownership of the Work (as defined herein) will be transferred to the City and County of Denver, hereinafter referred to as the "City," following installation, and will thereafter be managed as part of the City's Public Art Program under D.R.M.C. §§ 20-85 through 20-88. That transfer will occur pursuant to a separate contract. The parties to this contract are limited to the SCFD and the Artist only, referred to herein as the "parties."

2. The Artist has been selected by the Rex Morgan Tribute Committee, hereinafter referred to as the "Committee," to provide final design, execute, fabricate, deliver and install a work of art consisting of a fused glass sculpture, an *approved preliminary design of which is attached hereto as Exhibit A* and hereinafter referred to as the "Work." Such preliminary design was approved by the Committee selection process. Such Work is to be placed into the Galleria of the Site, after consultation with the Denver Office of Cultural Affairs (DOCA) and the Division of Denver Theatres and Arenas.

3. Both parties wish to reasonably promote and maintain the integrity and clarity of the Artist's ideas and statements as represented by the Work.

4. The Artist and preliminary design was selected via an open Call for Entry by a panel of the Rex Morgan Tribute.

5. The SCFD believes the Artist to be well able to undertake and perform such services for the SCFD on behalf of the Rex Morgan Tribute Committee and desires to contract with the Artist for performing such services.

6. The Artist is ready, willing and able to render such services as an independent



## AGREEMENTS

In consideration of the premises and the mutual covenants herein contained, and subject to the terms and conditions hereinafter stated, the parties hereto hereby agree as follows:

### 1. WORK TO BE PERFORMED:

#### 1.1 General.

a. As used in this Agreement, unless the context otherwise requires: “Work” means the work of art as ultimately conceived, designed, fabricated, transported, delivered and installed by the Artist, after final approval by the Committee and in consultation with the Site designers and others. The Work includes all physical components of the complete artwork including but not limited to associated foundations, bases, or mounting brackets or devices, electronic components, video components and all other miscellaneous components necessary to complete the fabrication and installation of the artwork.

b. The Artist shall perform all services and furnish all supplies, material and equipment as necessary for the design, execution and fabrication of the Work, including but not limited to, payments for all necessary taxes, insurance, small tools, Artist consultants, rental equipment, and all other items incidental to producing a complete and acceptable Work, and shall, either directly or through qualified subconsultants, undertake the transportation and installation of the Work at the Site.

c. The Artist shall determine the artistic expression, scope, design, color, size, material, texture, and location on the Site of the Work, subject to review and acceptance by the Committee and SCFD as set forth in this Agreement.

#### 1.2 Final Design Review.

a. *Within thirty (30) days of signing this contract*, the Artist shall prepare and submit to the SCFD detailed engineering working drawings of the Work and the Site, together with such other graphic material as may reasonably be requested by the SCFD in order to permit the SCFD and the City to carry out final design review and to certify the compliance of the Work with applicable statutes, ordinances, and regulations. Upon request by the Artist, the SCFD shall promptly furnish all readily available information and assistance required by the Artist in connection

with said submission. However, the SCFD does not guarantee its information, materials and assistance, and assumes no liability therefore. The Artist shall be solely responsible for designing, fabricating, constructing, delivering and installing the Work in compliance with all applicable city, state and/or federal statutes, ordinances, and/or regulations. It is expressly understood that the Artist shall have his final design plans for the Work reviewed and stamped as approved as to structural integrity by a professional engineer licensed to practice in the State of Colorado.

b. The submission shall also include a budget, not to exceed Fifty Thousand Dollars (\$50,000.00), as described herein, that includes all costs for design, execution, fabrication, transportation, delivery, installation, insurance, contingencies, consultant fees, fees and permits, and any other costs associated with the Work, and the Artist's fee.

c. The submission shall also include a written statement detailing anticipated regular and routine maintenance, such maintenance to be provided by the City as appropriate to maintain the Work in its intended condition.

d. During the final design review, the SCFD may also require the Artist to make such revisions to the design as are necessary for the Work to comply with applicable statutes, ordinances, or regulations of the City, the State of Colorado, or the U. S. Government.

e. The SCFD may also request revisions for other practical and/or non-aesthetic reasons.

f. After its receipt of the Artist's submission(s) pursuant to this Section 1.2, the SCFD shall notify the Artist of its approval (or disapproval) of such submission and budget and of all revisions made in the initial proposal as a result thereof. The SCFD's approval shall be in its sole discretion. Revisions made pursuant to this Section 1.2 become a part of the Final Design. The Final Design Proposal (the "Proposal") will be incorporated herein as Exhibit B.

### 1.3 Execution of Work.

a. After written approval by the SCFD of the Final Design, the Artist shall furnish to the SCFD a schedule for the completion of fabrication and installation of the Work, including a schedule for the submission of progress reports, if any. After written approval of the schedule by the SCFD, the Artist shall fabricate, transport and install the Work in accordance with such schedule. Such approval schedule shall be incorporated into this Agreement by reference as

Exhibit C and may be amended by written agreement between the SCFD and the Artist.

b. The SCFD shall have the right to review the Work at reasonable times during the fabrication hereof. The Artist shall submit to the SCFD progress reports acceptable to the City.

c. The Artist shall complete the fabrication, transportation and installation of Work in conformity with the Proposal.

d. The Artist shall present to the SCFD in writing for further review and approval any significant changes in the scope, design, color, size, material or texture of the Work. The SCFD shall in its sole discretion determine whether a significant change exists.

#### 1.4 Delivery and Installation.

a. The Artist shall notify the SCFD and the City in writing when fabrication of the Work is completed and it is ready for delivery and installation at the Site.

b. The Artist shall deliver and install the completed Work at the Site in compliance with the schedule approved pursuant to Section 1.3 and set forth in Exhibit C.

c. The SCFD and the Artist agree to cooperate with the City to prepare the Site for the timely installation of the Work, including necessary public access, and area lighting of the Work, but the SCFD shall not be responsible for any utility provision or expense, or for any physical alteration of the Site surface.

#### 1.5 Post Installation.

a. Within thirty (30) days after the installation of the Work, the Artist at his sole expense shall furnish the SCFD with the following photographs suitable for reproduction and print use, of the Work as installed:

(i) two (2) identical sets of three (3) 35 mm. color slides of the completed Work, one (1) taken from each of three (3) different viewpoints;

(ii) two (2) identical sets of three (3) different DPI digital from three (3) different viewpoints 8" x 10";

b. The Artist shall provide a plaque at the Site, according to specifications set out in Exhibit D attached hereto and incorporated herein by reference. The plaque shall be installed by the Artist as part of the installation of the Work at no additional cost to the SCFD, and shall be installed only with the prior approval of the SCFD of the content, material,

design, and location of the plaque.

c. The Artist shall be available at such time or times as may be agreed between the SCFD and the Artist to attend an inauguration or presentation ceremony(s) relating to the Work and to the SCFD. The SCFD shall endeavor to arrange for publicity for the completed Work as may be determined between the SCFD and the Artist as soon as practicable following installation.

d. Upon installation of the Work, the Artist shall provide to the SCFD written recommendations for appropriate maintenance and preservation of the Work.

e. The parties acknowledge that the Work has been designed to include the names of the annual winner of the Rex Morgan Award. The parties agree that on an annual basis, at such time and subject to such additional fees as may be agreed upon by the parties, the Artist, or his designee, shall inscribe the name of the most recent winner of the Rex Morgan Award to the Work, in such location as shall be selected by the Artist and approved by the SCFD. The parties further agree that in the event the Artist fails to satisfy the obligation set forth in this Section 1.5.e, the SCFD shall have the right, but not the obligation, to cause the name of the most recent winner of the Rex Morgan Award to be inscribed to the Work. The SCFD further agrees to attempt to include, in its transfer agreement with the City, a license permitting access to the Work to perform the obligations set forth in this Section 1.5.e.

#### 1.6 Final Acceptance.

a. The Artist shall advise the SCFD in writing when all services required prior to those described in Section 1.5. c. have been completed in conformity with the Proposal. The Artist shall, prior to final acceptance of the Work, provide the SCFD with lien and/or claim releases from contractor, subcontractors, and suppliers on the Project and shall otherwise comply with the provisions of C.R.S. §38-26-107.

b. Once the SCFD has received all lien and/claim releases described in Section 1.6.a., and confirmed to its satisfaction that the Work has been installed in conformance with the Proposal, the SCFD shall notify the Artist in writing of its final acceptance of the Work. Following final acceptance of the Work, the Artist shall deliver a bill of sale to SCFD transferring all ownership of the Work to the SCFD.

#### 1.7 Risk of Loss. The risk of loss or damage to the Work shall be borne by the

Artist until installation of the Work and final acceptance thereof by the SCFD, and the Artist shall take such measures as are necessary to protect the Work from loss or damage until such final acceptance. The parties recognize that the SCFD is a governmental entity and possesses immunities, rights, and privileges pursuant to C.R.S. §24-10-101, *et seq.*

1.8 Ownership of Work Products. The SCFD, at its option, may retain all plans, drawings, slides, photographs, submittals, studies, designs, maquettes and models, and other documents submitted to the SCFD by the Artist. These items, when submitted, become and are the property of the SCFD, and the SCFD may, without restriction, make use of such documents for educational, public relations, arts promotional and other non-commercial purposes. The Artist shall not be liable for any damage which may result from any use of said documents for purposes other than those described in this Agreement.

2. COORDINATION AND LIAISON: The Executive Director of the SCFD shall coordinate all services under this Agreement and, until otherwise notified by the Committee, is designated as the authorized representative of the SCFD through whom services performed under this Agreement shall be coordinated. The Director may from time to time direct that the authority to coordinate certain day-to-day matters shall be exercised by other SCFD employees. The Artist agrees that during the term of this Agreement he shall fully coordinate all work performed hereunder as directed by the SCFD.

3. TERM OF AGREEMENT AND TIME OF PERFORMANCE:

3.1 Term. The term of the Agreement shall commence on the date of execution hereof and, unless otherwise earlier terminated pursuant to Section 9.1, shall terminate on completion of the services to be performed by the Artist hereunder, or on December 31, 2010, whichever is earlier.

3.2 Duration. The services to be required of the Artist, as set forth in Article 1, shall be completed in accordance with the schedule for completion of the Work as set out in this Agreement; provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the SCFD.

3.3 Early Completion of Artist Services. The Artist shall bear any transportation and storage costs resulting from the completion of his or her services hereunder prior to the time provided in the schedule for installation.

3.4 Time Extensions. The SCFD shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the SCFD in performing its obligations under this Agreement, or if conditions beyond the Artist's reasonable control or Acts of God render timely performance of the Artist's services impossible or unduly burdensome despite the exercise of best efforts by the Artist. Failure to fulfill contractual obligations due to conditions beyond either party's control in such circumstances will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such conditions.

4. PAYMENT:

4.1 Fee. The Artist agrees to accept, and the SCFD agrees to pay, as full and complete compensation for completion of all the items of work contained in this Agreement a fixed fee of \$50,000.00 (fifty thousand dollars), which shall constitute full compensation for all services and materials whatsoever to be performed and furnished by the Artist under this Agreement. It is agreed that the SCFD has no obligations regarding commission, or any agreements with galleries or agents with whom the Artist may have contracted. The fee shall be paid in the following installments, subject to receipt by and approval of the SCFD of acceptable periodic invoices and supporting documentation required by SCFD from the Artist, each installment to represent full and final payment for all services and materials provided by the Artist prior to the submittal of such periodic invoice for the specific phase of performance:

a.	Execution of Contract	(10%) \$ 5,000.00
b.	Final Design Review	(40 %) \$20,000.00
c.	Mid-Point of Fabrication	(40 %) \$20,000.00
d.	Completed Installation and Final Acceptance	(10%) \$ 5,000.00

Total Contract Amount Not to Exceed (100%) \$50,000.00

The fee shall be paid by check made payable to (Artist) which shall be deemed to constitute full consideration to Artist. The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the SCFD, the cost of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement and for all other miscellaneous charges hereunder. Nothing contained in this Agreement shall entitle the Artist to retain funds paid by the SCFD hereunder in the event that the Artist fails to

fabricate, transport and install a satisfactory Work in accordance with this Agreement, and nothing contained in this Agreement shall prevent or prohibit the SCFD from seeking damages or reimbursement from the Artist in the event of the Artist's breach or default of this Agreement. Prior to the SCFD making any payments required by this Agreement, the Artist shall provide the SCFD with such information, including but not limited to the Artist's social security number, necessary to permit the SCFD to fulfill all reporting obligations imposed by the Internal Revenue Service, the State of Colorado, and any other governmental entity or agency with appropriate jurisdiction, for payment of services provided pursuant to this Agreement.

4.2 Appropriation. Notwithstanding any other term or condition of this Agreement, it is understood and agreed that the obligation of the SCFD for all or any part of its payment obligation hereunder, whether direct or contingent, shall only extend, to payment of monies duly and lawfully appropriated by the SCFD for the purpose of this Agreement. The Artist acknowledges that (i) the SCFD does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the SCFD.

4.3 Maximum Amount Payable. The maximum amount payable by the SCFD under this Agreement shall not exceed Fifty Thousand Dollars (\$50,000.00).

5. **STATUS OF ARTIST:** It is understood and agreed by and between the parties that the status of the Artist shall be that of an independent contractor and of a person retained on a contractual basis to perform professional or technical services for limited periods of time and it is not intended, nor shall it be construed, that the Artist or any employee or subcontractor of the Artist is an employee, officer, or agent of the SCFD for any purpose whatsoever. It is further understood and agreed that this Agreement shall not establish any partnership, joint venture, or similar relationship between the parties.

6. **WARRANTIES:**

6.1 Warranties of Title. The Artist represents and warrants to the SCFD that:

- a. The Work is solely the result of the artistic effort of the Artist;
- b. Except as otherwise disclosed in writing to the SCFD prior to the time of execution hereof, the Work is unique and original and does not infringe upon any copyright. The Artist hereby agrees to indemnify, defend, and hold harmless the SCFD from and against any claims



of copyright or other intellectual property right infringement brought by anyone in connection with or in any way related to the Work;

c. That neither the Work delivered hereunder, nor a duplicate thereof, has been accepted for sale elsewhere; and

d. The Work is free and clear of any liens or claims from any source whatsoever.

6.2 Warranties of Quality and Condition. The Artist represents and warrants to the SCFD that:

a. The execution and fabrication of the Work will be performed in a workmanlike manner:

b. The Work, as fabricated 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 SCFD hereunder.

6.3 Duration of Warranties: Breach. The warranties described in Section 6.2 shall survive for a period of two (2) years after the date of the SCFD’s written notification to the Artist of the final acceptance of the Work. The warranties described in Section 6.1 are deemed to be perpetual, and shall survive termination of this Agreement. The SCFD shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the SCFD, and at no cost to the SCFD, cure reasonably and promptly the breach of any such warranty which is curable by the Artist utilizing artistic skill and which cure is consistent with professional conservation standards as determined solely by the SCFD (including, for example cure by means of repair or re-fabrication of the Work).

## 7. OWNERSHIP AND REPRODUCTION RIGHTS:

7.1 Title. Title to the Work shall pass to the SCFD upon final acceptance.

7.2 Waiver of Rights Under Visual Artists Rights Act of 1990 (“VARA”). The Artist understands and agrees that, as to his rights in the Work, the provisions of this Agreement shall supersede the provisions of the Visual Artists Rights Act of 1990 (“VARA”), 17 U.S.C. §101

et. seq., as amended, including but not limited to §106A(a) and §113, as to the Work, and that execution of this Agreement by the Artist shall constitute a waiver by the Artist, as permitted in 17 U.S.C. §106A(e), as amended, of any and all rights or protections in the Work, and any uses of the Work whatsoever, set out in or otherwise granted by 17 U.S.C. §101, et seq., as amended, including but not limited to §106A(a) or §113, or otherwise in the nature of "Droit Moral" under which artists claim an interest in their work. The Artist understands that, despite the SCFD's commitment not to intentionally damage, alter, or modify the Work without the prior written approval of the Artist, removal of the Work from the Site may subject the Work to destruction, distortion, mutilation, or other modification, by reason of its removal, and the Artist hereby waives any and all claims against the SCFD for any such damage to the Work.

7.3 Artist's Remaining Retained Rights in the Work. The Artist therefore retains: (i) all right, title and interest in the Work including all copyrights, but expressly excluding any rights in the Work under the Visual Artists Rights Act of 1990 ("VARA"), 17 U.S.C. §101 et. seq., as amended, including but not limited to §106A(a) and §113, or otherwise in the nature of "Droit Moral" under which artists claim a continuing interest in their products and in the maintenance or modification of their products; and (ii) all rights expressly granted in this Agreement. The Artist's waived rights as described above are, insofar as such rights are transferable, assigned to the SCFD. In view of the intention that the Work in its final dimension shall be unique, the Artist shall not make any additional exact duplicate, two or three-dimensional reproductions of the final Work, including but not limited to miniatures or jewelry applications, nor shall the Artist grant permission to others to do so except with the prior written permission of the SCFD. This restriction shall not apply to the Artist's use of photographic reproductions of the Work in portfolio or in critical and scholarly writings. The Artist grants to the SCFD and its assigns an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, in the sole discretion of the SCFD and its assigns, including but not limited to reproductions used in advertising brochures, media publicity, and catalogues or other similar publications, as well as a reproduction of the Work on a plaque or other evidence of the annual Rex Morgan Award. The parties agree that in the future, it may be desirable to use a three-dimensional reproduction of the Work to serve as the annual Rex Morgan Award. The parties agree that in such event, the use any three-dimensional reproduction of the Work shall be done only pursuant to a written agreement executed by the

parties.

7.3 Notice. All reproductions by the SCFD shall contain a credit to the Artist and a copyright notice substantially in the following form: Patrick Marold, date of publication.

7.4 Credit to SCFD. The Artist shall give a credit reading substantially, “an original work owned and commissioned by the Metropolitan Denver Scientific and Cultural Facilities District,” in any public showing under the Artist’s control of reproduction of the Work.

7.5 Registration. The Artist shall at his expense cause to be registered, with the United States Register of Copyrights, a copyright of the Work in the Artist’s name, subject to the rights granted to the SCFD herein.

## 8. ARTIST’S RIGHTS:

8.1 Artist’s Enumerated Contractual Rights in the Work. The Artist understands that SCFD will, within a reasonable period of time following completion of the Work and the parties’ completion of their mutual obligations under this contract, transfer ownership of the Work to the City. The Artist’s rights subsequent to that transfer cannot be guaranteed by the SCFD. Subject to and consistent with the provisions of Article 7 above, the Artist understands and agrees that he is therefore granted the following rights in the Work pursuant to this Agreement only, which rights may or may not be acknowledged by the City.

### 8.2 Maintenance and Repair.

a. Unless and until the Work is transferred to the City, the SCFD, or its assignees, shall have the right to determine, in its sole discretion, after consultation with a professional conservator, selected by the SCFD or its assignees, when and if maintenance, repairs and restorations to the Work will be made. To the extent practical, the Artist, during the Artist’s lifetime, shall be given the opportunity to make or personally supervise significant repairs or restorations and shall be paid a reasonable fee for any such services, provided that the SCFD or its assignees and the Artist shall agree in writing, prior to the commencement of any significant repairs or restorations, upon the Artist’s fee for such services, and subject to appropriation by the SCFD or its assignees of such fee.

b. All repairs and restorations shall be made in accordance with recognized principles of conservation.

8.3 Damage. Subject to 8.5 below, the SCFD agrees that it will not intentionally

damage, alter, or modify the Work without the prior written approval of the Artist.

8.4 Notification to Artist. Within a reasonable time period following notice from the City, the SCFD shall endeavor to notify the Artist of any proposed alteration of the Site that would affect the intended character of the Work and shall endeavor to consult with the Artist in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Work.

8.5 Removal, Relocation, Sale, Donation or Destruction. Nothing in this Agreement shall preclude any right of the City, in its sole discretion, (i) to remove the Work from public display, (ii) to move or relocate the Work to another location selected solely by the City for public display. The SCFD agrees to seek notice and a right of first refusal from the City to purchase the Work should the City wish to (iii) donate or sell the Work to a third person or entity, or (iv) to destroy the Work. Without limiting the generality of Section 8.1, the Artist agrees that his or her rights in connection with the destruction of the Work are as described in this Section 8.5; as set out above, the Artist waives any rights which he or she might have in connection with the removal or destruction of the Work under the Visual Artists Rights Act of 1990 ("VARA"), 17 U.S.C. §101 et. seq., as amended, including but not limited to §106A(a) and §113.

8.6 Record. The SCFD will endeavor to include a copy of this Agreement as an exhibit to the contract for transfer of the Work to the City.

8.7 Artist's Address. The Artist shall notify the City of changes in his or her address. The failure to do so, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the Artist of the rights granted to the Artist in this Article 8, or otherwise retained by the Artist, the exercise of which requires response by the Artist. A mailing of notice by the City by certified mail with return receipt requested to the address of the Artist or of his or her attorney currently on file with the City at the time of such mailing, shall be deemed to be an adequate notification effort by the City hereunder.

8.8 Surviving Covenants. The covenants and obligations set forth in this Article shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest.

## 9. TERMINATION OR SUSPENSION OF AGREEMENT:

9.1 Termination for Default or Convenience. In addition to the SCFD's rights of

termination during Work design and fabrication as set out above, the SCFD may terminate this Agreement at any time on ten (10) days written notice if the Artist's services become unsatisfactory to it or if the Project is canceled. The SCFD may otherwise terminate the Agreement without cause, for its convenience, upon thirty (30) days written notice to the Artist. If the Artist's services are terminated, he or she shall be paid only for that portion of work or services satisfactorily completed at the time of notice of such action.

9.2 Event of Artist's Default. 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 SCFD's sole option become its property, provided that no right to fabricate or execute the Work shall pass to the SCFD. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the SCFD for damages sustained by the SCFD by virtue of any breach of this Agreement by the Artist, and the SCFD may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the SCFD from the Artist is determined, or exercise all of its other rights hereunder.

9.3 Suspension. The SCFD may, in its sole discretion, suspend performance of this Agreement until full compliance by the Artist with the insurance requirements set out in Article 17.

10. **WHEN RIGHTS AND REMEDIES NOT WAIVED:** In no event shall any payment by the SCFD hereunder constitute or be construed to be a waiver by the SCFD of any breach of term, covenant, or condition or any default which may then exist on the part of the Artist, and the making of any such payment when any such breach or default shall exist shall not impair or prejudice any right or remedy available to the SCFD with respect to such breach or default. No assent, expressed or implied, to any breach of any one or more covenants, terms, or conditions of the Agreement shall be construed as a waiver of any succeeding or other breach.

11. **EXAMINATION OF RECORDS:** The Artist agrees that any duly authorized representative of the SCFD, including the SCFD's accountant or auditor, shall, until the expiration of six (6) years after the final payment under this Agreement, have access to and the right to examine any directly pertinent books, documents, papers and records of the Artist involving transactions related to this Agreement.

12. **SUBJECT TO LOCAL LAWS; VENUE:** Each and every term, provision or

condition herein is subject to and shall be construed in accordance with the provisions of Colorado law. Venue for any action arising hereunder shall be in the District Court in and for the City and County of Denver, Colorado.

13. **ASSIGNMENT AND SUBCONTRACTING:** The SCFD is not obligated or liable under this Agreement to any party other than Artist named herein. The Artist understands and agrees that he shall not assign or subcontract with respect to any of his rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the SCFD, which consent or approval may be withheld in the absolute discretion of the SCFD; and in the event any such assignment or subcontracting shall occur, such action shall not be construed to create any contractual relationship between the SCFD and such assignee or subcontractor, and the Artist herein named shall remain responsible to the SCFD according to the terms of this Agreement.

14. **PREVAILING WAGES:** Employees of the Artist or his subcontractors may be subject to the payment of prevailing wages pursuant to D.R.M.C. 20-76, depending upon the nature of the Work. By executing this Agreement, the Artist covenants that he is familiar with this Code Section and is prepared to pay or cause to be paid prevailing wages, if any, required by the scope of work of the Artist's or his subcontractor's employees.

15. **NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under this Agreement, the Artist agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender expression, gender identity, marital status, or physical or mental disability; and further agrees to insert the foregoing provision in all subcontracts hereunder.

16. **ILLEGAL ALIENS**

16.1 **ILLEGAL ALIEN CERTIFICATION.** Prior to the execution of the Agreement, the Artist shall certify to the SCFD, as such certification form is attached hereto, that at the time of certification, it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that the Artist will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program (the

“Department Program”), as further described herein, in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

16.2 PROHIBITED ACTS. The Artist shall not:

(a) Knowingly employ or contract with an illegal alien to perform work under this Agreement; or

(b) Enter into a contract with a subcontractor that fails to certify to the Artist that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Artist shall provide the SCFD with all certifications received from subcontractors in which subcontractors certify that said subcontractors do not knowingly employ or contract with an illegal alien to perform work under this Agreement.

16.3 VERIFICATION.

(a) The Artist has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement through participation in either the E-Verify Program or the Department Program.

(b) The Artist shall not use the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed.

(c) If the Artist obtains actual knowledge that a subcontractor performing work under this Agreement knowingly employs or contracts with an illegal alien, the Artist shall:

(i) Notify the subcontractor and the SCFD within three (3) days that the Artist has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and

(ii) Terminate the subcontract with the subcontractor if, within three (3) days of receiving the notice required pursuant to subparagraph (i) hereof, the subcontractor does not stop employing or contracting with the illegal alien; except that Artist shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides

information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

16.4 DUTY TO COMPLY WITH INVESTIGATIONS. The Artist shall comply with any reasonable request by the Colorado Department of Labor and Employment (the "Department") made in the course of an investigation conducted pursuant to § 8-17.5-102 (5), C.R.S. to ensure that the Artist is complying with the provisions of this Section 16.

16.5 BREACH. If the Artist violates a provision of this Section 16, the SCFD may terminate the Agreement for a breach of the Agreement. If the Agreement is so terminated, the Artist shall be liable for actual and consequential damages to the SCFD. The SCFD shall notify the Colorado Office of the Secretary of State if the Artist violates a provision of this Section 16 and the SCFD terminates the Agreement.

16.6 DEPARTMENT PROGRAM. If the Artist participates in the Department Program, in lieu of the E-Verify Program, the Artist shall notify the Department and the SCFD of such participation. The SCFD shall, within twenty (20) days after hiring an employee who is newly hired for employment to perform work under the Agreement, affirm that the Artist has examined the legal work status of such employee, retained file copies of the documents required by 8 U.S.C. Sec. 1324a, and not altered or falsified the identification documents for such employees. The Artist shall provide a written, notarized copy of the affirmation to the SCFD.

**INSURANCE:**

17.1 General Conditions: Artist agrees to secure, at or before the time of execution of this Agreement, the following insurance covering all operations, goods or services provided pursuant to this Agreement. Artist shall keep the required insurance coverage in force at all times during the term of the Agreement, or any extension thereof, during any warranty period, and for three (3) years after termination of the Agreement. The required insurance shall be underwritten by an insurer licensed to do business in Colorado and rated by A.M. Best Company as "A"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or should any coverage be reduced before the expiration date thereof, the issuing company shall send written notice to the SCFD and to the Denver Risk Administrator, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202 by certified mail, return receipt requested. Such written notice shall be sent thirty (30) days prior to such cancellation or reduction unless due to



non-payment of premiums for which notice shall be sent ten (10) days prior.” If any policy is in excess of a deductible or self-insured retention, the SCFD and the City must be notified by the Artist. Artist shall be responsible for the payment of any deductible or self-insured retention. The SCFD reserves the right to require the Artist to provide a bond, at no cost to the SCFD, in the amount of the deductible or self-insured retention to guarantee payment of claims. The insurance coverages specified in this Agreement are the minimum requirements, and these requirements do not lessen or limit the liability of the Artist. The Artist shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under this Agreement.

17.2 Proof of Insurance: Artist shall provide a copy of this Agreement to its insurance agent or broker. Artist further agrees to have its agent or broker provide proof of Artist’s required insurance on [www.Ins-Cert.com](http://www.Ins-Cert.com) and link the information to the City. The SCFD reserves the right to require the Artist to provide a certificate of insurance, a policy, or other proof of insurance as required by the SCFD’s Executive Director in her sole discretion.

17.3 Additional Insureds: For general liability and excess/umbrella liability, Artist’s insurer shall name the SCFD as an additional insured.

17.4 Waiver of Subrogation: For all coverages, Artist’s insurer shall waive subrogation rights against the SCFD.

17.5 Subconsultants: All sub-consultants, subcontractors, independent contractors, suppliers or other entities providing goods or services required by this Agreement shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of the Artist. Artist shall include all such sub-consultants, subcontractors, independent contractors, suppliers or other entities as insureds under its policies or shall ensure that all subconsultants maintain the required coverages. Artist agrees to provide proof of insurance for all such subcontractors, independent contractors, suppliers or other entities upon request by the SCFD.

17.6 Workers’ Compensation/Employer’s Liability Insurance: The parties recognize and agree that the Artist is engaged in an independent occupation and profession and is free from control and direction in the performance of the services contracted for herein consistent with that mandated by C.R.S. §8-40-202(2)(a). It is understood and agreed by the parties that the SCFD does not (a) require the Artist to work exclusively for the SCFD, provided that the Artist may

have elected to work for exclusively for the SCFD for the period of time specified in the term of this Agreement; (b) establish a quality standard for the Artist, provided that the parties agree that while the SCFD may provide plans regarding its expectancy of the Work to be performed by the Artist, the SCFD will not oversee the actual work of the Artist or instruct the Artist as to how the Work will be performed; (c) pay a salary or hourly wage to the Artist instead of the fixed contract rate stated herein; (d) terminate the work of the Artist for cause during the term of this Agreement unless the Artist violates the terms of this Agreement or fails to produce the Work or result that meets the specific terms provided in the Agreement; (e) provide any training for the Artist other than minimal orientation to the site or other parameters of the Artist activity; (f) provide tools or benefits to the Artist; (g) dictate the time of performance, except that the Agreement completion date together with the range of negotiated and mutually agreeable work hours has been established herein; (h) pay the Artist personally instead of making SCFD payments to the professional name of the Artist, as an individual and sole proprietor; and (i) combine the regular operations of the SCFD in any way with the business operations of the Artist instead of maintaining all such operations separately and distinctly. These provisions are separately stated in Exhibit F, constituting the writing mandated by C.R.S. §8-40-202(2)(b), which must be signed and notarized by the Artist and the Executive Director.

The Artist and his subcontractors, if any, shall otherwise shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims.

Artist expressly represents to the SCFD, as a material representation upon which the SCFD is relying in entering into this Agreement, that none of the Artist's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the term of this Agreement, and that any such rejections previously effected, have been revoked as of the date Artist executes this Agreement.

17.7 General Liability: Artist shall maintain limits of \$1,000,000 for each occurrence claim, \$1,000,000 for each personal and advertising injury claim, \$1,000,000 products and completed operations for each occurrence, and \$1,000,000 policy aggregate.

17.8 Automobile Liability: Artist shall maintain limits of \$1,000,000 for bodily

injury per person, \$1,000,000 for bodily injury for each accident, and \$1,000,000 for property damage applicable to all vehicles operating on City property and elsewhere.

17.9 Additional Provisions:

(a) For all general liability and excess/umbrella liability, the policies must provide the following:

- (i) If any aggregate limit is reduced by twenty-five percent (25%) or more by paid or reserved claims, the Artist shall notify the City within ten (10) days and reinstate the aggregates required;
- (ii) Unlimited defense costs in excess of policy limits;
- (iii) Contractual liability covering the indemnification provisions of this Agreement;
- (iv) A severability of interests provision;
- (v) Waiver of exclusion for lawsuits by one insured against another;
- (vi) A provision that coverage is primary; and
- (vii) A provision that coverage is non-contributory with other coverage or insurance provided by the SCFD.

(b) For all general liability and excess/umbrella liability, if the policy is a claims-made policy, then the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the SCFD, whichever is earlier.

17.10 Payment and Performance Bonds. The Artist shall procure payment and performance bonds, in an amount satisfactory to the SCFD, upon approval by the SCFD of Artist's Final Design Proposal. The SCFD may in its sole discretion, in writing, accept alternative security from the Artist to assure the faithful payment and performance of the obligations set forth in the Agreement or waive this bond obligation in its entirety.

17.11 **INDEMNIFICATION:** The Artist shall defend, release, indemnify and save and hold harmless the SCFD against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the SCFD, and shall defend, release, indemnify, and save and hold harmless the SCFD from any and all claims, demands, suits, liabilities, actions, causes of action, or legal or equitable proceedings of any kind or nature, including workers'

compensation claims, of or by anyone whomsoever, in any way resulting from or arising out of the Artist's activities in connection herewith, including acts or omissions of the Artist or his officers, employees, representatives, suppliers, invitees, licensees, subconsultants, contractors, and agents; provided, however, that the Artist need not indemnify and save harmless the SCFD, its officers, agents, and employees from damages proximately resulting from the sole negligence of the SCFD's officers, agents, and employees. This indemnity clause shall also cover payment of the SCFD's defense costs in the event that the SCFD, in its sole discretion, elects to provide its own defense. The insurance coverage specified herein constitutes the minimum requirements, and said requirements shall in no way lessen or limit the liability of the Artist under the terms of the Agreement. The Artist shall procure and maintain, at his or her own expense and cost, any additional kinds and amounts of insurance that, in his or her judgment, may be necessary for the Artist's proper protection in the prosecution of the services hereunder. This indemnity clause shall survive termination of this Agreement.

16.12 **NO THIRD PARTY BENEFICIARY:** It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the SCFD and the Artist, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of the SCFD and the Artist that any person or entity other than the SCFD or the Artist receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

17. **TAXES, CHARGES, AND PENALTIES:** The SCFD shall not be liable for the payment of taxes, late charges or penalties of any nature.

18. **PARAGRAPH HEADINGS:** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

19. **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 certified mail, return receipt requested, postage prepaid, as follows:

If to the SCFD: Peg Long  
Scientific & Cultural Facilities District  
899 Logan St. Suite 500  
Denver, CO 80203

If to the Artist: The address first above written.

20. **EXHIBITS:** The following documents, certain of which are attached hereto, are incorporated herein and made a part of this Agreement:

- a. Exhibit "A", Artist's Preliminary Design Proposal (attached hereto)
- b. Exhibit "B", Artist's Final Design Proposal (incorporated herein by reference if accepted by SCFD)
- c. Exhibit "C", Artist's Schedule (incorporated herein by reference)
- d. Exhibit "D", City Plaque Specification
- e. Exhibit "E", Certification Regarding Illegal Aliens
- f. Exhibit "F" Written Statement Per Section 8-40-202(2)(b), C.R.S.

21. **SEVERABILITY:** It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by a Court of competent jurisdiction to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

22. **SURVIVAL OF CERTAIN AGREEMENT PROVISIONS:** The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits and attachments hereto, if any, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

27. **AGREEMENT AS COMPLETE INTEGRATION; AMENDMENTS:**

27.1 The Artist assures and guarantees that he possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement.

27.2 The person or persons signing and executing this Agreement on behalf of the Artist, do hereby warrant and guarantee that he/she or they have been fully authorized by the Artist to execute this Agreement on behalf of the Artist and to validly and legally bind the Artist to all the terms, performances and provisions herein set forth.

27.3 The SCFD shall have the right, at its option, to either temporarily suspend or permanently terminate this Agreement, if there is a dispute as to the legal authority of either the Artist or the persons signing the Agreement to enter into this Agreement. The SCFD shall not be obligated to pay Artist for any performance of the provisions of this Agreement after the SCFD has suspended or terminated this Agreement as provided in this Article.

28. **COUNTERPARTS OF THIS AGREEMENT:** This Agreement shall be executed in three (3) counterparts, each of which shall be deemed to be an original of this Agreement.

(BALANCE OF PAGE INTENTIONALLY LEFT BLANK)

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

SCIENTIFIC AND CULTURAL FACILITIES DISTRICT

By:   
EXECUTIVE DIRECTOR

APPROVED AS TO FORM  
ALAN POGUE, Attorney for Scientific and Cultural Facilities District

  
\_\_\_\_\_

“ARTIST”  
  
Patrick Marold Studios, Inc.

Exhibits A-F  
Attachment 1

EXHIBIT A

Artist's Preliminary Design Proposal

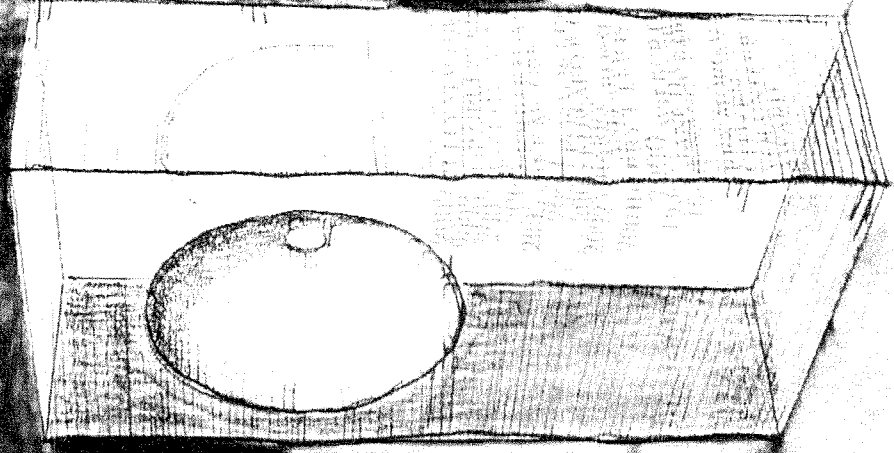


This will be a sculpture in layered glass that exhibits two intersecting hemispheres representing the work and realtionships that Rex Morgan cultivated. The concept illuminates the names of those who have continued developing the mission of the SCFD, while engaging the public through physical scale and form.

The volume of layered glass is the object, and the spherical voids are the formal focal point of the piece. They act in several ways to represent and enforce the theme behind the Rex Morgan award. Acoustically and visually they funnel the sound and light across and through the sculpture, representing two intersecting worlds or perspectives.

Among many, there are the converging relationships between the arts and sciences, culture and the public, creativity and commerce. This sculpture will stand like a beacon, visually poised to reflect the environment of the DPAC, and illuminate the role of SCFD.

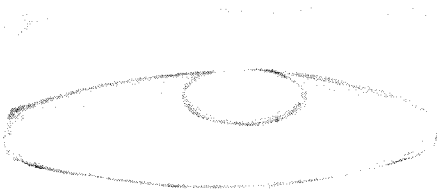
## SCFD REX MORGAN TRIBUTE PATRICK MAROLD 2009



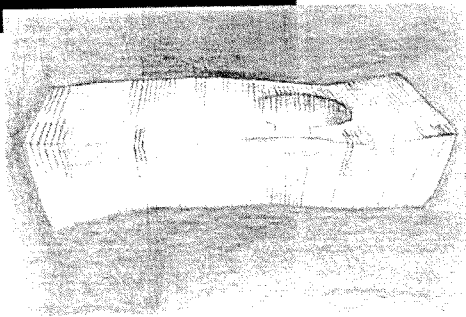
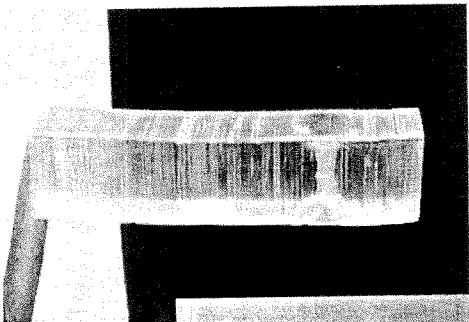
# DESIGN PROGRESSION

The initial sketch depicted a round column with a set of spherical voids. The concept moved to a square column to take advantage of facets to create contrast and depth in the glass. This change led to a more rectangular proportion to accommodate for the spherical voids to intersect geometrically, while also giving the sculpture a greater sense of balance and orientation within the surrounding architecture. The spherical voids were enlarged to visually enclose the viewer when in the immediate vicinity of the piece.

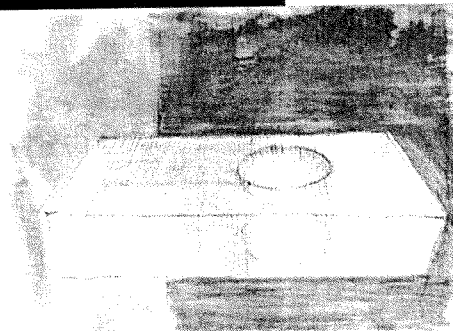
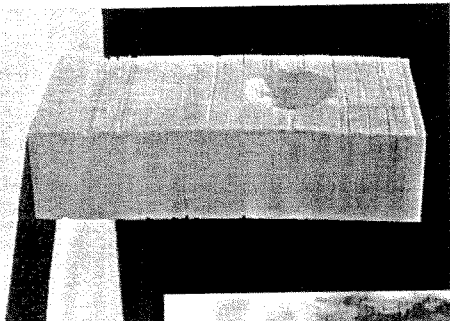
original sketch



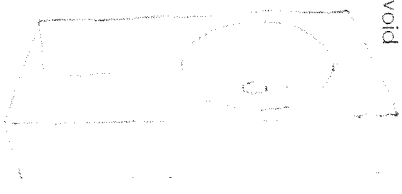
square column



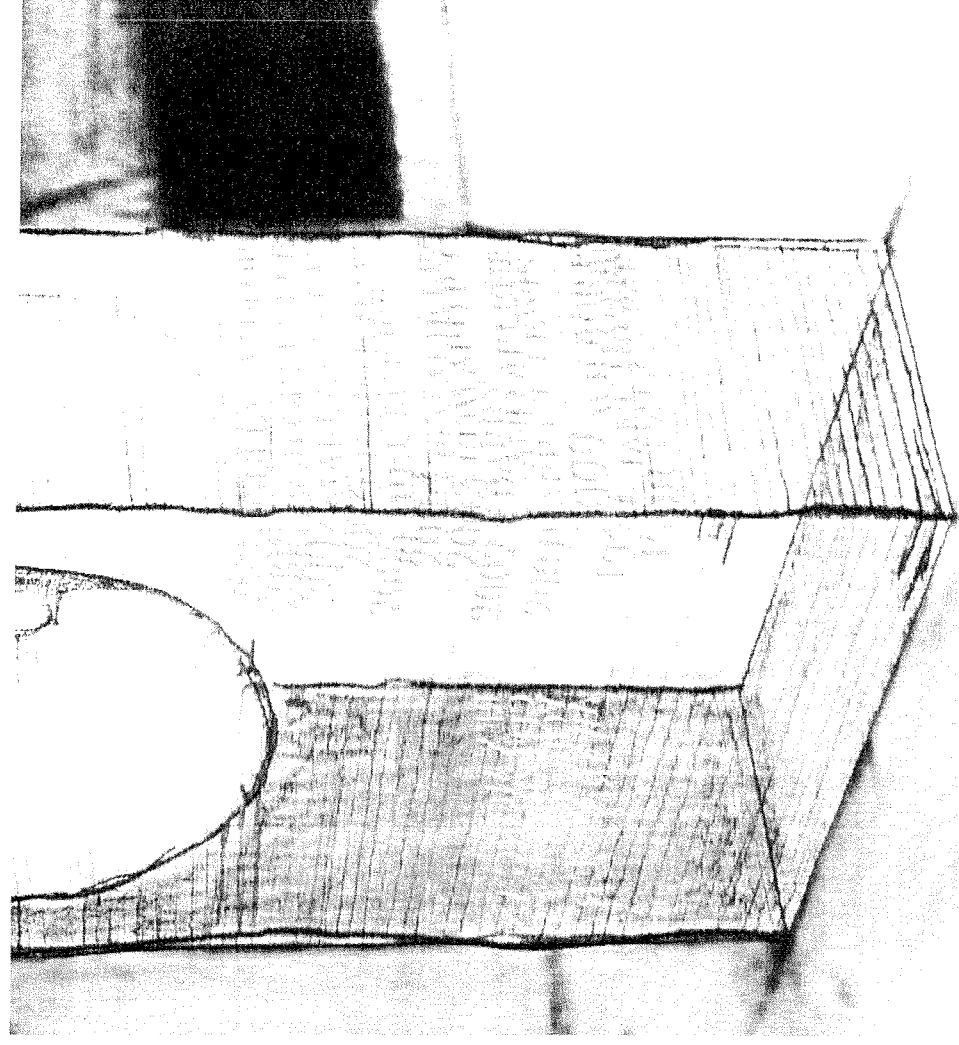
rectangular volume



enlarged spherical void to enclose viewer



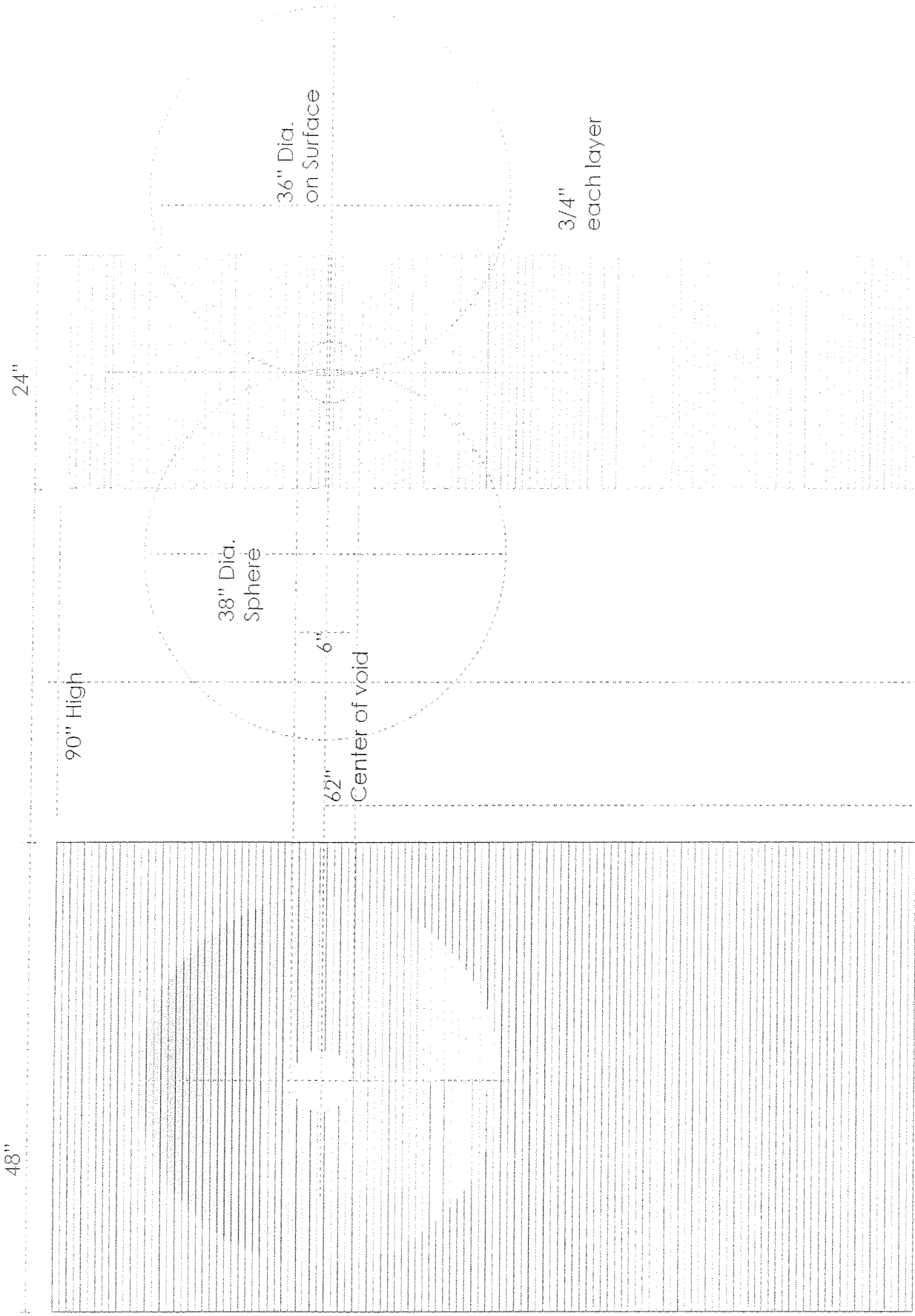
The names will be etched or sandblasted into the glass with a layered quality, composed and arranged to compliment a sense of rhythm and dimension. Rather than simply listing the names, the various names and information will be applied to compliment the impact and luminosity of the sculpture, enforcing the significance.



Additional names will be added in the same manner each year, following a loose chronology in order with the last recipient. In addition to the names, recognition of SCFD will also be applied to the glass to educate and inform the public about the significance of the names and the sculpture itself.



The spherical voids and the central hole in the sculpture are based on the idea of the intersection of two spheres, suspended in the public space where this glass cube will be sited. Metaphorically these represent the intersection of disciplines, minds, and cultures for this tribute. These spheres are irregular as are the worlds we build around ourselves. The intersection is irregular, but where they meet is an opportunity for a relationship, and the development of yet another sphere... visually and metaphorically.



The basic proportions of the glass volume will be 90" tall, 48" wide, and 24" deep. Final dimensions will be adjusted to accommodate the characteristics of the site and overall sculptural integrity. The intention is to maintain a physical presence and scale that enforces the positive space (the glass layers) and the negative space (the spherical voids and hole).

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Rex Morgan Tribute. Estimated Budget. October 2009

*This is based on the availability of \$50k.*

Arist Fee- \$7,500 (standard %15)

Additional Design and Engineering- \$5000

Materials- \$14,000

Fabrication- \$11,000

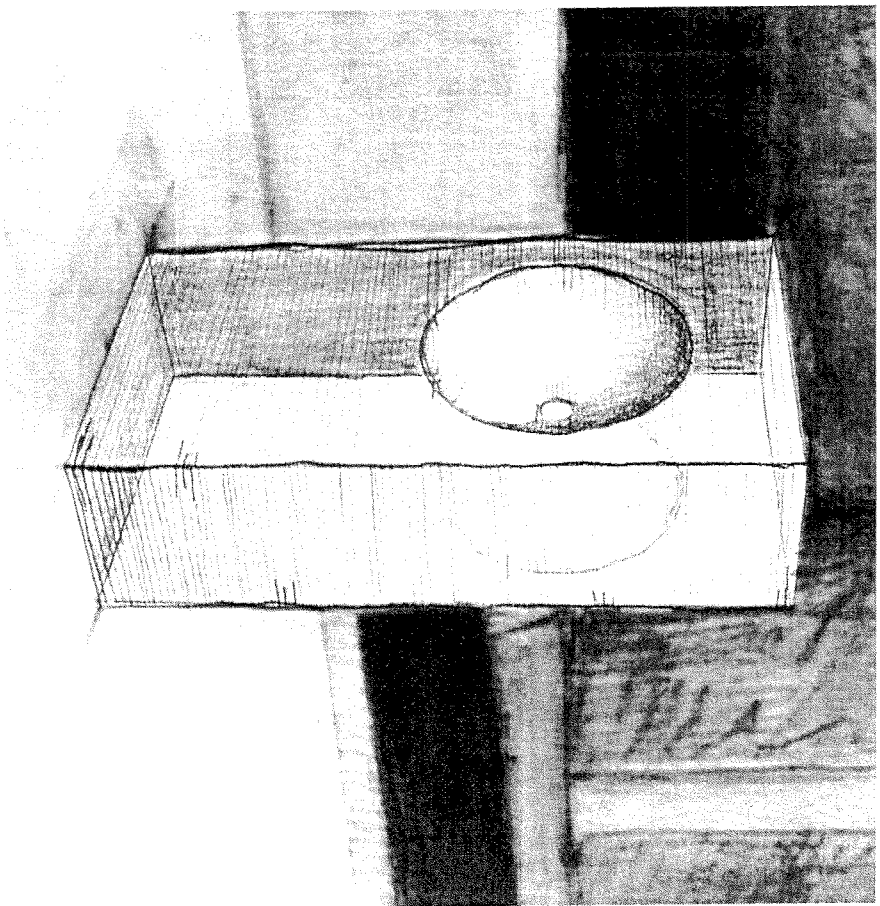
Layout and Sandblasting-\$4000

Installation and construction of foundation-\$5000

Administrative and General- \$3500

These amounts include 10% contingency.

estimated completion- late 2010



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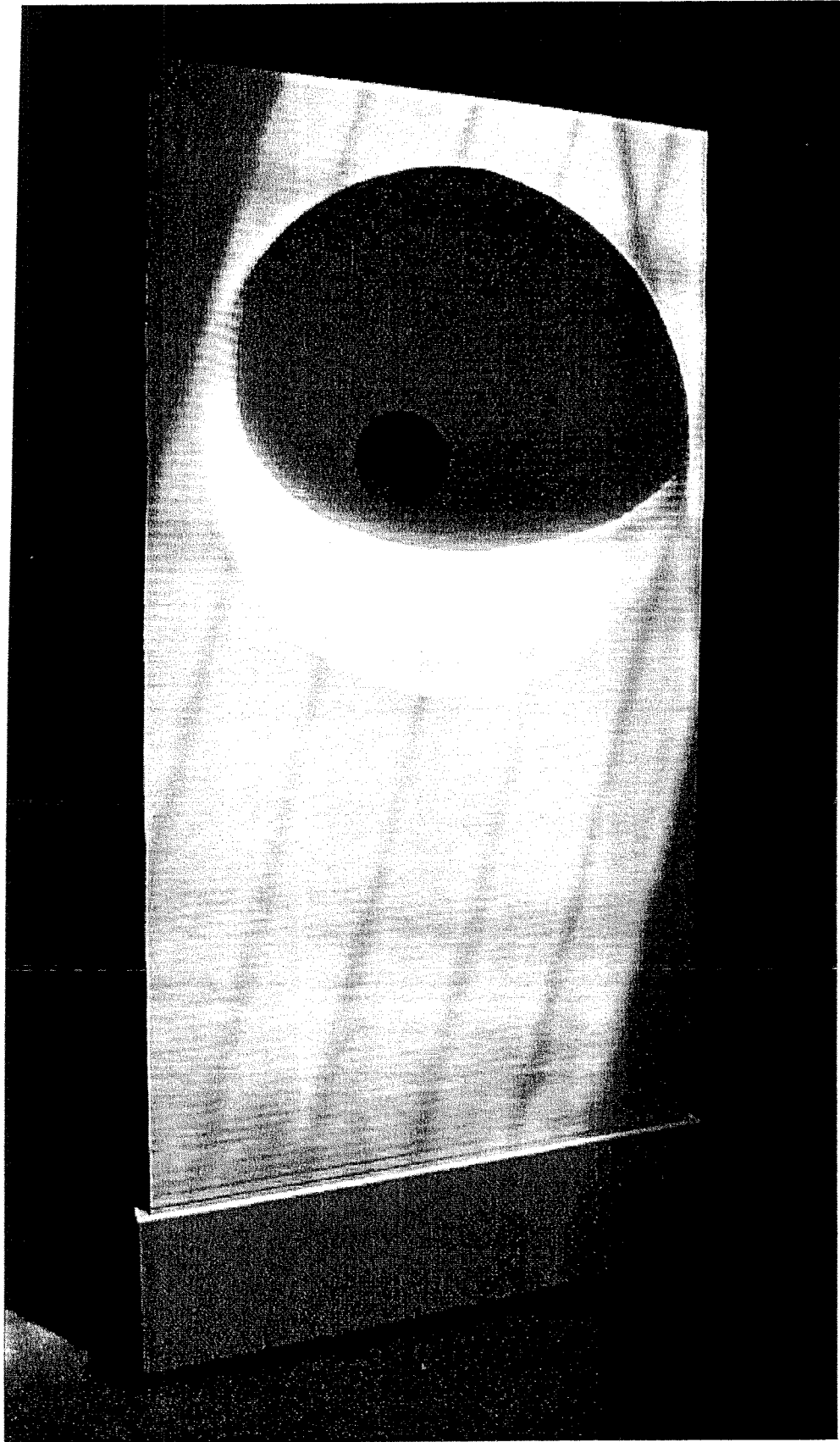
PATRICK MAROLD STUDIOS INC. 4335 CHEROKEE STREET. DENVER, CO 80216 720.323.5062 PATRICKMAROLD.COM

EXHIBIT B

Artist's Final Design Proposal







Scale Model of the Rex Morgan Tribute Sculpture.

42" wide, 22" deep and 87" high

This model, fabricated in fiber board will be used to transfer the details into glass layers. This model will also give everyone an accurate representation of scale and form.



# REX MORGAN CITIZEN VOLUNTEER AWARD

1998 NANCY PARKER

1999 JANE HANSBERRY

2000 WILBUR FLACHMAN

2001 HARRY T. LEWIS

2002 A. BARRY AND

ARLENE HIRSCHFELD

2003 EDWARD P. CONNORS

2004 ROSALIE KEITH

2005 MIKE MOORE

2006 JOHN E. HAYES

2007 MARUCA SALAZAR

2008 BOB GREENLEE

2009 GULLY STANFORD

While the information in both the quote and the explanation contain the foundation of what I think should be communicated, I do wish to refine and edit this down into a more concise and memorable body of text. With the input of the committee and further work, I will determine what will be placed on the opposite side of where the names will be read.

IN 1988 REX MORGAN CHAMPIONED A  
VISION THAT THE PEOPLE OF COLORADO  
EMBRACED TO PRESERVE AND NURTURE  
SCIENCE AND CULTURAL PROGRAMS:  
THE SCIENTIFIC AND  
CULTURAL FACILITIES DISTRICT.  
BY CULTIVATING VITAL RELATIONSHIPS  
AND MAKING IT POSSIBLE  
FOR EVERYONE TO ACCESS THESE  
COLLECTIVE CONTRIBUTIONS OF  
THE HUMAN SPIRIT AND MIND,  
THE SCFD ENRICHES US ALL.

I am certain that after the dust of  
centuries has passed over cities,  
we... will be remembered not for  
victories or defeats in battle or in  
politics, but for our contribution  
to the human spirit.

John F. Kennedy

## EXHIBIT C

### Schedule for Completion of Work

Benchmarks and fee portion distributions

10% distribution with Signing of Contract recognizing preliminary design work to date

40% distribution at 'proceed with build' approval of final design (following committee meeting) before or by 6/10/10;

40% distribution at midpoint of fabrication, based on documentation and by approximately 7/31/10

10% distribution contingent upon both (a) installation completion and (b) artist public appearance – Rex Morgan Tribute Dedication Event and Award ceremony, exact date to be forthcoming but tentatively 11/15/10;

## EXHIBIT D

### City Plaque Specifications

Artist will be responsible for the creation and installation of an accompanying plaque similar to sample below, with exact text copy provided by SCFD. Other details regarding the plaque will be mutually agreed upon by the Committee and the Artist.

Sample plaque text:

REX MORGAN TRIBUTE  
By Patrick Marold  
Dedicated on November xx, 2010  
With gratitude to the Citizens of the seven counties of SCFD  
Commission made entirely possible by  
The SCFD Rex Morgan Tribute Committee  
Holly H. Osgood, Chair, Harry T. Lewis, Jr., Fundraising Chair  
And the many donors who are named with appreciation on  
[www.scfd.org](http://www.scfd.org)  
No tax dollars were used for this art

**EXHIBIT E**  
**CERTIFICATION**  
**REGARDING ILLEGAL ALIENS**

To: Scientific and Cultural Facilities District

I, Patrick Marold, as the prospective Artist for that certain Public Art Program Agreement to be entered into with Scientific and Cultural Facilities District, do hereby certify that, as of the date of this Certification, I do not knowingly employ or contract with an illegal alien who will perform work under this Agreement and that I will participate in either the E-Verify Program administered by the U.S. Department of Homeland Security and the Social Security Administration, or in the Colorado Department of Labor and Employment's Employment Verification Program pursuant to Section 8-17.5-102(5)(c), C.R.S. in order to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

Executed on the 16 of April, 2010.



Patrick Marold

## EXHIBIT F

### Written Statement Per Section 8-40-202(2)(b), C.R.S.

To prove that the Artist is engaged in an independent trade, occupation, profession, or business and is free from control and direction in the performance of the service, the Artist and SCFD acknowledge and agree that SCFD does not:

- (a) Require the Artist to work exclusively for SCFD; except that the Artist may choose to work exclusively for such SCFD for the period of time specified in the term of the Agreement;
- (b) Establish a quality standard for the Artist; except that SCFD may provide plans and specifications regarding the Work to be performed by the Artist but SCFD shall not oversee the actual work or instruct the Artist as to how the Work will be performed;
- (c) Pay a salary or at an hourly rate to the Artist instead of the fixed contract rate stated in the Agreement;
- (d) Terminate the work of the Artist for cause during the term of this Agreement unless the Artist violates the terms of this Agreement or fails to produce the Work or result that meets the specific terms provided in the Agreement;
- (e) Provide any training for the Artist other than minimal orientation to the site or other parameters of the Artist activity;
- (f) Provide tools or benefits to the Artist;
- (g) Dictate the time of performance, except that the Agreement completion date together with the range of negotiated and mutually agreeable work hours have been established as set forth in the Agreement;
- (h) Pay the Artist personally instead of making SCFD payments to the professional name of the Artist, as an individual and sole proprietor; and
- (i) Combine the regular business operations of the SCFD in any way with the business operations of the Artist instead of maintaining all such operations separately and distinctly.

**The Artist, as an independent contractor, is not entitled to workers' compensation benefits and the Artist is obligated to pay federal and state income tax on any moneys earned pursuant to the contract relationship.**

SCIENTIFIC AND CULTURAL FACILITIES  
DISTRICT



By: Peg Long  
Peg Long, Executive Director

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Denver )

The foregoing was acknowledged before me on this 16<sup>th</sup> day of April, 2010,  
by Peg Long as Executive Director of the Scientific and Cultural Facilities District.

WITNESS my hand and official seal.

My Commission expires: 1-25-14

Nikki J. Root  
Notary Public

**PATRICK MAROLD STUDIOS, INC.**

By: [Signature]  
Independent Contractor

STATE OF COLORADO )  
 ) ss.  
COUNTY OF Denver )

The foregoing was acknowledged before me on this 16<sup>th</sup> day of April, 2010,  
by Patrick Marold, an independent contractor.

WITNESS my hand and official seal.

My Commission expires: 1-25-14

Nikki J. Root  
Notary Public

