CITY OF WEST DES MOINES
CITY COUNCIL MEETING COMMUNICATION

DATE: February 17, 2020

ITEM: Motion – Approval of Art on the Campus Artist Agreements - 2020 Art on the Campus Exhibit

FINANCIAL IMPACT: Expense of $20,000 for the artist stipends ($2,000 per work of art). Funds are available in the FY 19-20 Public Art budget.

BACKGROUND: The Public Arts Advisory Commission is sponsoring the eighth temporary "Art on the Campus" exhibit from April 15, 2020 to November 15, 2020. An "Art on the Campus" selection committee meeting was held on Tuesday, October 22, 2019 to review and score the forty-five (45) proposals that were submitted by twenty (20) different artists from Iowa, Illinois, Nebraska, Minnesota, and Wisconsin. Of the twenty artists, ten were new and ten were returning. The selection committee members were: Jed Gammell (Commission member), Rita Luther (Commission member), Vince Valdez (Citizen), Ray Seidelman (Citizen), and Liz Stephenson (Citizen).The Public Arts Advisory Commission approved the selection committee's recommendation on November 14, 2019.

Ten entries were selected to be temporarily installed around the pond on the city campus. The recommendations include:

Entry Name	Artist Name
The Sound of Color	Tim Adams
The Sacrifice	Travis Apel
Passage	James Bearden
American Dreamer	Gail Chavenelle
Blossom	Hilde DeBruyne
The Birth of Venus	Steven Maeck
Architrave	Dan Perry
Parent and Child	Albert Rhea
Three Pods	V. Skip Willits
Matrix	David Zahn

A photograph of the artwork is attached to each of the agreements. A map of the locations approved by the Public Arts Advisory Commission is also included.

OUTSTANDING ISSUES: None

RECOMMENDATION: That the Council approve the agreements as recommended by the Public Arts Advisory Commission for the 2020 "Art on the Campus" exhibit.

Lead Staff Member: Allison Ullestad, Arts, Culture, and Enrichment Supervisor

STAFF REVIEWS

Department Director	Sally Ortgies, Director of Parks and Recreation
Appropriations/Finance	Tim Stiles, Finance Director
Legal	Richard Scieszinski, City Attorney
Agenda Acceptance	

PUBLICATION(S) (if applicable)

Published In	N/A
Dates(s) Published	

SUBCOMMITTEE REVIEW (if applicable)

Committee	N/A		
Date Reviewed			
Recommendation	Yes	No	Split

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2020 Art on the Campus – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 21 day of November, 2019, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Tim Adams whose principal address is 404 E. Second Street, Webster City, IA 50595 (hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2020, and ending on November 15, 2020.
e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit.This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.

b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2020 and no later than April 15, 2020, and shall remove the Art Work from said Site after November 15, 2020 and no later than November 30, 2020.

d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.

e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.

f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

1.4 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.

b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $2,000 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.

b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a $2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

3.3 Early Completion of Artist Services

a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and

b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of $8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the $8,000.00 insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Recreation Coordinator
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Tim Adams
404 E. Second Street
Webster City, IA 50595

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

ARTIST

Tim Adams

Tim Adams

CITY

_____

Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Exhibit A

THE SOUND OF COLOR
2019
Steel, Chimes, and Lexan
Purchase Value: $2,900

Wind and Sun are two of nature's forces I've chosen to work with for this piece. The chimes give notice when a slight breeze moves through the air. The color draws the eye to the sound. It's the same concept as when you hear a bird sing and look around to see where the chirp is coming from. The next time you hear a bird sing, notice that you instinctively look around to see where it's coming from. The human brain is trained to look for color and associate it with sound!

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2020 Art on the Campus – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 29th day of December, 19, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and **Travis Apel whose principal address is 3118 N 76th Street, Omaha, NE 68134** (hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

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b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
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1.3 Risk of Loss

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1.4 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.

b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $2,000 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.

b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a $2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

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3.4 Time Extensions

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

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4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source whatever.

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a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and

b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of $8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the $8,000.00 insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Recreation Coordinator
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Travis Apel
3118 N 76th Street
Omaha, NE 68134

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

ARTIST

Travis Apel

CITY

Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Exhibit A

THE SACRIFICE
2018
Steel
Purchase Value: $7,500

I made the work from strips of welded mild steel and fabricated the work at Metropolitan Community College Welding Lab in Omaha, NE. The inspiration for the work combines the anatomical structure of a human vertebrae, which to me symbolize strength, courage, and the helmet for the "spine."

The mission of creating this sculpture was to honor all of the fallen warriors that preserves out democracy--military service members, law enforcement, whistleblowers, journalists, artists, and social critics alike.

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2020 Art on the Campus – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 13 day of January, 2020 by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and James Bearden whose principal address is 415 7th Street, Unit #203, West Des Moines, IA 50265 (hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2020, and ending on November 15, 2020.
e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit.This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.

b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2020 and no later than April 15, 2020, and shall remove the Art Work from said Site after November 15, 2020 and no later than November 30, 2020.

d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.

e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.

f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

1.4 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.

b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $2,000 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.

b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a $2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

3.3 Early Completion of Artist Services

a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and

b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of $8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the $8,000.00 insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Recreation Coordinator
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

James Bearden
415 7th Street, Unit #203
West Des Moines, IA 50265

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

ARTIST

James Bearden

CITY

Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Exhibit A

PASSAGE
2018
Patinated Steel
Purchase Value: $6,000

Passage is a work from my Voids Series and is based on the body in motion.

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2020 Art on the Campus – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this __28___day of December, 2019 ____, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Gail Chavenelle whose principal address is 1155 Kelly Lane, Dubuque, IA 52003 (hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2020, and ending on November 15, 2020.
e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit.This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.
b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.
c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2020 and no later than April 15, 2020, and shall remove the Art Work from said Site after November 15, 2020 and no later than November 30, 2020.
d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.
e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.
f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

1.4 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.
b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.
b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $2,000 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.
b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a $2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

3.3 Early Completion of Artist Services

a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source whatever.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and

b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of $8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the $8,000.00 insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: [Artist's Name], year of publication.

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Recreation Coordinator
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Gail Chavenelle
1155 Kelly Lane
Dubuque, IA 52003

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

ARTIST

Gail Chavenelle

Gail Chavenelle

CITY

_____

Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Exhibit A

AMERICAN DREAMER
2019
Steel and Powder Coated Finish
Purchase Value: $8,500

In this time of political division, immigration, ethnic or religious intolerance, American Dreamer reminds us of what is best and possible in our nation. The night figure and our dreams are supported by the breezes of our environment and freedom. The American Dream must be real for all- regardless of race, religion, or length of residency. The dreaming figure has no features, hair or clothing style. It represents all viewers or American Dreamers- in any time. The head tips down to include each viewer- as if to invite them to dream. We, in the United States and Iowa, have many opportunities. The sculptural figure is surrounded by the evening stars - the stars of opportunity. We, as the sculptural figure, can reach out, capture our dreams and hold stars of success aloft in our hands.

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2020 Art on the Campus – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 12 day of January, 2020, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Hilde DeBruyne whose principal address is 3264 Cumming Road, Cumming, IA 50061 (hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2020, and ending on November 15, 2020.
e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit.This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.

b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2020 and no later than April 15, 2020, and shall remove the Art Work from said Site after November 15, 2020 and no later than November 30, 2020.

d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.

e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.

f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

1.4 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.

b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $2,000 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.

b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a $2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

3.3 Early Completion of Artist Services

a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and

b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of $8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the $8,000.00 insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Recreation Coordinator
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Hilde DeBruyne
3264 Cumming Road
Cumming, IA 50061

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

ARTIST

Hilde DeBruyne

CITY

Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Exhibit A

BLOSSOM
2020
Painted Metal
Purchase Value: $20,000

"Blossom" is a contemporary, organic abstract sculpture. It is part of the "Botanical" Series where the artist is inspired by the natural form and beauty of flowers. Positive and negative spaces create a playful effect and invites the viewer to experience the organic shape of the flower from all angles. It is painted a deep Blue.

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2020 Art on the Campus – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 25th day of December, 2019 by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Steven Maeck whose principal address is 373 361st Street, Decorah, IA 52101 (hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2020, and ending on November 15, 2020.
e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit.This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.

b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2020 and no later than April 15, 2020, and shall remove the Art Work from said Site after November 15, 2020 and no later than November 30, 2020.

d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.

e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.

f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

1.4 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.

b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $2,000 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.

b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a $2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

3.3 Early Completion of Artist Services

a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and

b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of $8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the $8,000.00 insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Recreation Coordinator
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Steven Maeck
2373 361st Street
Decorah, IA 52101

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

ARTIST

Steven Maeck

CITY

_____

Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Exhibit A

BIRTH OF VENUS
2015
Steel
Purchase Value: $15,500

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2020 Art on the Campus – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 9th day of December, 2019 by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Daniel Perry whose principal address is 1122 Ridgemont Road, Waterloo, IA 50701 (hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2020, and ending on November 15, 2020.
e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit.This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.

b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2020 and no later than April 15, 2020, and shall remove the Art Work from said Site after November 15, 2020 and no later than November 30, 2020.

d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.

e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.

f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

1.4 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.

b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $2,000 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.

b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a $2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

3.3 Early Completion of Artist Services

a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and

b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of $8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the $8,000.00 insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Recreation Coordinator
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Dan Perry
1122 Ridgemont Road
Waterloo, IA 50701

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

ARTIST

Dan Perry

Dan Perry

CITY

_____

Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Exhibit A

ARCHITRAVE
2017
Stainless Steel and Aluminum
Purchase Value: $12,000

Architrave is a part of the series of artworks exploring historical architectural elements and details. I extrapolate fragments of buildings and recreate them sculpturally in metal. The sculptures are a combination of the abstract and the recognizable, presenting a different viewing experience for the public each time they see it.

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2020 Art on the Campus – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 21st day of November, 2019 by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and Albert Rhea whose principal address is 811 North Beadle Street, Papillion, NE, 68046 (hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2020, and ending on November 15, 2020.
e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit.This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.

b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2020 and no later than April 15, 2020, and shall remove the Art Work from said Site after November 15, 2020 and no later than November 30, 2020.

d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.

e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.

f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

1.4 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.

b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $2,000 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.

b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a $2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

3.3 Early Completion of Artist Services

a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and

b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of $8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the $8,000.00 insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Recreation Coordinator
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

Albert Rhea
811 North Beadle Street
Papillion, NE 68046

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

ARTIST

Albert Rhea

CITY

Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Exhibit A

PARENT AND CHILD
2017
Stainless Steel
Purchase Value: $9,500

The Parent and Child sculpture is part of a series of six outdoor works. In the last three years, I have produced three large scale works for public display. As a grandparent and nanny to a five year old, the parent and child theme has special meaning. The emotions of wanting, needing, and loving are expressed in these sculptures. This sculpture creates a timeless homage to this special bond. This work makes a powerful statement about the unconditional love a mother and her child share. I hope this sculpture of a mother with her child depicts the intimate connection they share.

CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2020 Art on the Campus – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 27 day of NOVEMBER, 2019, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and V. Skip Willits whose principal address is 820 3rd Street, Camanche, IA, 52730 (hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2020, and ending on November 15, 2020.
e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit.This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.

b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2020 and no later than April 15, 2020, and shall remove the Art Work from said Site after November 15, 2020 and no later than November 30, 2020.

d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.

e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.

f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

1.4 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.

b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $2,000 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.

b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a $2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

3.3 Early Completion of Artist Services

a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and

b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of $8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the $8,000.00 insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Recreation Coordinator
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

V. Skip Willits
820 3rd Street
Camanche, IA 52730

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

ARTIST

V. Skip Willits

CITY

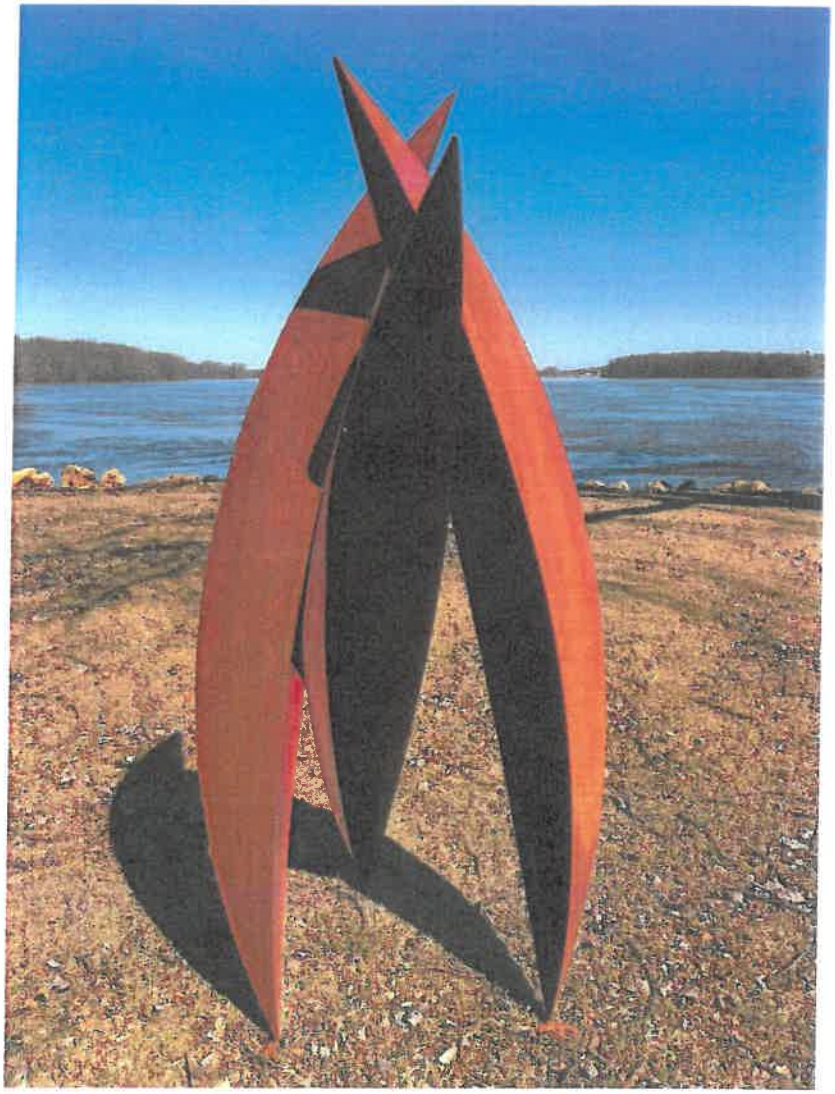
_____

Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Exhibit A

THREE PODS
2019
Steel
Purchase Value: $8,000

12 gauge sheet steel welded together to form 3 pods each with two sides.



CITY OF WEST DES MOINES PUBLIC ART PROGRAM
2020 Art on the Campus – Art Exhibition
AGREEMENT BY AND BETWEEN CITY AND ARTIST

This Agreement, made this 28 day of January, 20, by and between the City of West Des Moines, a municipal corporation organized and existing under the laws of the State of Iowa, (hereinafter referred to as the "City") and David Zahn whose principal address is 2504 31st. Avenue Ct., Moline, IL 61265(hereinafter referred to as the "Artist").

WITNESSETH:

WHEREAS, the City desires to hold a summer art exhibit which will include a certain work of art described in Exhibit A attached hereto and incorporated herein by this reference (the "Art Work"), which has been conceived and designed by Artist, to be installed on the City's property at the City/School Campus (hereinafter referred to as the "Site"), West Des Moines, Iowa; and

WHEREAS, the Artist desires to loan the Art Work to the City for a time period specified in this Agreement, and upon installation by Artist and Artist's Team, City desires to provide insurance coverage for the Art Work, from the time of installation of the Art Work until the time of removal of the Art Work from the City's property, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and undertakings contained herein, the parties agree as follows:

ARTICLE 1: SCOPE OF SERVICES

1.1 General

a) The Artist shall perform all services and furnish all supplies, materials, and equipment as deemed necessary for the completion, transportation, and installation of the Art Work at the Site.
b) The Artist shall inspect the existing substrate and construction of the concrete slab to which the Art Work is to be attached and notify the City of any issues.
c) The Artist shall meet with the City as deemed necessary to coordinate the installation and removal of the Art Work.
d) The Artist shall loan the Art Work to the City for a seven (7) month time period beginning on April 15, 2020, and ending on November 15, 2020.
e) If the City or another buyer desires to purchase said Art Work to add to the City's permanent Public Art collection, or the private collection of the individual, the purchase price shall not be greater than the price indicated on the Artist Application for said Art Work.
f) If said Art Work is sold to a private collector, 15% of the total purchase price received will be donated by the Artist to the City.
g) The Artist shall agree to fully participate in the creation process of a mobile audio guide which the City will use to further enhance and promote the Art on the Campus exhibit. This creation process may include but is not limited to the following: Artist spoken interview, providing photographs of Art Work, and disclosing Artist contact information.

1.2 Delivery and Installation

a) The Artist shall notify the City when the Artist is ready to deliver and install the Art Work at the Site designated by the City.

b) The Artist agrees to notify the City no fewer than seven (7) days prior to the Artist's intended time of delivery to determine the exact schedule of delivery and installation.

c) The Artist shall deliver and install the completed Art Work at the Site after April 1, 2020 and no later than April 15, 2020, and shall remove the Art Work from said Site after November 15, 2020 and no later than November 30, 2020.

d) The City shall be responsible for preparing the Site to allow the Artist to prepare for the timely installation of the Art Work.

e) The Artist shall be responsible for all expenses, labor, and equipment necessary for the installation and removal of the Art Work.

f) If the Art Work will be affixed to the City-provided pads, then the Artist shall affix the Art Work to the City-provided pads using tamper-resistant locking bolts.

1.3 Risk of Loss

a) The risk of loss or damage to the Art Work shall be borne by the Artist until final installation is complete. After the complete installation of the Art Work, the risk of loss or damage to the Art Work shall be borne by the City during the loan period provided for in this Agreement, subject to the limitation on damages contained in Section 5.2 herein.

1.4 Indemnity

a) The Artist agrees to indemnify and hold harmless the City from any liabilities, willful or non-willful acts of negligence by the Artist or the Artist's agents, or any or all elements of loss, theft, mutilation, vandalism or other damage (including those caused by acts of God) that may befall the Art Work during any activities related to the planning, creation, or delivery of the Art Work.

b) Upon installation of the Art Work, the City shall, subject to the limitation on damages contained in Section 5.2 herein, indemnify and hold harmless the Artist from claims or liabilities relating to the maintenance of the Site at which the Art Work is installed, which claims or liabilities arise from and after the date of installation of the Art Work.

b) The Artist shall indemnify and hold the City harmless from any and all costs, claims, liabilities or damages in any manner related to the Artist's breach of the representations and warranties set forth in Article 4 of this Agreement.

ARTICLE 2: COMPENSATION AND PAYMENT SCHEDULE

2.1 Fixed Fee

a) The City shall pay the Artist a stipend of $2,000 which shall constitute full compensation for all fees, services, expenses, and materials to be performed and furnished by the Artist under this Agreement. The fee shall be paid in full within thirty (30) days after final installation of the Art Work at a location specified by the City. The Artist shall provide the City with an invoice for the stipend amount after final installation has occurred.

b) If the City decides to purchase the Art Work following the stated loan period, the stipend outlined in Section 2.1(a) will serve as a $2,000 credit towards the final purchase price.

2.2 Artist's Expenses

a) The Artist shall be responsible for the payment of all mailing or shipping charges on submissions to the City, the cost of transporting the Art Work to the Site, and the costs

of all travel by the Artist and the Artist's agents and employees necessary for the proper performance of the services required under this Agreement.

2.3 Invoices

a) The Artist shall submit an invoice to the City for payment as described in section 2.1. The invoice shall be on stationary and must be signed and dated by the Artist.

ARTICLE 3: TIME OF PERFORMANCE

3.1 Duration

a) The services to be required of the Artist as set forth in Article 1 shall be completed in accordance with the schedule for installation and removal of the Art Work as proposed by the Artist and approved by the City pursuant Section 1.2(c), provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

3.2 Installation Delays

a) If, when the Artist is ready for installation of the Art Work, the Artist is delayed from installing the Art Work within the time specified in the schedule as a result of the construction of the Site not being sufficiently complete to reasonably permit installation of the Art Work, the City shall provide storage, or reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the Site is sufficiently complete to permit installation of the Art Work.

3.3 Early Completion of Artist Services

a) The Artist shall bear any transportation and storage costs resulting from the completion of the Artist's services prior to the time provided in the schedule for installation.

3.4 Time Extensions

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

ARTICLE 4: WARRANTIES

4.1 Warranties of Title

a) The Artist represents and warrants that:
   1) The Art Work is solely the result of the artistic effort of the Artist;
   2) Except as otherwise disclosed in writing to the City, the Art Work is unique and original and does not infringe upon any copyright;
   3) The Art Work, or a duplicate thereof, has not been accepted for sale elsewhere;
   4) The Art Work is free and clear of any liens from any source whatever.

4.2 Warranties of Quality and Condition

a) The Artist represents and warrants, except as otherwise disclosed to the City in writing in connection with the submission of the Application and pursuant to Article 1, that:
   1) The execution and fabrication of the Art Work will be performed in a workmanlike manner;
   2) The Art Work, as fabricated and installed, will be free of defects in material and workmanship, including any inherent defects or qualities which cause or accelerate deterioration of the Art Work; and

b) In the event that the City purchases the Art Work, the warranties described in this Section 4.2 shall survive for a period of five (5) years after the final acceptance of the Art Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Art Work).

ARTICLE 5: INSURANCE

5.1 Artist Insurance

a) The Artist and all employees of the Artist shall maintain insurance to protect the Artist from claims under workers' compensation acts; claims for damages because of bodily injury including personal injury, sickness or disease, or death of any of the Artist's employees or of any person other than the Artist's employees; and from claims for damages because of injury to or destruction of tangible property; including loss of use resulting there from; and from claims arising out of their performance of professional services caused by errors, omissions, or negligent acts for which the Artist is legally liable.

b) The Artist shall provide proof of insurance for the retail value of the artwork stated on the Artist Application to the City upon installation of the art exhibit.

5.2 City/Art Exhibit Insurance

a) Through the duration of the period that the Art Work is loaned to the City for the art exhibit, as identified in Section 1.1(d), the City will provide a maximum of $8,000.00 in property loss and liability insurance coverage for the Art Work. The Artist acknowledges and agrees that the maximum amount that shall be paid to the Artist in damages related to any aspect of this Agreement shall be the price for the Art Work indicated on the Artist Application, or the $8,000.00 insurance limit, whichever amount is lower.

ARTICLE 6: REPRODUCTION RIGHTS

6.1 General

a) The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C., 101 et. seq., and all other rights in and to the Art Work including ownership and possession. The Artist grants to the City the right to photograph and reproduce images of the Art Work for promotional and educational purposes.

6.2 Notice

a) All reproductions by the City shall contain a credit to the Artist and a copyright notice substantially in the following form: © [Artist's Name], year of publication.

ARTICLE 7: ARTIST'S RIGHTS

7.1 Identification

a) The City shall, at its expense, prepare and install at the Site a plaque identifying the Artist, the title of the Art Work, the year of completion, and the City of West Des Moines Public Art Program; and shall reasonably maintain such notice to the extent as may be practicable.

7.2 Maintenance

a) The City recognizes that maintenance of the Art Work on a regular basis is essential to the integrity of the Art Work. The Artist shall submit reasonable maintenance recommendations to the City, and the City shall take such action to reasonably assure that the Art Work is properly maintained and protected, taking into account the Artist's recommendations.

7.3 Alteration of the Work

a) The City agrees that it will not intentionally damage, alter, modify, or change the Art Work without the prior written approval of the Artist.

7.4 Record

a) The City shall maintain a record of this Agreement and the location and disposition of the Art Work.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

a) The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City, nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: ASSIGNMENTS, TRANSFER, SUBCONTRACTING

9.1 Transfer of Agreement

a) Neither this Agreement nor any interest herein shall be transferred by the Artist.

9.2 Subcontracting by Artist

a) The Artist may subcontract portions of the services to be provided hereunder relating to the installation of the Art Work at the Artist's expense provided that said subcontracting shall not negatively affect the design, appearance, or visual quality of the Art Work and shall be carried out under the personal supervision of the Artist. The Artist must obtain approval from the City prior to hiring any subcontractor who will assist with the installation process. This approval may be achieved via electronic correspondence.

ARTICLE 10: TERMINATION

If either party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate, any of the covenants, agreements, or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have thirty (30) days after receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches,

photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall at the City's option become its property, provided that no right to fabricate or execute the Art Work shall pass to the City and the City shall compensate the Artist pursuant to Article 2 for all services performed by the Artist prior to termination; or the Artist shall refund all amounts paid by the City in exchange for all finished and unfinished related Art Works. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

ARTICLE 11: COMPLIANCE

a) The Artist shall be required to comply with Federal, State, and City statutes, ordinances, and regulations applicable to the performance of the Artist's services under this Agreement.

ARTICLE 12: NOTICES

a) All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

1) if to the City, to:

Allison Ullestad, Recreation Coordinator
City of West Des Moines
P.O. Box 65320
West Des Moines, IA 50265

2) if to the Artist, to:

David Zahn
2504 31st Ave. Ct.
Moline, IL 61265

ARTICLE 13: MISCELLANEOUS

This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof and supersedes all negotiations, preliminary agreements and all prior and contemporaneous discussions, agreements and understandings of the parties in connection with the subject matter hereof. No amendment, change or modification of any of the terms, provisions or conditions of this Agreement shall be effective unless made in writing and signed or initialed by all parties. Waiver of any provision of this Agreement shall not be deemed a waiver of future compliance therewith and such provision shall remain in full force and effect. In the event any provision of this Agreement is held invalid, illegal or unenforceable, in whole or in part, the remaining provisions of this Agreement shall not be affected thereby and shall continue to be valid and enforceable. This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective legal representatives, heirs, successors and permitted assigns. Nothing in this Agreement, express or implied, is intended to confer upon any party,

other than the parties hereto (and their respective heirs, legal representatives, successors and permitted assigns), any rights, remedies, obligations or liabilities under or by reason of this Agreement. In addition to any other remedies available at law or in equity to the parties hereto with respect to a breach hereof, the parties hereto each reserve the right to enforce this Agreement by specific performance. The titles or captions of paragraphs in this Agreement are provided for convenience of reference only, and shall not be considered a part hereof for purposes of interpreting or applying this Agreement and such title or captions do not define, limit, extend, explain or describe the scope or extent of this Agreement or any of its terms or conditions. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine or neuter gender, according to the context. Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim arising out of or relating to this Agreement.

This agreement is executed on day and year first written above.

ARTIST

David Zahn

David Zahn

CITY

_____

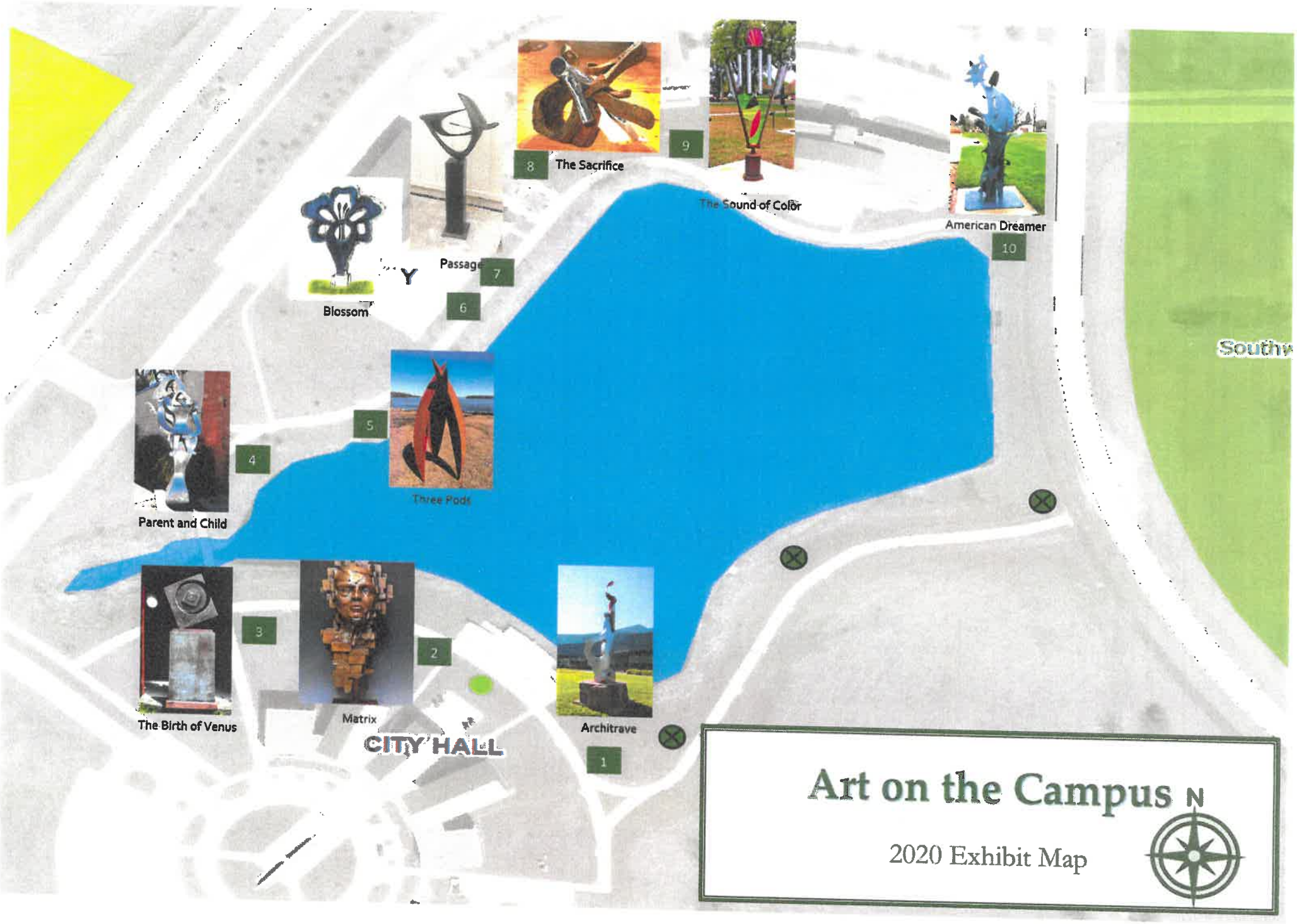
Sally Ortgies, Director of Parks and Recreation Department
City of West Des Moines

Exhibit A

MATRIX
2019
Bronze and Steel
Purchase Value: $9,950

The sculpture is of a larger than life size person's face. In the artwork the image fragments off into cube like forms. The sculpture is futuristic looking, and has a science fiction feel to it. It is meant to appear to be a relic from another place and time. This sculpture stirs the imagination. It would be a great activity to have students come up with their own story as to where an image like this may have come from.

In the images shown the base not pictured. I have pictures of works on square steel bases like the one I would be using here on my website. The large image of the face and neck is over 3' tall and would be displayed on a base about 36" tall.


Art on the Campus
2020 Exhibit Map
N
1
Architrave
2
Matrix
3
The Birth of Venus
4
Parent and Child
5
Three Pods
6
Blossom
7
Passage
8
The Sacrifice
9
The Sound of Color
10
American Dreamer
CITY HALL