

## ASSIGNMENT OF INTEREST AGREEMENT

**THIS ASSIGNMENT OF INTEREST AGREEMENT** is made and entered into by and between the **CITY AND COUNTY OF DENVER** (the "City"), and **PARK CREEK METROPOLITAN DISTRICT**, a Colorado political subdivision of the State (the "Assignor"), whose address is 7350 East 29<sup>th</sup> Avenue, Denver, Colorado 80238.

### W I T N E S S E T H:

**WHEREAS**, the parties entered into an Individual Facilities Development Agreement Art-1 ("IFDA A-1") dated August 9, 2005, whereby the Assignor agreed to enter into contracts with artists under the terms of the District's Art Master Plan, which includes Infrastructure sites that are conveyed upon completion with the site's accompanying art to the City.

**WHEREAS**, the Assignor entered into an agreement with artist **THOMAS H. SAYRE**, whose address is 311-200 West Martin Street, Raleigh, North Carolina 27601 (the "Artist") for artwork ("Work") a description of which is attached as **Exhibit A** to be installed at Westerly Creek (the "Site") dated October 30, 2009 (the "Artist Agreement"), attached hereto as **Exhibit B** and incorporated herein by this reference, to perform the Work;

**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 Site, including 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:** 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

Agreement (“Agreement”) or otherwise. 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 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 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, shall belong to the City.

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 Economic Development.

**10. 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.

**11. 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.

**12. 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:                    Arts and Venues Denver  
  1245 Champa Street, First Floor  
  Denver, Colorado 80204

If to the Assignor:            The address first above written.

**13. 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.

**14. 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.

**15. 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.

**16. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:** Assignor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The Parties agree not to deny the legal effect or enforceability of the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The Parties agree not to object to the admissibility of the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**17. COUNTERPARTS OF THIS AGREEMENT:** This Agreement shall be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

*(Remainder of page left intentionally blank.)*

**Contract Control Number:**

**Vendor Name:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: 201102323

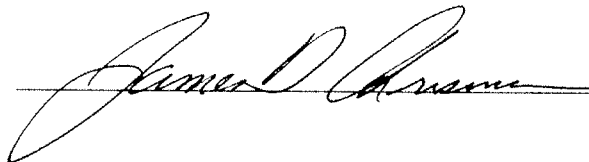
Vendor Name: The Park Creek Metropolitan District

By: 

Name: Cheryl Cohen-Vader  
(please print)

Title: First Vice President  
(please print)

ATTEST: [if required]

By: 

Name: James P. Chrisman  
(please print)

Title: Sec.  
(please print)



**EXHIBIT A**  
**"Chorus" Sculpture(s) Contract Re-Assignment**  
Scope of Work

Overview

Park Creek Metropolitan District (PCMD)/Stapleton Public Art Program commissioned a sculpture installation "Chorus" -- a series of fourteen earth-cast vessels situated in Westerly Creek by artist Thomas Sayre. The sculptural installation is to be conveyed to the City and County of Denver for inclusion into the City's permanent collection.

This sculpture commission was selected in an open, competitive process. The installation is complete and has been inspected by the City and Stapleton public art administrators. The artwork was installed satisfactorily and does not pose a risk or maintenance burden to the City. Because the project is installed on City Property, the City will accept this artwork as a permanent part of the City's public art collection.

The donation has been approved by the City's Public Art Committee and the Denver Commission on Cultural Affairs.

This contract will re-assign the contract rights for "Chorus" from The Park Creek Metropolitan District to the City of Denver. The artwork will be considered a donated work of art.

This is a no dollar amount contract.

Vendor Name/Address

The Park Creek Metropolitan District  
7350 East 29<sup>th</sup> Avenue  
Denver, CO 80238

Persons Name with whom you are negotiating with:

**Attn:**  
Cheryl Cohen-Vader

Roles & Responsibilities

Park Creek Metropolitan District will assign all rights and ownership of sculpture to the City of Denver. The City will be responsible for its maintenance and upkeep from the point of acceptance.

General duties include:

Descriptive of:

Contract beginning/ending date:

Beginning August 1, 2011 with no termination date

Invoice Amount & Payment Schedule

n/a



# Exhibit B

## PUBLIC ART PROGRAM – CONTRACT FOR COMMISSION

THIS CONTRACT, made this 30th day of October, 2009 by and between the Park Creek Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (hereinafter "the Client") and Thomas H. Sayre hereinafter "the Artist"), whose address is 311-200 W. Martin Street, Raleigh, NC 27601.

WHEREAS, the Client has adopted a Public Art Master Plan for the development of Stapleton and funds have been budgeted and otherwise made available for the Westerly Creek open space public art project at Stapleton (hereinafter the "Project").

WHEREAS, the Artist was selected through jury procedures set forth in the Public Art Master Plan for Stapleton and reviewed and adopted by the Public Art Advisory Committee and the Client to design, execute, fabricate and install a work of art for the Project (hereinafter "the Work") at the location hereinafter specified in Westerly Creek Park owned by the City and County of Denver (hereinafter "the Site"); and

WHEREAS, both parties wish to promote and maintain the integrity and clarity of the Artist's ideas and statements as represented by the Work; and

WHEREAS, the Artist has visited the Site, familiarized themselves with the local conditions under which they are to work and in which the Work shall remain; and

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

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

### ARTICLE 1. SCOPE OF SERVICES

#### 1.1 General:

- a. The Artist will design, execute, fabricate, install and document the following Work:

Title: Untitled

Dimensions: The series of up to fourteen (14) earthcast vessels will be placed on their sides to serve as markers to create points of interest in the Westerly Creek open space park. area between the bridge at East 26<sup>th</sup> Avenue and the Martin Luther King Boulevard bridge. The Work will represent the balance between the human- made and the nature-made elements of Westerly Creek Park. The cone shaped vessels will be approximately 4' high and 8' in diameter. They will be deployed in circulation nodes according to a plan developed collaboratively among the artist, the Client or Forest

City Stapleton and the Denver Office of Cultural Affairs on behalf of Denver Parks.

Medium: The vessels will be unique castings made from reinforced concrete shot directly into earthen molds dug from an industrial tree spade.

The permanent location for the Work shall be: the open space area between the bridge at East 26<sup>th</sup> Avenue and the Martin Luther King Boulevard bridge at Stapleton.

- b. The Artist shall perform all services and furnish all supplies, materials and equipment as necessary for the design, execution, fabrication, transportation and installation of the Work.
- c. The Artist shall be responsible for all permits and fees associated with the fabrication and installation of the Work.
- d. The Artist will coordinate with the Client or Forest City or other parties affected by this project as designated by the Client for site preparation and installation of the Work.
- e. The Artist shall determine the artistic expression, scope, design, color, size, location, material and texture of the Work, subject to review and acceptance by the Client as set forth in this Agreement.

## 1.2 Execution of the Work

- a. The Artist will begin design and fabrication of the Work upon written notification by the Client to proceed with the Work.
- b. The Artist shall complete the fabrication and installation of the Work in substantial conformity with the design as recommended by the Project Selection Committee and approved by the Client.
- c. Prior to implementation of any changes in the Artwork, the Artist shall present to the Client in writing for further review and approval a thorough description of such proposed changes. A significant change is any change affecting the scope, intent, design, color, size, material or location of the work not permitted by, or not in substantial conformity with, the approved design. Significant changes shall also include those affecting the installation, scheduling, site preparation or maintenance for the Work or the concept of the Work as represented in the approved design. Following receipt of the required description of proposed change(s), the Client shall, in its discretion, determine which changes shall be considered "significant," and retains the right to approve or disapprove any significant changes suggested by the Artist. The Artist may implement any significant change only with prior written agreement from the Client.
- d. The Client shall have the right to review the progress of the Work at reasonable times, and, with advance notice, during the fabrication thereof.

- e. In performance of the Work described herein, the Artist shall comply with all applicable State and local laws, rules and regulations.
- f. The Artist shall complete the work and the installation thereof within twelve (12) months of written notification to proceed. Upon notification of completion of the Work by the Artist according to Section 1.3 (Delivery and Installation) below, the Client shall determine the actual date of installation.
- g. The Artist shall provide to the Client a written plan of installation of the Work on site. This written plan shall be provided sixty (60) days prior to the date of initial installation referenced in section 1.2 (e). The written plan shall include the following information: Specifications for installation; and specifications for site preparation, including materials needed for site preparation or any physical alteration of the site as contemplated by the Artist. The Artist understands and agrees that site preparation and installation are subject to prior approval from the Client.

Assuming timely completion of Site preparations by the Client, the Work and the installation of the Work on the Site shall be completed by the 31<sup>st</sup> day following the scheduled installation date, except as otherwise authorized in Section 4.3 (Time Extensions) below. In the event that the Work and the installation thereof have not been completed by the 60<sup>th</sup> day following the scheduled installation date, the Artist shall incur a penalty of five percent (5%) of the balance still remaining due the Artist upon completion and installation of the Work. For each monthly period that passes thereafter, without completion and installation of the Work, the Artist shall incur an additional penalty as follows: (i) for the next monthly period, ten percent (10%) of the remaining balance due; (ii) for the next monthly period, fifteen percent (15%) of the remaining balance due; (iii) for the next monthly period, twenty percent (20%) of the remaining balance due; (iv) for the next monthly period, twenty-five percent (25%) of the remaining balance due; and (v) for each monthly period thereafter, twenty-five percent (25%) of the remaining balance due.

The Artist may request an extension of time from the Client up to thirty (30) days before the originally agreed upon installation date. If an extension is granted, a new installation date shall be agreed upon in writing and the above penalties shall apply if the new completion and installation dates are not met.

### 1.3 Delivery and Installation

- a. The Artist shall notify the Client in writing when fabrication of the Work is completed, and the Artist is ready to deliver the Work and install it at the Site.
- b. The Artist shall deliver and install the completed Work at the Site.
- c. The Client or Forest City shall be responsible for all fees, permits, expenses, labor and equipment to prepare the site for timely installation of the Work, including landscaping, public access, and spotlighting of the Work, unless through prior written arrangement the Artist agrees to assume responsibility for one or more of the costs required for site preparation.
- d. The Client shall notify the Artist of construction delays resulting in delays in site preparation prior to the scheduled delivery date.

- e. Following installation of the Work at the Site, the Artist shall be responsible for restoration of the Site to the condition existing prior to installation or as mutually agreed upon by the Client, the Denver Parks and the Artist.

1.4 Post-Installation

- a. Within forty-five (45) days after installation of the Work, the Artist shall furnish the Client with the following photographs of the Work as installed:
  - (i) two sets of high resolution digital color photographs of the completed Work, one taken from each of three different viewpoints, and labeled as follows: the Artist's names, last name first, the title of the Work and the dimensions (height x width x depth) and date of completion and the medium; and
  - (ii) two sets of 8" x 10" glossy black and white prints of the Work and negatives labeled with the Artist's name and the title of the Work; and
- b. The Artist shall also furnish the Client with a full written narrative description of the Work.
- c. The Artist shall provide to the Client, detailed written instructions for appropriate maintenance and preservation of the Work including materials specifications, sources, and appropriate cleaning agents and processes and schedules.
- d. The Artist shall provide and install an identification plaque for the Work. The written contents of the plaque shall include the following information:

(Title of Work)		(Year)
(Artist)	(Artist's City)	(State of Residence)
Commissioned by the Board of the Park Creek Metropolitan District with funding provided by the Denver Urban Renewal Authority.		

The plaque shall be of such medium and design as to be appropriate to the Work itself and the permanent location of the Work.

1.5 Final Acceptance

- a. The Artist shall advise the Client in writing when all services required including those described in Section 1.4 (Post Installation) have been completed.

- b. The Client, or an authorized representative, shall then notify the Artist in writing within thirty (30) days of its final acceptance of the Work
- c. Final acceptance shall be determined solely by the Client and shall constitute the Client's acknowledgement that the Work has been completed, delivered, installed and accepted for all purposes according to the terms of the Agreement.
- d. All risk of loss or damage to the Work shall remain with the Artist until final acceptance by the Client.

1.6 Ownership and Reproduction Rights

- a. Title to and ownership of the Work shall pass to the Client upon final acceptance. In addition, the Client may retain all plans, drawings, slides, photographs, submittals, studies, designs, maquettes and models, and other documents submitted to the Client by the Artist related to the Work. These items, when submitted, become and are the property of the Client, and the Artist expressly licenses the Client to, without restriction and at their sole option and without further approval or compensation to the Artist, make use of such documents for educational, public relations, promotional and other non-commercial purposes without further approval of the Artist. The Client, without amendment to this Agreement, shall have the right to negotiate separate license arrangements with the Artist for use of such documents for commercial purposes. The Artist shall not be liable for any damage which may result from any use of said documents by the Client for purposes other than these described in this Agreement.
- b. The Work. The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §§101 et seq., except for the Artist's rights under 17 U.S.C. §106A(a)(2), 17 U.S.C. §106A(a)(3) and 17 U.S.C. §113(d), which are specifically waived by this Agreement, or otherwise granted to the Client under this Agreement. All other rights in and to the work, including but not limited to all rights in the nature of "Droit Morale" in regard to any continuing interest the Artist may have in the maintenance or modification of the Work, are expressly waived by the Artist and, insofar as such rights are transferable, are assigned to the Client.
- c. 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, nor shall the Artist grant permission to others to do so except with the written permission of the Client. 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 Client and its respective assigns an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, including but not limited to reproductions used in advertising brochures, media publicity, and catalogues or other similar publications.
- d. Notice. All reproductions by the Client shall contain a credit to the Artist and a copyright notice.
- e. Credit to Public Art Program at Stapleton. The Artist shall use their best efforts to give a credit reading substantially, "an original work commissioned through the

Public Art Program at Stapleton", in any public showing under the Artist's control of reproduction of the Work.

- f. Registration. The Artist shall, at the team's expense, cause to be registered, with the United States Register of Copyrights, a copyright of the Work in the Artist's name.

### 1.7 Waiver of Artist's Rights

- a. Waiver of Rights under 17 U.S.C. §106A(a). The Artist understands and agrees that, as to their rights in the Work, the provisions of this Article shall control over the provisions of 17 U.S.C. §106A(a)(2) and 17 U.S.C. §106A(a)(3), and shall constitute a waiver by the Artist of any rights in the work set out in or otherwise granted by the provisions of 17 U.S.C. §106A(a)(2) and 17 U.S.C. §106A(a)(3).
- b. Waiver of Rights under 17 U.S.C. §113(d). The Artist understands and agrees that, as to their rights in the Work, the provisions of this Article shall control over the provisions of 17 U.S.C. §113(d), and shall constitute a waiver by the Artist of any rights in the work set out in or otherwise granted by this provision. The Artist acknowledges and represents that the Artist has been informed and is aware of the method and location of installation of the work at the Site and, to the extent that the Work is incorporated into the Site in such a way that removing the work from the Site will cause the destruction, mutilation, or other modification of the work, the Artist agrees that execution of the Agreement satisfies the requirements for waiver of the requirements of 17 U.S.C. §106A(a)(2) and 17 U.S.C. §106A(a)(3).

## ARTICLE 2. MAINTENANCE, REPAIR AND RESTORATION

### 2.1 Maintenance

- a. The Client shall have the right to determine, in its sole discretion when and if maintenance, repairs and restorations to the Work will be made.
- b. Any repairs and restorations shall be made in accordance with the Artist's recommendations and recognized principles of conservation.

### 2.2 Repairs and Restoration

- a. The Client will, if practicable, consult with the Artist as to recommendations with regard to all repairs and restoration made during the Artist's lifetime. To the extent practicable and in accordance with recognized principles of professional conservation, the Artist, or his/her representative shall be given the opportunity to accomplish such repairs and restoration and shall, if so agreed by the parties, be paid a reasonable fee for such services.
- b. At any point after delivery and installation of the Work, the Artist may inspect the Work and shall notify the Client in writing as to the necessity of any repairs. The Client shall make the final determination of whether repairs are needed.

### 2.3 Alteration of Work

- a. The Client agrees that it will not consent to intentional alteration, modification, change, destruction of or damage to the Work without consulting the Artist. This stipulation includes outright removal or change in location resulting from public or private opinion regarding the artwork. "Alteration" of the Work includes, but is not limited to, a change in the interrelationship or relative locations of parts of the Work.
- b. In the event of any alteration or damage, whether intentional, accidental, within or without the control of the Client or otherwise, the Artist shall have the right to disclaim authorship of the Work; and upon written request of the Artist to the Client shall remove the identification plaque at its own expense. The Artist may take such other action as he/she may choose in order to disavow the Work.

#### 2.4 Alteration of the Site

- a. The Client shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Work. The Client may consult with the Artist in the planning and execution of any such alteration.

#### 2.5 Permanent Record

The Client shall maintain on permanent file a record of this Agreement and of the location and disposition of the Work.

#### 2.6 Artist's Address

The Artist shall notify the Client of changes in his/her address. The failure to do so, if such failure prevents the Client from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce those provisions of Article 2 that require the express approval of the Artist. The Client shall make every reasonable effort to locate the Artist when matters arise relating to the Artist's rights.

#### 2.7 Removal, Sale, Donation or Destruction.

Nothing in this Agreement shall preclude any right of the Client, (1) to remove the Work from public display, (2) to move or relocate the Work to another location selected solely by the Client for public display, (3) to donate the Work, (4) to sell or transfer the Work, (5) to correct any unsafe or hazardous condition of the Work, or (6) to destroy the Work. Any donee, transferee or buyer of the Work shall assume all of the Client's duties toward the Artist stated herein, and will take the Work subject to all of the Artist's rights as stated herein, and the donee, transferee or buyer shall be given a copy of this executed Agreement at the time of donation or sale. If the Client shall at any time decide to destroy the Work, it shall by notice to the Artist offer the Artist at no cost to the Artist, 90 days following receipt of notice to take possession of the Work at no cost to the Artist, except for an obligation of the Artist to indemnify and reimburse the Client for the amount by which the cost to the Client of such recovery exceed the costs to the Client of the proposed destruction as determined solely by the Client. In such event, title to the Work shall pass to the Artist at the time that the Artist takes possession of the Work.

## 2.8 Surviving Covenants

The covenants and obligations set forth in this Article 6 shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest, and the Client's covenants do attach and run with the Work and shall be binding to and until twenty years after the death of each member of the Artist. The Client shall give any subsequent owner of the Work notice in writing of the covenants herein and shall cause each such owner to be bound thereby.

## 2.9 Additional Rights and Remedies

Nothing contained in this Article 2 shall be construed as a limitation on such other rights and remedies available to the Artist under the law which may now or in the future be applicable.

# ARTICLE 3. COMPENSATION AND PAYMENT SCHEDULE

## 3.1 Fixed Fee

The Client shall pay the Artist a fixed fee of \$155,000.00 which shall constitute full compensation for all services and materials to be performed and furnished by the Artist under this Agreement, including any fees under Section 1.1.c. The fee shall be paid in the following installments, expressed as percentages of such fixed fee, each installment to represent full and final, nonrefundable payment for all services and materials provided prior to the due date thereof:

- a. Ten (10) percent (\$15,500.00) upon approval by the Client of the Artist's final proposal and signing of this Agreement by all parties.
- b. Forty (40) percent (\$62,000.00) upon completion of fifty percent (50%) of the Work.
- c. Forty (40) percent (\$62,000.00) upon completion of seventy-five percent (75%) and Client approval of plans for installation.
- d. Ten (10) percent (\$15,500.00) after final acceptance of the installed Work and receipt of the photo documentation, final Work description and maintenance instructions by the Client, as described in Section 1.4 (Post Installation).

In order to receive all except the initial payment which will be made automatically after all parties have signed this contract, the Artist shall submit a written billing or invoice to the Client when each of the last two stages outlined above has been reached. The invoice shall be signed by the Artist, contain photographs documenting that the required work has been completed and include a signed payment request form. The Client shall have sole responsibility for determining when the Work has reached a given state of completion. The parties agree that no interest or other costs shall accrue on the fixed fee at any time during the operation of this contract.

# ARTICLE 4. TIME OF PERFORMANCE

## 4.1 Construction Delays



If, when the Artist completes fabrication of the Work and notifies the Client that the Work is ready for installation, the Artist is delayed from installing the Work more than (60) days from the date specified in Section 1.2 of this Agreement, and the Client finds that this delay was caused as a result of the Client's failure to complete construction or preparation of the Site to permit installation of the Work herein, the Client shall reimburse the Artist for reasonable transportation and storage costs incurred for the period between the date provided in Section 1.2 (Execution of the Work) for commencement of installation and the date upon which the Site is sufficiently complete reasonable to permit installation of the Work. However, this clause shall not go into effect if the Client has issued an extension of time as contemplated in Section 1.3 (d).

#### 4.2 Early Completion of Artist Services

The Artist shall bear any transportation and storage costs resulting from the completion of their services hereunder prior to the time provided in Section 1.2 for installation.

#### 4.3 Time Extensions

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

### ARTICLE 5. WARRANTIES

#### 5.1 Warranties of Title

The Artist represents and warrants that:

- a. the Work is solely the result of the artistic and creative efforts of the Artist;
- b. except as otherwise disclosed in writing to the Client, the Work is unique and original and does not infringe upon on any copyright;
- c. the Work has not been accepted for exhibition, sale or lease elsewhere; and
- d. the Work is free and clear of any liens from any source whatever.

#### 5.2 Warranties of Quality and Condition

The Artist represents and warrants that:

- a. the Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and

- b. 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 Client according to the Section 1.4 (Post-Installation).

The warranties described in this Section 5.2 shall survive for a period of three (3) years after the final acceptance of the Work. The Client shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the Client, and at no cost to the Client, cure reasonable and promptly the breach of any such warranty, which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or refabrication of the Work).

## ARTICLE 6. ARTIST AS INDEPENDENT CONTRACTOR

The Artist agrees to perform all work under this Agreement as an independent contractor and not as an agent or an employee of the Client. The Artist as an independent contractor shall furnish all supervision, labor, materials, equipment, supplies other incidentals, as well as transportation, shipping and installation of the Work. The Artist shall not be supervised by any employee or official of the Client, nor shall the Artist exercise supervision over any employee or official of the Client.

## ARTICLE 7. INSURANCE

The Artist, as independent contractor, is responsible for complying with city, state and federal requirements pertaining to Workmen's Compensation insurance and employee liability insurance. The Artist is required to carry general liability insurance coverage of at least \$600,000.00. This policy shall name The Park Creek Metropolitan District and Forest City Enterprises, its subsidiaries and affiliates, the City and County of Denver (the "City") and the Denver Urban Renewal Authority as additional insureds. The Artist may, at their expense, insure the Work during fabrication and installation; the Client shall have no responsibility to insure the Work at any time.

## ARTICLE 8. ASSIGNMENT OF WORK

The work and services required of the Artist are personal and shall not be assigned, sublet or transferred. This shall not prohibit the Artist from employing qualified personnel who shall work under their supervision.

## ARTICLE 9. TERMINATION

### 9.1 Termination

The services to be performed under this Agreement may be terminated by either party, subject to written notice submitted thirty (30) days before termination, provided that attempts to reconcile the reason for termination have been undertaken but failed. The notice shall specify whether the termination is for convenience or cause.

- a. If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or

stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement for cause by giving written notice to the defaulting party its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If it is not cured then this Agreement shall terminate. In the event of default by the Client, the Client shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, the Artist shall remit to the Client a sum equal to all payments (if any) made to the Artist pursuant to this Agreement prior to such default.

- b. If such termination is for the convenience of the Client and occurs before notice to proceed has been given to the Artist, the Artist shall retain the fee set forth in Section 3.1.a in full payment of all Work and services provided by the Artist. If such termination is for the convenience of the Client and occurs after notice to proceed has been given to the Artist, the Artist shall, if the fee set forth in Section 3.1 has not been fully paid, have the right to an equitable adjustment in the fee on the basis of the Work performed to the date of such written notice (without allowance for anticipated profit or unperformed services), in which event the Client shall have the right at its discretion to possession and transfer of title to the sketches, designs and models already prepared and submitted or prepared for submission to the Client by the Artist under this Agreement prior to the date of termination, provided that no right to fabricate or execute the Work shall pass to the Client.
- c. If such termination is for the convenience of the Artist, the Artist shall remit to the Client a sum equal to all payments (if any) made to the Artist pursuant to this Agreement prior to termination.

#### 9.2 Event of Artist's Default or Incapacity

- a. 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 Client's sole option become its property, including the right to fabricate or execute the Work. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the Client for damages sustained by the Client by virtue of any breach of this Agreement by the Artist, and the Client may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the Client from the Artist is determined, or exercise all of its other rights hereunder.
- b. In the event of incapacity or death of either member of the Artist, such event will not be deemed a breach of this Agreement or a default on the part of the Artist. The Artist has the right to appoint a successor artist to complete the Work in the event of incapacity or death. The successor artist shall, however, be subject to approval of the Client at the time of the signing of the contract and shall be bound to complete the Work under the same terms, including compensation set forth in Article 3; however, the successor artist shall be automatically given an extension of sixty (60) days added to the timeline. Artist shall be paid only for that portion of work or services satisfactorily completed at the time of incapacity or death with remaining payments to be made to the successor artist. The Work shall pass to the Client and all copyright described under this Agreement shall remain with the

original Artist. The Artist shall provide a copy of this Agreement to the successor artist and the successor artist shall provide a written acknowledgement to the Client of the successor artist's agreement to abide by the terms of this Agreement.

- c. In the event of incapacity or death of the Artist, where no successor artist has been appointed or where an appointed successor artist does not complete the Work, 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 Client's sole option become its property. If the Work was at mid-point of fabrication or beyond at time of death or incapacity, and no successor is appointed, the Client retains the rights to select a successor artist to finish the Work at the Client's expense. If the artwork was not at mid-point of fabrication or beyond at time of death or incapacity, and no successor is appointed, the Client retains possessory rights to the Work as then in existence and to exhibit the Work with the designation that it is "unfinished." Artist shall be paid only for that portion of work or services satisfactorily completed at the time of incapacity or death. In the event of incapacity or death, where no successor artist has been appointed, all copyright described under this Agreement shall remain with the original Artist.

#### **ARTICLE 10. MEDIATION**

If, prior to final acceptance of the Work, its installation and subsequent acceptance, there arises a major disagreement between the Artist and the Client, both parties will make every effort to affect a mutually satisfactory resolution of the disagreement. Before terminating this contract or pursuing any other legal remedy in connection with this contract, either party must notify the other party in writing of his/her intent to terminate or pursue such legal remedy and take whatever steps may be reasonably necessary to mediate the underlying dispute.

#### **ARTICLE 11. MODIFICATION**

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both parties hereto.

#### **ARTICLE 12. CONFLICT WITH LAW**

Any provision of this contract which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States or the State of Colorado shall be considered null and void. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent the contract is capable of execution. Venue for any action or proceeding hereunder shall be in the District Court for the City. Colorado law shall govern.

#### **ARTICLE 13. EFFECTIVE DATE**

The effective date of this contract shall be the date of approval by the Board of the Park Creek Metropolitan District.

PARK CREEK METROPOLITAN DISTRICT

By: Cylo-VR

Title: First Vice President

Date: Oct 30, 2009

ARTIST:

Signature: Thomas H. Sayre

Name: THOMAS H. SAYRE  
(Please Print)

Social Security or FEIN #: 56-1333257

Date: 10/12/2009

10-9-09