

ARTIST'S MASTER AGREEMENT

Between **THE CITY OF CALGARY** (Hereinafter referred to as "The City")

- and -

Company Name in Full (Hereinafter referred to as the "Artist" which is deemed to include "Artist" or "Professional Service Provider" as the circumstances may require)

This document provides the general terms and conditions under which the Artist will perform services for The City, as a result of written work orders or requests for services, which shall be **confirmed in writing by Purchase Orders issued by The City;**

THE PARTIES AGREE AS FOLLOWS:

1. Purpose of Agreement

The City retains the Artist for the purposes of performing those Services specified by The City in a written work order or request for services, **together with a Purchase Order.**

This Agreement shall not obligate The City to order services from the Artist nor obligate the Artist to accept orders for services from The City. Any work order or request for services, together with the applicable Purchase Order, shall control and govern all artistic services performed by the Artist for The City during the term indicated on the agreement or Purchase Order. If the event of conflicts between the terms in this document and those on the specific contract or applicable Purchase Order, the terms of the specific contract or Purchase Order shall take precedence.

2. Contract Term

This Agreement shall be in effect for a period of one (1) year commencing the effective date set out on the signature page.

When mutually agreeable between the City and the Artist, this Agreement may be extended or renewed under the same terms and conditions for one (1) year periods, not to exceed four (4) additional years. Termination of this agreement can be made by either party, by providing written notification to the other.

3. Performance

- a) Upon agreement between The City and Artist on the services required and the scope of work, and upon receipt of the Purchase Order, the Artist will perform the services to completion as scheduled by The City with due diligence and in a proper professional manner in accordance with generally accepted professional standards. The City may, at its sole discretion, stop or suspend the performance of the Services at any time, but when the Artist is not in default, The City shall reimburse the Artist as deemed appropriate by The City. The Artist shall make no change or alteration in the Services nor perform any additional Services without The City's written authorization.
- b) The Artist may be evaluated on their performance at any time during the term as well as on contract completion. The project manager may provide a copy of the completed vendor performance evaluation form to the Artist. Information contained in this form may be used for

future proposal evaluations and award recommendations. In the event of an unfavourable review, the City may meet with the Artist for the purpose of resolving the deficiencies.

4. Acquaintance with Conditions

The Artist will be responsible to acquaint them self with the job site and with all conditions pertaining to the performance of the services. The City shall accept no responsibility for failure of the Artist to do so. Costs for remedy of unforeseen and/or undetermined environmental issues may be considered for negotiation between The City and the Artist, at the City's discretion.

5. Duties of Artist

In the performance of services, the Artist shall, where applicable:

- a) Provide contact information for the Artist's representative to The City Project Manager.
- b) Comply with all laws, ordinances, rules and regulations of any governmental body having jurisdiction including, but not limited to, all environmental legislation, ordinances, rules, regulations, or bylaws, including the Environmental Protection and Enhancement Act (Alberta). In addition to the foregoing, the Artist shall fully comply with all applicable safety laws, ordinances, rules, regulations and bylaws, whether Federal, Provincial, or local. In case of any overlap between the applicable Federal, Provincial or local laws, ordinances, rules or regulations, the more stringent shall apply. It is the responsibility of the Artist to ensure that all subcontractors, Artists, suppliers, agents, and employees employed by the Artist in the performance of the contract are aware of and conform to all applicable Federal, Provincial and local safety legislation, regulations and rules.
- c) Cause a minimum of interference with The City's operations and the operations of other Artists or Contractors on the premises and, upon completion of services, leave the premises clean and free of all tools, equipment waste, material and rubbish.

6. Fees Payable

Unless otherwise agreed or noted in a specific contract, the following fee structure shall apply to all services performed;

- (a) Disbursements may be in addition to the fees payable, and shall be billed at eight (8%) percent of fees, unless otherwise agreed by The City and the Artist and confirmed in writing.
- (b) Fees shall be payable by The City for work completed to the satisfaction of The City, with standard payment terms of Net 30 days from receipt of an invoice detailing hours worked and disbursements included. Fees may be made payable at regular intervals during the contract period, for work in progress. Notwithstanding the foregoing, the Builders lien Act may apply where appropriate.
- (c) GST, where applicable, will be shown separately on all invoices and will be paid by The City to the Artist. The Artist's GST registration number is required on all invoices to The City. If the provision regarding unregistered suppliers and "small suppliers" as defined in Sec. 148 of the Excise Tax Act applies, the Artist shall indicate this status on their invoices.
- (d) The Artist acknowledges that The City is obligated to deduct a percentage specified by the Canada Customs and Revenue Agency from certain taxable payments to non-residents, as

defined in the Income Tax Act (Canada), as amended from time to time, unless the Artist provides The City with a waiver letter from Canada Customs and Revenue Agency.

- (e) All invoices submitted by the Artist to The City shall be marked with The City's Purchase Order number.

6.1 Limitations on Work and Fees

- (a) Where during the performance of the contract, it appears to the Artist that the total fees required to perform the work agreed upon will exceed the Purchase Order value, the Artist shall inform The City Project Manager, in writing:
 - (i) The amount by which the fees and disbursements will exceed the Purchase Order value
 - (ii) The reason why the Purchase Order value will be exceeded.
- (b) The City may refuse to accept increases beyond the contract value.
- (c) The Artist shall not perform any altered or additional services without prior written permission from the Project Manager.

7. Insurance

The Artist shall, during the term of this Agreement and at its own expense, maintain with Insurers allowed by the laws of the Province of Alberta to issue insurance policies in Alberta, and in forms satisfactory to the City Solicitor, a Comprehensive General Liability insurance policy for bodily injury (including death) and property damage in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) inclusive limit for any one occurrence and such policy shall include:

- (i) The City named as an Additional Insured;
- (ii) A Cross Liability clause;
- (iii) contractual liability coverage;
- (iv) non-owned Automobile liability clause;

The insurance policy shall include provision for the City to be given thirty (30) days written notice prior to cancellation, and thirty (30) days prior notice of any material change requested by the Artist on the insurance policy.

The Artist shall provide proof of insurance satisfactory to the City and a copy of the renewal or continuance of the insurance prior to the expiry of each certificate. The Artist shall be responsible for any deductible that may apply for the insurance policy.

The Artist agrees that the City's insurance requirements mentioned above shall not be construed to and shall in no manner limit or restricts the liability of the Artist.

8. Indemnity

The Artist agrees to indemnify and hold harmless The City from any loss or damage, any and all third party claims, demands, or actions, for which the Artist is legally responsible, including those arising out of negligence, wilful harm, or crimes by the Artist or Artist's employees, agents, or subcontractors. This hold harmless shall survive this Agreement.

The City will not be liable or responsible for any bodily or personal injury or property damage of any nature that may be suffered by the Artist, its employees, agents or sub-contractors in the performance of this Agreement, except to the extent of any negligence or misconduct on the part of The City.

9. Independent Artist

Neither the Artist, nor anyone used or employed by the Artist shall be deemed to be the agent, servant or representative of The City in performance of the services or in any matter in the performance of the contract. The City shall have no direction or control of the Artist or its employees, agents and subcontractors, except in the results to be obtained. Neither party shall assume any liability for the actions nor omissions of the other party except as stated in this Agreement.

10. Conflict of Interest

During the term of the Agreement, the Artist must not engage in or provide to any other person, company or entity, any service or act which could be reasonably perceived to be in conflict with the interest of the City in respect of the services being provided by the Artist to the City.

11. Security

The City may require the Artist to obtain a security clearance, without cost to the City, from the Calgary Police Service for each Artist representative and provide proof of this clearance prior to commencement of services under this Agreement.

12. Confidentiality and FOIPP

- (a) All information including, without limitation, any technology of a proprietary or novel nature, disclosed to the Artist by The City or by a third party to the Artist as a representative on behalf of The City (which, in addition to the confidentiality requirements hereunder will be kept confidential by the Artist in accordance with the terms of its disclosure by such third party) or obtained or developed by the Artist in the performance of services under this agreement, other than that which is common knowledge or within the public domain, shall be the confidential property of The City and shall not be divulged by the Artist, except to duly authorized representatives of The City, and shall not be employed other than in the performance of services for The City, unless authorized by The City in writing. These provisions shall remain binding obligations on the Artist after the completion, expiration or termination of this Agreement until The City reasonably determines that the confidential information has become part of the public domain. This requirement shall not prohibit the Artist from complying with an order to provide information or data issued by a court or other authority with proper jurisdiction or to act to correct or report a situation which the Artist may reasonably believe to endanger the safety or welfare of the public.
- (b) All documents submitted to The City are subject to the protection and disclosure provisions of the Freedom of Information and Protection of Privacy Act ("FOIPP") as amended, revised or substituted from time-to-time. While this Act allows persons a right of access to records in The City's custody or control, it also prohibits The City from disclosing personal or business information where disclosure would be harmful to business interests or would be an unreasonable invasion of personal privacy as defined in Section 16 and 17 of the Act.
- (c) The Artist should identify appropriate parts of any proposal or submission as confidential, since this will clearly establish its expectations towards the document, both to The City as a public body and to the Information and Privacy Commissioner in any review of or refusal of access. The City, however, may not be able to meet these expectations in every instance.

13. Copyright

Unless otherwise agreed and confirmed in writing:

The Artist shall retain all copyrights in the Artwork.

The Artist grants The City the following exclusive rights:

- (a) The City shall have the right to exhibit the Artwork and to loan the artwork to others for the purpose of public display.
- (b) The Artist grants The City the right to reproduction (including Electronic images) for not-for-profit promotion and educational purposes.
- (c) The City shall have the right to remove the Artwork from the Site and/or deaccession the Artwork from the City's art collection at any time for the following reasons:
 - Endangerment of public safety
 - Excessive repairs or maintenance, or repair is not feasible
 - Public accessibility is no longer available
 - Demolition of a structure incorporating the Artwork or redevelopment of a site incorporating the Artwork
 - Expiry of lifespan of the Artwork
- (d) Except to the extent permitted in subsection (c) above, The City agrees to not Intentionally modify the Artwork without first obtaining the Artist's written consent.
- (e) The City shall have the right to donate or sell the Artwork at any time. Before exercising this right, The City, by written notice to the Artist at the Artist's last known address, agrees to give the artist the opportunity to purchase the Artwork for the greater of the Total Price or the amount of any offer which The City has received for the purchase of the Artwork, plus all costs associated with the removal of the Artwork from the Site, clean-up of the Site and delivery to Artist. The Artist shall have thirty (30) days from the date of The City's notice to exercise the option to purchase the Artwork.

14. Gifts and Gratuities

The Artist or its subcontractors shall not give to, or receive from any employee or agent of The City, or a spouse or relative of any such person, any commission, fee, rebate or gift, other than courtesies of a nominal value, in connection with this Agreement or subsequent contracted services.

15. Termination

This Agreement shall continue in full force and effect from the date of the agreement to expiry or termination, but neither party shall, by the termination of this Agreement be relieved of its respective obligations and liabilities. The City of Calgary reserves the right to terminate this contract immediately in the event of non-performance or failure to comply with safety policies.

16. Assignment or Subcontracting

The Artist shall not assign any obligations under this Agreement, including any remuneration due, to any third party without the prior consent of The City.

17. Laws, Rules and Regulations

This Agreement and the Services to be provided shall be subject to all laws, rules and regulations, federal, provincial and municipal pertaining to the location or locations where the services are performed or furnished. It is agreed that any legal interpretation given to this Agreement shall be governed by the laws in force in the Province of Alberta.

18. Work Site Safety

The Project Manager will discuss any issues deemed necessary for the safe completion of the project with the Artist's or their representative prior to commencement of any work.

Failure of the Artist to comply with The City of Calgary Safety Policy shall result in an immediate suspension of the contract, until the unsafe situation is resolved.

19. Notices

All communication and notices required under this Agreement, unless otherwise specifically provided for, must be given in writing and provided to the designated City Project Manager for each particular contract.

20. Alteration of Terms

The parties may alter or vary the terms of the contract, including the obligations of the Artist, provided mutual agreement is obtained in writing.

21. Time

Time is of the essence for this agreement and all services performed relative to this Agreement.

22. Records and Audit

To support all charges invoiced to The City with respect to Services performed hereunder, the Artist, for a period of seven (7) years after the performance of such Services, shall maintain a true and correct set of records pertaining thereto which shall include, without limiting the generality of the foregoing: the date and time worked, the location of the Services and the type of Services; invoices issued to The City and ledgers and similar books of record, and shall allow The City to audit such records upon reasonable request, PROVIDED HOWEVER, that the Artist shall have the right to exclude any trade secrets, formulas, or processes from such audit. The Artist shall require each of its subconsultants to keep such books and records which shall similarly be open to inspection and audit by or on behalf of The City.

No officer, employee or agent of the Artist or its subconsultants shall give to, or receive from, any official, officer, employee or agent of The City, or a spouse or relative of any such person, any commission, fee, rebate or gift, other than courtesies of a nominal value, in connection with this Agreement or the performance of Services hereunder. Further, no director, employee or agent of the Artist or its subconsultants shall enter into any business arrangement with any official, officer, employee or agent of The City that is not related to The City's business. Without limiting the general audit rights under this clause, The City may audit any and all records of the Artist and its

subconsultants in connection with this Agreement and the Services performed hereunder, and all transactions related thereto, for the purpose of determining whether there has been compliance with this clause.

SIGNATURE SHEET

The Artist/Professional Service Provider hereby acknowledges they have thoroughly reviewed and are prepared to comply with this Artist's Master Agreement:

Artist/Professional Service Provider's Company Name: (please print)	Signature and Position of Principle
Date:	Telephone: Fax: E-mail:

Company Address:	CONTACT NAME FOR FURTHER INFORMATION NAME: TELEPHONE: FAX: E-MAIL:
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AGREEMENT BY THE CITY OF CALGARY	SIGNATURE: PRINT NAME: PRINT TITLE:
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