MONTANA STATE UNIVERSITY

COMMISSIONED WORK OF ART AGREEMENT

THIS AGREEMENT is made between Montana State University, an agency of the State of Montana (the "Owner") and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Artist"), with a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_. Owner and Artist are hereinafter collectively referred to as the “Parties.”

WHEREAS, funds have been allocated and otherwise made available by Owner for the commission of artwork created by Artist (the “Work”); and

WHEREAS, Owner has selected Artist based upon Artist’s response to Owner’s Request for Qualifications and Proposals dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_; and

WHEREAS, Artist has indicated a desire to create for Owner an original artwork in a professional manner;

NOW THEREFORE, the parties mutually agree as follows:

1. **Effective Date and Duration:** This Agreement is effective upon the date of last signature below and terminate upon completion of all services and installation of the Work in accordance with the Installation and Time Schedule. Artist shall commence performance only upon receipt of a signed and fully executed agreement from Owner.
2. **Description of the Work.** Artist shall perform all services and furnish all supplies, material, transportation, and equipment necessary for the design, fabrication, transportation, and installation of the Work as described in Exhibit A, which is incorporated herein by reference.
3. **Location of the Work.** The permanent location for the Work shall be \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Site”). Artist will coordinate closely with Owner to determine when the Site is prepared to receive the Work. Artist must promptly notify Owner of any adverse conditions at the Site that would negatively affect or impede installation of the Work. Artist is responsible for timely installation of the Work. Artist may not install the Work until authorized to do so by Owner.
4. **Installation and Time Schedule.** Artist shall complete all services and installation of the Work no later than the date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_. In the event the permanent Location of the Work is not sufficiently prepared to permit installation or an extension of the installation date for the Work is deemed to be required by Owner, the parties will negotiate a reasonable extension.
5. **Design.** The Work shall be in substantial conformity with the proposal submitted by Artist and approved by Owner.
6. **Changes to Design.** Artist has the right to make minor changes in the Work that are structurally and aesthetically necessary. Any change in scope, design, or material that significantly alters the original and approved concept and design of the Work or affects installation, scheduling, site preparation, or maintenance for the Work shall require the prior review and approval of Owner. If Owner, upon review of the Work, determines the modified Work does not conform to the approved Final Design, Owner reserves the right to notify Artist in writing of the deficiencies and that Owner intends to withhold the next budget installment as allowed in the Price and Payment Schedule herein.

Artist will have 14 days to cure Owner’s objections and will notify Owner in writing of completion of the cure. Owner shall promptly review the Work, and upon approval shall release the next budget installment. If the Artist disputes the Owner’s determination that the Work does not conform, Artist shall promptly submit reasons in writing to Owner within 7 days of Owner’s prior notification to the contrary. Owner shall make reasonable efforts to resolve the dispute with Artist in good faith. However, final determination as to whether Artist has complied with the terms of this Agreement shall remain with Owner.

1. **Price and Payment Schedule.** Owner shall pay the Artist a total fixed fee of $\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, which shall constitute full and complete compensation for all services performed and material furnished or required by Artist under this Agreement including, but not limited to, design work, fees, materials, labor of the Artist and the Artist's assistants, studio and operating costs applicable to this project, travel costs for the Artist to visit and research the site, transportation of materials to the permanent location, any required permits or licensing, and any costs incurred by the Artist for installation of the Work at the permanent location.

Payments shall be made in accordance with the following scheduled installments [modify as necessary], each installment representing full and final payment for all services and material provided prior to payment thereof:

10% Upon execution of this Agreement.

10% Upon receipt of final design and Owner approval of final design.

15% Upon commencement of the required construction or creation of the Work.

15% Upon completion of half of the required construction or creation of the Work.

10% Upon delivery by Artist to Owner of a Maintenance Manual with written instructions for the

maintenance and preservation of the Work.

40% Upon final installation and official acceptance of the Work by Owner.

Payments shall be made within 30 days of invoice from Artist at each of the above stages of the payment schedule. Documentation may be requested to substantiate progress of the Work. If Owner disagrees with Artist’s estimation of the stage of completion of the Work, Owner must notify Artist within fourteen working days of receipt of invoice or be foreclosed from raising objection to Artist’s estimation.

1. **Official Acceptance.** Official Acceptance of the Work will occur when (1) Artist has completed all Work under this Agreement; (2) Artist notifies Owner that the Work has been installed in substantial conformity with the design and agreement documents; and (3) Owner issues a written acceptance to Artist. Accordingly, Artist agrees to forward final documentation materials and request a letter of acceptance from Owner upon completion of the Work.
2. **Maintenance Manual.** Artist shall provide a maintenance manual with a description of all materials, processes and products utilized in the Work and the required care and upkeep involved, as well as recommended procedures in the event of necessary conservation.
3. **Warranties.**
   1. **Warranties of Quality and Condition.** Artist represents and warrants that:
      1. All services shall be performed in a professional manner in strict compliance with all terms and conditions in this Agreement.
      2. The Work will be free from defective or inferior materials and workmanship, including any defects consisting of “inherent vice” or qualities that cause or accelerate deterioration of the Work, for one year after the date of final acceptance by Owner.
         1. If Owner observes any breach of warranty within one year of Final Acceptance, Artist shall cure the breach promptly, satisfactorily, and consistent with professional conservation standards, at no expense to Owner. Owner shall give notice to Artist of such breach with reasonable promptness.
         2. If Owner observes any deterioration of quality or condition that is curable by Artist after one year from Final Acceptance, Owner shall contact Artist to make or supervise repairs or restorations at a reasonable fee. Artist shall have the right of first refusal to make or supervise repairs or restorations. Should Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, Owner may seek the services of a qualified restorative conservator and maintenance expert.
      3. The Work and the materials used are not currently known to be harmful to public health or safety.
      4. Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the Maintenance Manual submitted by Artist.
   2. **Warranties of Title.** Artist represents and warrants that:
      1. All Work created by Artist under this Agreement, whether created by Artist alone or in collaboration with others, shall be wholly original to Artist and shall not infringe upon or violate the rights of any third party.
      2. Except as otherwise disclosed in writing to the Owner, the Work is unique and original and does not infringe upon any copyright or the rights of any person.
      3. The Work (or duplicate thereof) has not been sold to another party.
      4. Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Work or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement.
      5. The Work is free and clear of any liens from any source whatsoever.
      6. Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
      7. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.
      8. These representations and warranties shall survive the termination or other expiration of this Agreement.
4. **Ownership and Intellectual Property Rights**
   1. **Title.** Title to the Work shall pass to the Owner upon the Owner’s written acceptance and payment for the Work.
   2. **Ownership of Documents.** One set of presentation materials prepared by Artist and submitted to Owner under this Agreement shall be retained by Owner.
   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.
   4. **Reproduction Rights.**
      1. In view of the intention that the final Work shall be unique, Artist shall not make any additional exact duplicate three-dimensional reproductions of the final Work, nor shall Artist grant permission to others to do so except with the written permission of Owner. However, nothing shall prevent Artist from creating additional works in the Artist’s manner and style of artistic expression.
      2. Artist grants to Owner and its assignees an irrevocable license to make two-dimensional reproductions of the Work for non-commercial or educational purposes, including, but not limited to, photographs, 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.
      3. All reproductions by Owner shall contain a credit to Artist and a copyright notice in substantially the following form: © [Artist’s name, date of publication].
      4. Artist shall use best efforts in any public showing or résumé use of reproductions to give acknowledgment to Owner in substantially the following form: “An original artwork owned and commissioned by the Owner.”
      5. If Owner wishes to make reproductions of the Work for commercial purposes, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
5. **Risk of Loss.** Artist shall bear the risk of loss or damage to the Work until the final installation of the Work. Artist shall take such measures as are reasonably necessary to protect the Work from loss or damage.
6. **Insurance.** Artist shall maintain for the duration of the contract, at Artist’s cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Artist or Artist’s agents, employees, representatives, assigns, or subcontractors.
   1. **Primary Insurance**. The Artist’s insurance coverage shall be primary insurance as respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees or volunteers shall be excess of the Artist’s insurance and shall not contribute with it.
   2. **Insurance Requirements.** The Artist shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000 per occurrence and $2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of the Artist or Artist’s employees, agents, representatives, assigns, or subcontractors.
   3. **Additional Insured Status.** The State, its officers, officials, employees, and volunteers are to be added as additional insured via endorsement to the Artist’s policy.
   4. **Certificates of Insurance.** Insurance is to be placed with an insurer with a Best’s rating of no less than A-. All certificates and endorsements are to be received by the state prior to the provision of a service or purchase of a product. The state reserves the right to require complete copies of insurance policies at all times.
7. **Indemnification.** The Artist agrees to defend, indemnify, and hold Owner harmless from any and all losses and claims that may result to Owner because of the activity of Artist or Artist’s employees, agents, representatives, assigns, or subcontractors. This indemnification shall survive the termination or expiration of this Agreement.
8. **Alteration of Site or Removal of Work.** Owner shall have complete discretion to remove the Work from the Site without prior permission of Artist. Owner shall notify Artist in writing upon adoption of a plan of construction or alteration of the Site which would entail only partial removal or relocation of the Work which might result in the Work being destroyed, distorted, or modified. Artist shall be granted the right of consultation regarding the partial removal or relocation of the Work. If the Work cannot be successfully removed or relocated as determined by Owner, Artist may disavow the Work or have the Work returned at Artist expense.
9. **Relationship of the Parties.** It is mutually agreed that Artist is an independent contractor and not an employee of Owner for purposes of this Agreement. It is understood that Artist is not subject to the supervision and control of Owner; nor is Artist carrying out the regular business of Owner. Artist shall furnish all supervision, labor, supplies, materials, insurance, and other incidentals needed to complete this Agreement. Each of the parties will be solely and entirely responsible for its own acts and/or the acts of its employees or agents. No benefits provided by Owner to its employees, including unemployment and workers' compensation insurance, will be provided to Artist or Artist’s employees or agents.
10. **Assignment of Work.** The work and service required of Artist under this Agreement are personal and shall not be assigned or transferred. This shall not prohibit Artist from employing or subcontracting qualified personnel who shall work directly under Artist's supervision.
11. **Termination.**
    1. This Agreement may be terminated at any time upon the written mutual consent of the parties. Owner shall pay Artist for services performed and commitments made prior to the date of the termination, consistent with the schedule of payments set forth in this Agreement.
    2. Owner may terminate this Agreement for failure of Artist to perform any of the services, duties or conditions contained in this Agreement after providing the Artist written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 14 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.
    3. The above remedies are in addition to any other remedies provided by law or the terms of this Agreement.
12. **Notices.** All notices relating to this Agreement will be in writing and given to the contact person at the address provided for in this Agreement.

**Artist Information**

Name:

Address:

Point of Contact:

Email:

Phone:

Social Security Number (SSN) or Federal Tax Identification (FTI) number:

*Note: Artist’s SSN/FTI number must be provided before payment will be processed. If Artist is a Non-Resident Alien, payment is subject to withholding in accordance with IRS 1042 reporting requirements and Artist shall request instructions for Non-Resident Alien tax withholding. Non-Resident Alien: YES*  *or NO .*

**Owner Information**

Montana State University

Address:

Point of Contact:

Email:

Phone:

1. **Waiver.** The Parties agree that a waiver of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.
2. **Access to Records.** Artist shall adequately account for and maintain reasonable records for Artist’s performance and allow access to these records by Owner, the Legislative Auditor and/or the Legislative Fiscal Analyst as may be necessary for audit purposes and in determining compliance with the terms of this Agreement.

All records pertaining to this Agreement must be retained by Artist for a period of eight years from the completion date of this Agreement. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until the litigation, claim, or audit findings have been resolved.

1. **Non-discrimination.** Artist agrees that under Section 49-3-207, Montana Code Annotated, and the federal civil rights acts, no part of this Agreement shall be performed in a manner which illegally discriminates against any person, including on the basis of race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.
2. **Severability.** If one part of this Agreement is held to be illegal, void, or in conflict with any Montana law, the validity of the remainder of this Agreement remains operative and binding.
3. **Choice of Law and Venue.** This Agreement will be interpreted according to the laws of the State of Montana. The parties agree that, in the event of litigation concerning this Agreement, venue shall be in the Eighteenth Judicial District of the State of Montana, in and for the County of Gallatin.
4. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and no statements, promises or inducements made by either party, or agents or either party, that are not contained in this Agreement are valid or binding. This Agreement may not be enlarged, modified, or altered except by written amendment by the parties.

This Agreement consists of numbered pages shown and any Attachments as required. The original will be retained by Owner. A copy of the original shall have the same force and effect as the original for all purposes. To express the parties' intent to be bound by the terms of this Agreement, they have executed this document on the dates set forth below.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name, VP, Dean, Date Artist Name/Title Date

Department Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

MSU Legal Counsel Date

***(required for purchases exceeding $25,000)***

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Procurement & Contract Services Date

***(required for purchases exceeding $25,000)***

Approved as to Form:

Peggy Wallace, Contract Specialist

Procurement & Contract Services

Reviewed By:

Insert name & title of Department Point of Contact/Liaison here

Insert Department Name here

**\*\*REMOVE all the BLUE type (instructions) before sending via DocuSign for initials & signatures:**

**Agreement to be sent via DocuSign for review, initials, signatures. Set-up recipients in DocuSign in the following order:**

**1. Initial - Contract Specialist**

**2. Initial – Department Point of Contact**

**3. Signature – Visiting Artist**

**4. Signature - MSU VP/Dean or Delegated Signature Authority**

**Once all signatures are obtained a fully executed copy will be sent to all parties via DocuSign.**

**Agreement invalid unless signed by all required parties**

**EXHIBIT A**

**Approved Design and Timeline**