

PUBLIC SAFETY COMMITTEE

11-0611R

RESOLUTION AUTHORIZING AN AGREEMENT WITH THE DULUTH PUBLIC ARTS FUND, INC. FOR THE PLACEMENT OF A BRONZE SCULPTURE AT THE NEW PUBLIC SAFETY BUILDING.

CITY PROPOSAL:

RESOLVED, that the proper city officials are authorized to enter into an agreement with the Duluth Public Arts Fund, Inc. for the placement of a bronze sculpture entitled "Cooperation, Safety, Honor" at the new public safety building adjacent to the St. Louis County sheriff's department.

Approved:



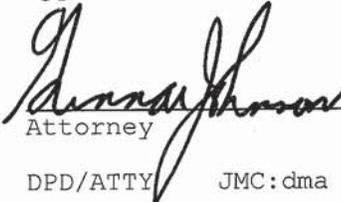
Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

DPD/ATTY JMC:dma 11/15/2011

STATEMENT OF PURPOSE: The City is constructing a new Public Safety Building adjacent to the St. Louis County Sheriff's Department upon property it is leasing from the County. The Duluth Public Arts Fund, Inc. ("DPAC") has entered into an agreement with artist Tom Christiansen to create and install a bronze sculpture representing members of the Duluth Police Department and the St. Louis County Sheriff's Department entitled "Cooperation, Safety, Honor" to be located at the exterior entry of the building. DPAC's agreement with the artist in the amount of \$142,000 is payable from the Municipal Art Fund in which is deposited 1% of the cost of all City of Duluth new building construction projects. The agreement between the City and DPAC provides DPAC and the artist a temporary non-exclusive license to enter the property for the purpose of installing the sculpture.

PUBLIC SAFETY BUILDING ART PROJECT AGREEMENT
BY AND BETWEEN
DULUTH PUBLIC ARTS FUND, INC.
AND
CITY OF DULUTH

THIS AGREEMENT, by and between the CITY OF DULUTH, a municipal corporation, hereinafter referred to as "City," and DULUTH PUBLIC ARTS FUND, INC. located at 301 W. 1st Street, Duluth, MN 55802 a non-profit corporation under the laws of Minnesota, hereinafter referred to as "DPAC."

WHEREAS, the City has entered into a lease agreement with St. Louis County, MN for the purpose of leasing property (the "Leased Premises") on which a new facility for the City's Police Department headquarters is being constructed (the "Public Safety Building"). A map of the Leased Premises is attached to this Agreement as Exhibit A; and

WHEREAS, the City Ordinance 8777, adopted April 7, 1986, created a Municipal Art Fund in which is deposited 1% of the cost of all City new building construction projects which monies are designated for the public arts features. The Municipal Art Fund is administered by DPAC; and

WHEREAS, DPAC through a selection committee selected artist Tom Christiansen (the "Artist") to create a bronze sculpture entitled "Cooperation, Safety, Honor" (the "Sculpture") to serve as the public art feature for the Public Safety Building; and

WHEREAS, the parties desire to enter into an agreement to set forth the responsibilities of each party with respect to the Sculpture.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter contained, the parties hereto agree as follows:

I. DPAC's Responsibilities.

1. DPAC has entered into an agreement with the Artist to create and install the Sculpture (the "Artist Agreement"). A copy of the Artist Agreement is attached to this Agreement as Exhibit B and incorporated herein by reference.
2. DPAC shall cause Artist to create and deliver the completed Sculpture for installation ("Installation") at the Public Safety Building at the statue location

on the Leased Premises shown on Exhibit A no later than July 13, 2012; provided however that the time for Installation may be extended upon the prior written consent of the City's Chief Administration Office. At least 30 days prior to Installation of the Sculpture, DPAC shall contact the City Attorney's Office to confirm the physical location of Installation.

3. Pursuant to the terms of the Artist Agreement, DPAC has required the Artist to be responsible for all costs associated with the Installation including but not limited to labor, materials, equipment and supplies necessary for design, fabrication and installation.
4. DPAC will ensure that all work is performed pursuant to this Agreement in a good and workmanlike manner, in strict compliance with the specifications provided in Exhibit B, and to the satisfaction of the City of Duluth. The City shall have the right to review the progress of the Installation. In the event the City notices any problems or discrepancies between the agreed upon specifications pursuant to Exhibit B and the materials or work being done, City shall bring them promptly to DPAC's attention and DPAC will require Artist to correct the problems or discrepancies. Inasmuch as this contract concerns work, materials and equipment needed for the public benefit, the provisions of this contract relating to the time of performance and completion of work and delivery of materials or equipment are of the essence of this Agreement. DPAC shall cause the Artist to warrant that the Sculpture will be free from defects in materials and workmanship for a period of three (3) years from Installation (the "Warranty Period"). If at any time during the Warranty Period the City determines, in good faith, that there is a defect and/or abnormal or accelerated deterioration of the Sculpture, DPAC shall cause the Artist to correct such defect and/or restore such deterioration to the satisfaction of City, at no cost to the City, acknowledging that the color (patina) of the Sculpture is affected by the environment and will darken slightly over a number of years.

II. City's Responsibilities.

City grants DPAC and Artist and each of their respective employees and contractors a temporary and non-exclusive license to enter in and upon the Leased Premises for the purpose of performing the Installation. DPAC will provide City notice of the dates and length of time needed to complete the Installation.

III. General Terms and Conditions.

1. Amendments.

Any alterations, variations, modifications or waivers of terms of this Agreement shall be binding upon the City and DPAC only upon being

reduced to writing and signed by a duly authorized representative of each party.

2. Assignment.

DPAC will not in any way assign or transfer any of its rights or interests under this Agreement in any way whatsoever except as provided for in the Artist Agreement.

3. Records and Inspection.

Records shall be maintained by DPAC in accordance with requirements prescribed by the City and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after the final payment to the Artist under the Artist Agreement. The City and its duly authorized representative shall have access to the books, documents, papers and records of the DPAC that are related to this Agreement.

4. Ownership of Sculpture.

DPAC agrees that upon completion of the Installation and City's acceptance, the City shall own all right, title, and interest in and to the Sculpture, including the entire copyright in the Sculpture subject to the rights maintained by Artist as outlined in Exhibit B. DPAC agrees to execute and if necessary to cause the Artist to execute, at no cost to City, all documents necessary for City to perfect its ownership of the entire copyright in the Sculpture. DPAC represents and warrants that the Sculpture will be original and will not infringe upon the rights of any third party, and DPAC further represents that the Sculpture will not have been previously assigned, licensed or otherwise encumbered. DPAC will require Artist to turn over to the City complete copies of all plans, blueprints, design sketches, models, specifications and other artistic materials pertaining to the design, fabrication and installation of the Sculpture including but not limited to no less than twenty (20) digital images of the Sculpture taken during the production, a written technical description of the Sculpture and written recommended maintenance for the Sculpture with accompanying maintenance schedule.

Nothing in this Agreement shall preclude any right of the City to: 1) relocate the Sculpture; 2) remove the Sculpture from public display; or 3) destroy the Sculpture. In the event the Sculpture is to be destroyed, the City will make reasonable efforts to notify DPAC of the City's intent to destroy the Sculpture along with date firm for destruction (the "Destruction Date"). It is the responsibility of DPAC in its sole discretion to notify Artist of the pending destruction, the Destruction Date and the opportunity for Artist to purchase

the Sculpture. If the City does not receive a response from DPAC or the Artist by the Destruction Date, the City will assume the Artist does not intend to purchase the Sculpture and the City will move forward with destruction.

5. Public Notice/Signage.

DPAC shall cause the Artist to design, fabricate and install at Artist's sole cost and expense a notice in the form of a bronze plaque satisfactory to DPAC which includes the title of the Sculpture, identification of the Artist, year of completion and a notice of the Duluth Public Arts Commission One Percent for Public Art Program and the City's ownership of the Sculpture and its design.

6. Agreement Period.

The term of this Agreement shall commence on the later of the date of the last required signature below (the "Effective Date") and performance shall be completed by July 13, 2012, unless terminated earlier as provided for herein.

In the event of the Artist's failure to perform his obligations under the Artist Agreement and his failure to cure any said default upon ten (10) days' written notice from DPAC or in the event the cure within ten (10) days is not possible, commencement of cure within ten (10) days and completion as soon thereafter as possible, DPAC may terminate the Artist Agreement. In the event termination of the Artist Agreement, this Agreement shall simultaneously terminate without any liability to the City.

7. Independent Contractor.

a. It is agreed that nothing herein contained is intended or should be construed in any manner as creating or establishing the relationship of copartners between the parties hereto or as constituting DPAC as an agent, representative or employee of the City for any purpose or in any manner whatsoever. The parties do not intend to create any third party beneficiary of this Agreement. DPAC and its employees shall not be considered employees of the City, and any and all claims that may or might arise under the Workers' Compensation Act of the State of Minnesota on behalf of DPAC's employees while so engaged, and any and all claims whatsoever on behalf of DPAC's employees arising out of employment shall in no way be the responsibility of City. DPAC's employees shall not be entitled to any compensation or rights or benefits of any kind whatsoever from City, including without limitation, tenure rights, medical and hospital care, sick and vacation leave, Workers' Compensation, Unemployment Insurance, disability or severance pay and P.E.R.A. Further, City shall in no way be

responsible to defend, indemnify or save harmless DPAC from liability or judgments arising out of the acts or omissions of DPAC or its employees while performing the work specified by this Agreement.

- b. The parties do not intend by this Agreement to create a joint venture or joint enterprise, and expressly waive any right to claim such status in any dispute arising out of this Agreement.
- c. DPAC expressly waives any right to claim any immunity provided for in Minnesota Statutes Chapter 466 or pursuant to the official immunity doctrine.

8. Indemnity.

DPAC shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in connection with any claims resulting from the DPAC's a) breach of this Agreement or b) its negligence or misconduct or that of its agents or contractors in performing the services hereunder or c) any claims arising in connection with DPAC's employees or contractors or the Artist, or d) the use of any materials supplied by the DPAC to the City unless such material was modified by City and such modification is the cause of such claim. This Section shall survive the termination of this Agreement for any reason.

DPAC shall cause the Artist to take all reasonable precautions to protect the property upon which the Sculpture is placed and adjacent property from damage during Installation. DPAC will be responsible for payment for any repairs of any damage caused by the Artist. DPAC shall cause the Artist to secure adequate and appropriate barricades and warning signs during Installation.

9. Insurance.

- a. DPAC shall cause the Artist to procure and maintain the insurance set forth in the Artist Agreement and to name the **City of Duluth as an Additional Insured** under the Public Liability and Automobile Liability of the Artist. The insurance required herein shall be maintained in full force and effect during the life of this Agreement
- b. If a certificate of insurance is provided, the form of the certificate shall contain an unconditional requirement that the insurer notify the City without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate and shall further provide that failure to give such notice to

City will render any such change or changes in said policy or coverages ineffective as against the City.

- c. **The use of an "ACORD" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002) or equivalent, as approved by the Duluth City Attorney's Office.**
- d. Certificates showing that Artist is carrying the above described insurance in the specified amounts shall be furnished to the City upon to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with the City during the term of this Agreement.

10. Civil Rights Assurances.

DPAC, as part of the consideration under this Agreement, does hereby covenant and agree that:

- a. No person on the grounds of race, color, creed, religion, national origin, ancestry, age, sex, marital status, status with respect to public assistance, sexual orientation, and/or disability shall be excluded from any participation in, denied any benefits of, or otherwise subjected to discrimination with regard to the work to be done pursuant to this Agreement.
- b. That all activities to be conducted pursuant to this Agreement shall be conducted in accordance with the Minnesota Human Rights Act of 1974, as amended (Chapter 363), Title 7 of the U.S. Code, and any regulations and executive orders which may be affected with regard thereto.

11. Laws, Rules and Regulations.

DPAC agrees to observe and comply with all laws, ordinances, rules and regulations of the United States of America, the State of Minnesota and the City with respect to their respective agencies which are applicable to its activities under this Agreement.

12. Applicable Law.

This Agreement, together with all of its paragraphs, terms and provisions is made in the state of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

13. Notice.

Notice to City or DPAC provided for herein shall be sufficient if sent by the regular United States mail, postage prepaid, addressed to the parties at the addresses hereinafter set forth or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

To City of Duluth: City of Duluth
Room 402 City Hall
411 West First Street
Duluth, MN 55802
Attn: Chief Administrative Officer

To DPAC: Duluth Public Arts Fund, Inc.
301 W. 1st Street
Duluth, MN 55802

14. Severability.

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provision shall continue in full force and effect and shall be binding upon the parties to this Agreement.

15. Waiver.

The waiver by either party of any breach or failure to comply with any provision of this Agreement by the other party will not be construed as, or constitute a continuing waiver of such provision or a waiver of any other breach of or failure to comply with any other provision of this Agreement.

16. Entire Agreement.

It is understood and agreed that the entire agreement of the parties including all exhibits is contained herein and that this Agreement supersedes all oral agreements and negotiations between the parties relating to the subject matter hereof. Any amendment to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

17. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute

one and the same instrument.

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

CITY OF DULUTH

DULUTH PUBLIC ARTS FUND, INC.

By: _____
Mayor

Date: _____

By: _____
DPAC Representative

Its: _____
Title of Representation

Date: _____

Attest:

City Clerk

Date: _____

Countersigned:

City Auditor

Date: _____

Approved as to form:

City Attorney

Date: _____

LEGAL DESCRIPTION OF LEASED PREMISES FOR CITY OF DULUTH, MINNESOTA

Legal description:

That part of the Northwest Quarter of Section 16, Township 50 North, Range 14 West lying westerly of Rice Lake Road except the southerly 100 feet of the westerly 250 feet, described as follows:

Commencing at the northwest corner of said Section 16; thence South 0 degrees 19 minutes 50 seconds East along the west line of said Northwest Quarter a distance of 2645.40 feet to the west quarter corner of said Section 16; thence North 31 degrees 48 minutes 28 seconds East 1384.33 feet; thence North 5 degrees 00 minutes 00 seconds East 81.00 feet to the point of beginning; thence North 85 degrees 00 minutes 00 seconds West 150.00 feet; thence North 5 degrees 00 minutes 00 seconds East 19.17 feet; thence North 85 degrees 00 minutes 00 seconds West 70.90 feet; thence North 5 degrees 00 minutes 00 seconds East 137.00 feet; thence North 60 degrees 45 minutes 57 seconds East 420.54 feet; thence South 29 degrees 27 minutes 51 seconds East 119.23 feet; thence South 5 degrees 00 minutes 00 seconds West 294.43 feet; thence North 85 degrees 00 minutes 00 seconds West 194.26 feet to the point of beginning and there terminating.

AND

Commencing at the northwest corner of said Section 16; thence South 0 degrees 19 minutes 50 seconds East along the west line of said Northwest Quarter a distance of 2645.40 feet to the west quarter corner of said Section 16; thence North 27 degrees 28 minutes 22 seconds East 1292.71 feet to the point of beginning; thence South 70 degrees 14 minutes 58 seconds West 6.00 feet; thence South 19 degrees 45 minutes 02 seconds East 4.00 feet; thence North 70 degrees 14 minutes 58 seconds East 6.00 feet; thence North 19 degrees 45 minutes 02 seconds West 4.00 feet to the point of beginning and there terminating.

Containing 117,276 square feet or 2.69 acres, more or less.

Statute base legal description

That part of the Northwest Quarter of Section 16, Township 50 North, Range 14 West lying westerly of Rice Lake Road except the southerly 100 feet of the westerly 250 feet, described as follows:

Commencing at the northwest corner of said Section 16; thence South 0 degrees 19 minutes 50 seconds East along the west line of said Northwest Quarter a distance of 2645.40 feet to the west quarter corner of said Section 16; thence North 27 degrees 28 minutes 22 seconds East 1292.71 feet to the point of beginning; thence South 70 degrees 14 minutes 58 seconds West 6.00 feet; thence South 19 degrees 45 minutes 02 seconds East 4.00 feet; thence North 70 degrees 14 minutes 58 seconds East 6.00 feet; thence North 19 degrees 45 minutes 02 seconds West 4.00 feet to the point of beginning and there terminating.

Containing 24 square feet.

I hereby certify that this survey, plan of report was prepared by me or under my direct supervision and that I am a duly Licensed Land Surveyor under the laws of the State of Minnesota.

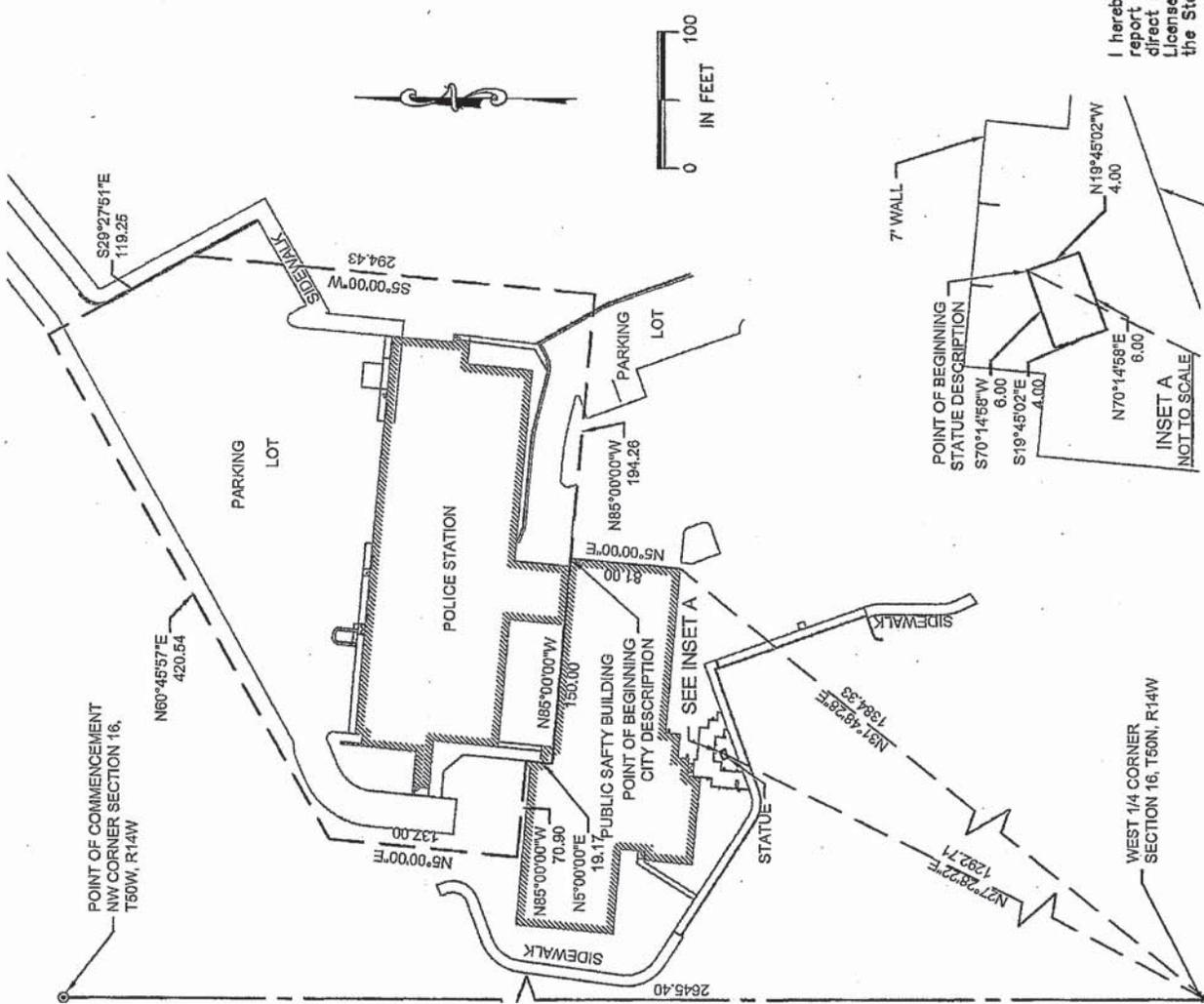
Approved:

Carly Munn

St. Louis County
Property Manager

Date 11/16/11

Stacy Koo
Fletcher A. Koo
Date 11-14-11 REG. NO. 40077



AGREEMENT

THIS AGREEMENT, made this 5 day of MAY 2011, by and between the DULUTH PUBLIC ARTS FUND, INC. ("DPAC"); and TOM CHRISTIANSEN ("Artist").

WHEREAS, the City of Duluth (the "City") is expanding and relocating its Police Department headquarters and related facilities to a facility adjacent to the St. Louis County Sheriff's Department located at 2030 North Arlington Avenue, Duluth, MN (the "Public Safety Building") pursuant to which the City has entered into an architectural service contract with LHB Architects (the "Architect"); and

WHEREAS, City Ordinance 8777, adopted April 7, 1986, created a Municipal Art Fund in which is deposited 1 % of the cost of all City of Duluth new building construction projects which monies are designated for public art features. The Municipal Art Fund is administered by DPAC; and

WHEREAS, a selection committee consisting of three members of DPAC, three members of the public, a member from LHB Architects, a member from the Duluth Police Department, and a member from the St. Louis County Sheriff's department selected one (1) artist and that artist's design for the purpose of manufacture and installation to serve as a work of public art feature at the Public Safety Building; and

WHEREAS, the Artist is willing and able to create for DPAC an original artwork in a professional manner.

NOW, THEREFORE, the parties mutually agree as follows:

1. Description of Artwork

The Artist will create and install a bronze sculpture(s) representing members of the Duluth Police Department and the St. Louis County Sheriff's Department entitled "Cooperation, Safety, Honor" to be located at the exterior entry plaza of the Public Safety Building.

2. Design Approval

DPAC hereby approves the design of the Work subject to Architect review of the final design for conformance with technical requirements for the installation of the sculpture. Attached hereto as "Exhibit A", or, "the Concept". The Artist may propose changes in the design of the Work at any time prior to its installation; provided however, that any such changes shall be approved by DPAC and such changes shall be at no cost to DPAC under this Agreement.

3. Price and Payment Schedule

As payment for the design services, creation and installation of the completed Work, DPAC shall pay the Artist a total of and not exceeding One-Hundred and Forty-Two Thousand and 00/100ths Dollars (\$142,000.00), which shall constitute full compensation for the Work, including, but not limited to fees, materials, applicable state sales tax, labor of the Artist and the Artist's subcontractors, studio and operating costs applicable to this project, insurance, travel costs for the Artist to visit and research the site, and any other costs of any kind

whatsoever incurred by the Artist.

The money shall be paid, as follows:

a) The Artist will then be paid a sum of \$110,000 upon the signing of this Agreement.

b) Final payment of the remaining \$32,000 shall be paid to the Artist upon installation of the Work, the receipt of an invoice from the Artist, receipt of all documentation referred to in Paragraph 6, compliance with Sections 8 and 9, written acceptance of the Work by the Public Safety Building's Architect.

4. Installation and Time Schedule

The Artist agrees he shall deliver the final Work for installation at the Public Safety Building site by July 13, 2012 (Dedication date). Artist agrees to furnish reports of the progress via Artist's Blog at tomchristiansen.blogspot.com on production of the Work to DPAC on a monthly basis, and DPAC shall have the right at any reasonable time to review by photograph or in person the progress of the Work's fabrication and the Artist's workmanship. DPAC shall have the right to review and approve the finished clay for the Work prior to the Artist's creation of the mold. No changes in the Work will be made by the Artist after the finished clay has been completed and approved.

In the event that, through the fault of the Artist as determined by the DPAC, the Work is not installed by the agreed date due to the failure of the Artist to deliver the completed final design, the amount of 10% of the balance due shall be deducted every ten (10) working days until the Work is delivered and the installation is completed. Such change shall not affect any other provisions or sections of this Agreement. The DPAC will only consider granting an extension of the installation date upon special.

5. Artist Fee

In addition to the amount of One-Hundred and Forty-Two Thousand and 00/100ths Dollars (\$142,000.00) to be paid to the Artist pursuant to Paragraph 3, DPAC will pay the Artist as an artist's fee the amount of Fourteen-thousand dollars and 00/100ths Dollars (\$14,000.00). Said amount shall be paid to the Artist at the time of the final payment reference in Paragraph 3b above.

6. Documentation

Upon installation of the Work, and before final payment shall be made, the Artist shall furnish DPAC with a completed Documentation Worksheet form including:

a) ten to twenty digital images of the Work during production for archival records,

b) a written technical description of the Work, and

c) recommended maintenance and maintenance schedule for the Work.

7. Independent Contractor

The Artist agrees to perform all work under this Agreement as an independent contractor and not as an agent or employee of the DPAC. It is agreed that nothing herein contained is intended or should be construed in

any manner as creating or establishing a relationship of co-partners between the parties hereto or of constituting the Artist or any of its agents, subcontractors or employees as an officer, agent, servant, representative or employee of DPAC for any purpose or in any manner whatsoever. The Artist shall furnish all supervision, labor, supplies, materials, insurance, and other incidentals needed to complete this Agreement.

8. Public Notice / Signage

The Artist agrees to design, fabricate, install and pay for a notice in the form of a bronze plaque which is satisfactory to DPAC and which includes the title of the Work, identification of the Artist, and year of completion as well as notice of the Duluth Public Arts Commission One Percent for Public Art Program and DPAC ownership of the Work design. The public notice shall be installed by the Artist on or before date that the Work is completed and installed.

9. Artist's Warranties

The Artist warrants that the Work is the original product of the Artist's own creative efforts. The Artist also warrants that the Work is unique and that the Work, or a duplicate thereof, has not been accepted for sale elsewhere. The Artist expressly warrants that no pre-existing Agreements with an artist's gallery agent shall be the cause for any breaches of this Agreement or render this Agreement impracticable by the Artist.

The Artist warrants that the execution and fabrication of the Work shall be performed in a workmanlike manner and that the Work, as fabricated and installed, shall be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Work. This warranty will cover the project through installation. After installation the Artist shall personally guarantee the Work from faults of material and workmanship for a period of three years.

DPAC will inform Artist of perceived defect and allow reasonable time for artist to repair. Color of the Work (patina) is affected by the environment and will darken slightly over a number of years – this is understood and acceptable.

10. Assignment of Work

The work and services required of the Artist under this Agreement are personal and shall not be assigned, sublet, or transferred without prior written consent of the DPAC. Notwithstanding the above, DPAC consents to the subletting of concrete work with RJS Construction Group, LLC.

11. Indemnity and Insurance

The Artist agrees to indemnify and save and hold the DPAC, the City of Duluth and their agents, subcontractors and employees harmless from any and all claims or causes of action arising from the performance of this Agreement by the Artist or Artist's agents or employees. The risk of damage to or loss of the Work prior to final acceptance by DPAC shall be that of the Artist solely.

The Artist must take all reasonable precautions to protect the property upon which the Work is to be

placed and adjacent property from damage while installing the Work. In addition to any other available remedies, the DPAC may deduct from its payments to the Artist the amount necessary to repair any damage. The Artist shall be responsible for securing adequate appropriate barricades and installing warning signs.

In addition, prior to the Artist's doing work at the Public Safety Building site, the Artist shall procure public liability and automobile liability insurance written on an "occurrence" basis under a comprehensive general liability form with "broad form" property damage liability coverage in limits of not less than \$1,500,000 per occurrence for personal injury, bodily injury and death, and limits of \$1,500,000 for property damage liability and shall provide the following: liability for premises, operations, completed operations, independent contractors, and contractual liability. If per person limits are specified, they shall be for not less than \$1,500,000 per person and be for the same coverages. Artist shall also require such liability coverage of his subcontractors. DPAC and the City of Duluth shall be named as additional insured's under the public liability and automobile liability insurance. The use of an "Acord" form as a certificate of insurance shall be accompanied by two forms – 1) ISO Additional Insured Endorsement (CG-2010 pre-2004) and 2) Notice of Cancellation Endorsement (IL 7002); or equivalent as approved by DPAC. Certificates showing that this insurance is carried in the specified amounts shall be furnished to DPAC prior to the execution of this Agreement and a certificate showing continued maintenance of such insurance shall be on file with DPAC during the term of this Agreement. The form of each certificate shall contain an unconditional requirement that the insurer notify DPAC without fail not less than 30 days prior to any cancellation, non-renewal or modification of the policy or coverages evidenced by said certificate. DPAC does not represent or guarantee that the types or limits of coverage provided herein are adequate to protect Artist's interests and liabilities.

12. Ownership

All rights in ownership of the Work shall belong to DPAC. Nothing in this Agreement shall give the Artist any rights to the Work, except that DPAC grants to the Artist a license to reproduce the Work in printed form for purposes of advertising the Artist's qualifications. All reproductions of the Work by the Artist shall contain the following: Artist's name, title of the Work, a statement that the original design is owned by DPAC and commissioned under its Percent for Art in Public Places, and permanently installed at the Duluth Public Safety Building in (year of installation).

13. Default by the Artist

In the event of Artist's failure to perform his obligations under this Agreement as provided herein and his failure to cure any default upon ten (10) days' written notice from DPAC thereof or, in the event that cure within ten (10) days is not possible, commencement of cure within ten (10) days and completion of cure as soon thereafter as possible, DPAC may terminate this Agreement with Artist. In the event of any such termination, DPAC shall not be obligated to compensate Artist for any fees as provided for in Paragraph 3

above, and any said sums which have been paid by DPAC to Artist shall promptly be reimbursed by Artist to DPAC, and DPAC shall have no further obligation for any such sums which would otherwise be owed to Artist pursuant to this Agreement.

14. Alterations of the Work or of the Site

DPAC agrees that if any changes, alterations or destructions occur to the Work after it has been completed and installed, including any change in the interrelationship or relative locations of parts of the Work, the Work shall no longer be represented as the Work of the Artist upon receipt of a written request to that effect from the Artist.

Nothing in this section shall preclude any right of the DPAC to: 1) relocate the Work; 2) remove the Work from public display; or 3) destroy the Work. If the work is to be destroyed, DPAC will make its best efforts to notify the artist and give the Artists the opportunity to purchase the Work.

15. Notices

Notices to DPAC provided for herein shall be sufficient if sent by regular United States Mail, postage prepaid, addressed to the Duluth Public Arts Fund, Inc., at 301 West First Street, Suite 308, Duluth, Minnesota 55802; and notices to the Artist if sent by regular United States Mail, postage prepaid, addressed to Tom Christiansen, PO Box 127, Lutsen, MN 55612, or to such other respective persons or addresses as the parties may designate to each other in writing from time to time.

16. Records

Records shall be maintained by the Artist in accordance with requirements prescribed by DPAC and with respect to all matters covered by this Agreement. Such records shall be maintained for a period of six (6) years after receipt of final payment under this Agreement. These record-keeping requirements will be furnished to the Artist in written form within 90 days of signing this agreement.

17. Waiver

Any waiver by either party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision.

18. Severability

In the event any provision herein shall be deemed invalid or unenforceable, the remaining provisions shall continue in full force and effect and shall be binding upon the parties to this Agreement.

19. No Third Party Rights

This Agreement is to be construed and understood solely as an Agreement between the DPAC and the Artist and shall not be deemed to create any rights in any other person. No person shall have the right to make claim that he or she is a third party beneficiary of this Agreement or of any of the terms and conditions hereof, which, as between DPAC and the Artist, may be waived at any time by mutual agreement between DPAC and

the Artist

20. Choice of Law

This Agreement, together with all of its terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

21. Amendments

Any amendments to this Agreement shall be in writing and shall be executed by the same parties who executed the original agreement or their successors in office.

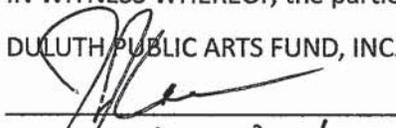
22. Entire Agreement

This Agreement constitutes the entire Agreement between the parties and supersedes all prior written and oral agreements and negotiations between the parties relating to the subject matter hereof.

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

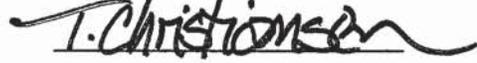
DULUTH PUBLIC ARTS FUND, INC.

It's



President

TOM CHRISTIANSEN



Artist