

# ARTWORK PURCHASE AGREEMENT

BETWEEN THE CLIENT AND \_\_\_\_\_

THIS AGREEMENT, is entered into this \_\_th day of \_\_\_\_ 20\_\_ by and between [NINE dot ARTS], a Colorado Corporation, (hereinafter the "Client") and [artist name] (hereinafter, "Artist") NINE dot ARTS is consulting on the artist selection, final design, schedule and coordination of the Artwork for the benefit of \_\_\_\_\_ (hereinafter, "Owner").

WITNESSETH:

Whereas, the Client has selected an Artwork of Artist's to be installed in \_\_\_\_\_, and Whereas, Artist is willing to furnish such Artwork on the terms hereinafter set forth.

NOW, THEREFORE, it is agreed as follows:

## Article 1: Scope of Services

### 1.1 Artist's Obligations

- a. The Artist shall perform all services and furnish [all supplies, material, labor and/or work equipment (sculpture foundation, insurance, structural engineering, fabrication, travel time, meeting time, plaque, etc.)] as necessary for the design, fabrication, transportation and installation of the Artwork. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- b. The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the Client and any regulatory agencies with project oversight, as set forth in this Agreement. The Artist will do so in a manner that ensures that the Artwork as installed shall not interfere with the intended use of the site, pedestrian and other traffic flow, parking, safety devices and procedures, and other needs and functions of the site as defined by Client and/or ordinance prior to the approval of a design by the Artist.
- c. The Artist shall prepare the design concept described in Section 1.3 of this Agreement.
- d. The Artist shall complete the fabrication, transportation and installation of the Artwork by the scheduled dates as provided in Section 1.4(b)(i) of this Agreement.
- e. The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation of the Artwork at the Site.
- f. The Artist shall arrange for the transportation and installation of the Artwork in coordination with Client. If the Artist does not install the Artwork himself, Artist shall supervise and approve the installation. Prior to the installation of the Artwork, Artist shall inspect site to ensure that it is ready to accept the artwork and compliant with the specifications provided by the Artist. Artist shall notify Client of any perceived conflict, defect or non-compliance with specifications. All work shall be performed by qualified professionals and by licensed contractors as required by law.
- g. Artist shall provide required insurance in amounts and limits specified in Article 5 and Exhibit C. If the insurance amount provided by the Artist is not sufficient, the Artist is required to increase the insurance to said amount at no cost to the Client or Owner.
- h. Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.

- i. Artist shall provide a maintenance manual with a description of all materials, processes and products utilized in the Artwork and the required care and upkeep involved, as well as recommended procedures in the event of necessary conservation.
- j. Artist shall provide a set of “as built” drawings if there is significant deviation from approved and permitted construction documents.
- k. Artist shall provide photographic documentation of the Artwork in a format acceptable to Artist and Client and Owner.
- l. Artist shall be available with reasonable advance notice for a reasonable number of meetings required to coordinate design, lighting, landscaping and project implementation, ceremonies and the like, as necessary.

## **1.2 Client's Obligations**

- a. The Client shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- b. The Client shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist in order to perform.
- c. The Client shall be responsible for coordination and communication between Artist and other invested parties (architects, landscape architects, general contractor and decision makers) including a reasonable number of meetings required to coordinate design and project implementation.

## **1.3 Design**

### **a. Concept/Schematic**

The Artist submitted a design concept (the “Design”) which was selected and approved by the Client. The Design shall be attached to this Agreement as Exhibit A. Minor modifications to the design are required for final approval.

### **b. Approval**

The Client will notify the Artist in writing of requested revisions to the Design in order to comply with any applicable laws, ordinances and/or regulations or for other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the Design.

### **c. Final Design**

Upon approval of the revised Design by Client, Artist is authorized to proceed with Final Design which shall include the following: presentation quality materials, which shall include colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artwork and how it will be installed at the Site, mock-ups, final color and materials samples, proposed fabrication methods, feasibility studies and final cost estimates at design completion. When used in reference to the proposed Artwork, Final Design Documents shall fix and describe the size and character of the Artwork with respect to its relationship to the site, including architectural, structural, mechanical and electrical systems, materials and other elements as may be appropriate.

### **d. Final/Construction Documents**

Artist shall submit Construction Documents for construction and/or installation of the proposed Artwork as approved, which must be signed and stamped by design professionals licensed in the State of Colorado, as required by the Building Code.

- i. Artist shall deliver Maquette (computer model or otherwise as agreed to by both parties) and color and material samples.
  - ii. Artist shall review Architect's Design Development and/or Construction Documents for accuracy of the integration of Artist's Proposal within the site and provide the Client with written comments and/or corrections.
  - iii. Artist shall provide a detailed description of future maintenance requirements for the Artwork. The Artist will make recommendations on the maintenance of the Artwork, and the Artist shall provide a written copy of the recommendations to the Client. The report will indicate future maintenance and conservation needs and anticipated costs and may reflect issues such as the longevity of the materials used and the life span of the project.
  - e. Artist shall deliver a schedule describing Artist's specific timelines for completing the Artwork in conjunction with construction timeline. The schedule shall be attached to this agreement as Exhibit D.
- f. Design Revision or Modification
- i. Prior to the execution of any change in the approved design, Artist shall present proposed changes in writing to the Client for further review and approval. The Artist must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design.
  - ii. If the Client approves the changes, the Client shall promptly notify the Artist in writing.
  - iii. If the Client disapproves of the changes, the Client shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design.

#### **1.4 Budget, Payment and Deliverables Schedule**

- a. Budget
  - i. The Artist shall prepare a budget, which shall include all goods, services and materials with such costs itemized. The Budget shall be attached to this Agreement as Exhibit B.
  - ii. Budget shall mean a specific and detailed document identifying the cost of completion of all work under this Agreement, including all modifications. The Budget shall include the costs for all design fees and costs; preliminary and final engineering requirements; materials and labor for fabrication, including Artist and subcontractors' costs; consultants, including engineers and specifications writers; transportation of Artwork; installation of Artwork, including any necessary permits; permits and licenses; required insurance. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.
  - iii. If the Artist incurs costs in excess of the amount listed in the budget, the Artist shall pay such excess from the Artist's own funds unless the Artist obtains approval in writing for such additional costs from the Client (or such costs were the result of actions or inaction of the Client).
- b. Payment Schedule

Artist's completion milestones and payment schedule is as set forth in Exhibit D, Payment Schedule, which is incorporated herein by reference.

### **1.5 Schedule and Progress Reports**

- a. The Artist shall notify the Client of the anticipated schedule for the fabrication, transportation and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any required by Client or permitting agency. The Schedule may be amended by written agreement. The Schedule of Deliverables must identify a specific date or timeframe for the completion of the Artwork. This Schedule of Deliverables is included as Exhibit D.
- b. The Artist shall inform the client of the progress of each phase of work completed under the Agreement.

### **1.6 Fabrication Stage**

- a. The Artist shall fabricate [and install] the Artwork in substantial conformity with the Design. The Artist may not deviate from the approved design without written approval of the Client.
- b. If the Artwork is being constructed on site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations.
- c. The Client shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice.
- d. If the Client, upon review of the Artwork, determines that the Artwork does not conform to the approved Final Design, the Client reserves the right to notify the Artist in writing of the deficiencies and that the Client intends to withhold the next budget installment within [30] days of the determination as in paragraph (g) below.
- e. The Artist will have thirty days to cure the Client's objections and will notify the Client in writing of completion of the cure. The Client shall promptly review the Artwork, and upon approval shall release the next budget installment. If the Artist disputes the Client's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to the Client within [15] days of the Client's prior notification to the contrary. The Client shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Agreement shall remain with the Client.
- f. The Artist shall notify the Client in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the site if the Artwork was fabricated off-site.
- g. Prior to the transportation and installation of the Artwork, the Client shall inspect the Artwork within [30] days after receiving notification pursuant to paragraph (f) to determine that the Artwork conforms with the Final Design: give final approval of the fabricated Artwork and; authorize the installation of the Artwork at the site. The Client shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the Client does withhold final approval, the Client shall submit the reasons for such disapproval in writing within [30] days of examining the fabricated Artwork. The Artist shall then have [30] days from the date of the Client's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the site unless the Artist has willfully and substantially deviated from the Design without the prior approval of the Client. The Artist shall then be held responsible for any expenses incurred in correcting such deviation.
- h. The Client shall promptly notify the Artist of any delays impacting installation of the Artwork.

- i. The Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the Client of any adverse Site conditions that will impact the installation of the Artwork and which are in need of correction. Failure to do so by the Artist shall be deemed as an acceptance of the Site conditions.
- j. The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork with the application of a protective sealant, patina or anti-graffiti coating, if applicable, unless the Client specifically disapproves of such.

### **1.7 Installation**

- a. Upon the Client's final approval of the fabricated Artwork as being in conformity with the Design, the Artist shall deliver [and install] the completed Artwork to the site in accordance with the schedule provided in Exhibit D.
- b. The Artist will coordinate closely with the Client to ascertain that the Site is prepared to receive the Artwork. Artist must notify the Client of any adverse conditions at the Site that would affect or impede the installation of the Artwork.
- c. The Artist is responsible for timely installation of the Artwork. Artist may not install the Artwork until authorized to do so by the Client.
- d. The Artist shall be present to supervise the installation of the Artwork.
- e. Upon final payment, the Artwork shall be deemed to be in the custody of the Owner for purposes of Article 3 and Article 5 of this Agreement; the Artist waives the Client of all liability for any damage to the Artwork or injury to persons or property caused by the Artwork or any activity related to the Artwork.
- f. Upon completion of the installation of the Artwork, the Artist shall provide the Client with written instructions for the future maintenance and preservation of the Artwork.

## **Article 2: Terms of Agreement**

### **a. Duration**

This Agreement shall be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by the Client or submission of final payment to the Artist by the Client under Exhibit D, whichever is later. Extension of time of performance hereunder may be granted upon the request of one party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and attached to the schedule described in Exhibit D.

## **Article 3: Risk of Loss**

The Artist shall bear the risk of loss or damage to the Artwork until the installation of the Artwork. The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage.

## **Article 4: Artist's Representations and Warranties**

### **4.1 Warranties of Title**

The Artist represents and warrants that:

- a. the Artwork is solely the result of the artistic effort of the Artist;
- b. except as otherwise disclosed in writing to the Client, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;

- c. the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d. the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- e. the Artwork is free and clear of any liens from any source whatsoever.
- f. all Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party.
- g. the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
- h. all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.
- i. these representations and warranties shall survive the termination or other extinction of this Agreement.

#### **4.2 Warranties of Quality and Condition**

The rights of the Client under this license are fully transferable without the consent of the Artist.

- a. The Artist represents and warrants that all work will be performed in accordance with professional “workmanlike” standards and free from defective or inferior materials and workmanship (including any defects consisting of “inherent vice,” or qualities that cause or accelerate deterioration of the Artwork) for one year after the date of final acceptance by the Client.
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.7(f).
- d. If within [one] year the Client observes any breach of warranty described in this Section 4.2, the Artist shall cure the breach promptly, satisfactorily, and consistent with professional conservation standards, at no expense to the Client. The Client shall give notice to the Artist of such breach with reasonable promptness. However, if Artist did not disclose this risk of breach in the Proposal and Maintenance and Conservation manual, and if breach is not curable by Artist, the Artist is responsible for reimbursing the Client for damages, expense and loss incurred by the Client as a result of the breach of warranty.

## **Article 5: Insurance**

### **5.1 General**

- a. The Artist acknowledges that until installation of the Artwork under Section 1.7(e), any injury to property or persons caused by the Artist’s Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist’s Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist’s Artwork, regardless of where such loss occurs.
- b. Terms for the procurement and duration of insurance are provided in Exhibit C.
- c. Required insurance policies are described in Exhibit C.

### **5.2 Indemnity**

- a. The Artist shall indemnify the Client, its respective officers, agents, and employees, from any claims brought arising out of the breach of this Agreement or any negligent occurrence which occurs pursuant to the performance of this Agreement by the Artist, its subcontractors, agents or employees.
- b. Each Party shall immediately notify the other of any written claim regarding any matter resulting from or relating to the Party's obligations under this Agreement. Each Party shall cooperate, assist, and consult with the other in the defense or investigation of any such claim arising out of or relating to the performance of this Agreement.
- c. The indemnification shall include reasonable attorneys' fees and costs.
- d. This indemnification shall survive the termination or expiration of this Agreement.
- e. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a Party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

## Article 6: Ownership and Intellectual Property Rights

### 6.1 Title

Title to the Artwork shall pass to Owner upon the Client's and Owner's written final acceptance and payment for the Artwork pursuant to Section 1.8(b) and Exhibit B. Owner is the possessor of the final Artwork and NINE dot ARTS is not responsible for any misuse or other acts of Owner after the artwork is installed. The Artist and NINE dot ARTS agree that the Owner is a third party beneficiary of this agreement.

### 6.2 Ownership of Documents

One set of presentation materials prepared by Artist and submitted to Client under this agreement shall be retained by Client.

### 6.3 Copyright Ownership

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §101 et seq., as the sole author of the Artwork for the duration of the copyright.

### 6.4 Reproduction Rights

- a. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate [three]-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the Owner. However, nothing shall prevent the Artist from creating works in the Artist's manner and style of artistic expression.
- b. The Artist grants to the Client, Owner and its assignees an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publication provided that these rights are exercised in a tasteful and professional manner.

## Article 7: Alteration of Site or Removal of Artwork

While the Client will consult Artist regarding the placement of the Artwork, this decision lies wholly within the rights of Owner. Owner reserves the right to relocate the Artwork from the initial installation site if such decision is deemed appropriate and warranted in the future at its own discretion. Artist hereby acknowledges that Owner may deaccession the Artwork at any time.

This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto, their successors and assigns.

IN WITNESS WHEREOF, the parties have hereunto set their hands the day and year first above written.

**ARTIST:**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

**CLIENT:**

NINE dot ARTS  
a Colorado corporation

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_



EXHIBIT A

**ARTWORK CONCEPT**

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EXHIBIT B

**BUDGET**

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EXHIBIT C

**INSURANCE**

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EXHIBIT D

**TIMELINE, PAYMENT SCHEDULE + PROGRESS REPORTS**

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