

**SALES AND PURCHASE AGREEMENT BETWEEN THE CITY OF MCKINNEY,  
TEXAS, AND ARTIST \_\_\_\_\_**

**THIS AGREEMENT** is made by and between the City of McKinney, Texas (“City”), and \_\_\_\_\_ (“Artist”), for the City’s purchase of certain original artwork created by the Artist (“Artwork”), as identified below and as more specifically described in Exhibit A, attached hereto.

**Whereas**, the City believes that public art is a tremendous asset to the community and lends a special sense of identity, creates memorable public places, and conveys a sense of civic purpose; and

**Whereas**, the parties acknowledge that, as reflected by the City of McKinney’s Public Art Program, the City is committed to promoting the cultural, aesthetic, and economic vitality in the City by assembling and integrating art into public places, civic infrastructure, and present and future development, thereby setting the City apart as a distinctive place to visit, live, and do business; and

**Whereas**, the Artist has created the Artwork and wishes to sell the Artwork to the City for use as public art; and

**Whereas**, the City wishes to purchase the Artwork from the Artist for use as public art; and

**Whereas**, the City of McKinney, Texas, and the Artist wish to enter into this Sales and Purchase Agreement (“Agreement”) to establish the rights and obligations of the parties relating to the Artwork.

**Now, therefore**, for and in consideration of the mutual covenants of the parties set forth in this Agreement, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the City and the Artist acknowledge and agree that the Artist agrees to sell to the City, and the City agrees to purchase from the Artist, the Artwork, subject to the following terms and conditions:

1. **Recitals.** The recitals set forth above: (a) are true and correct as of the Effective Date, as hereafter defined; (b) form the basis upon which the parties negotiated and entered into this Agreement; and (c) reflect the final intent of the parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, be given full effect. The parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the parties reflected by the recitals, would not have entered into this Agreement.
  
2. **Title of the Artwork.** The Artwork consists of \_\_\_\_\_ by the Artist, titled: \_\_\_\_\_

3. **Date of the Artwork.** The date \_\_\_\_\_
4. **Name and Address of the Artist.**
5. **Subject Matter of the Artwork.** The subject matter of the Artwork
6. **Artwork Medium.** The Artwork has been created by using the following medium or media:
7. **Artwork Size:**
  - X The artwork is two dimensional.
  - The Artwork is three dimensional and measures approximately \_\_\_ inches by \_\_\_ inches.
8. **Purchase Price; Title.** The purchase price of the Artwork is aggregate and total for artwork. The Artist acknowledges payment in full by the City on the Effective Date of this Agreement, and all right, title, and interest in and to the Artwork, subject to Section 11, below, shall pass from the Artist to the City immediately upon such payment on the Effective Date.
9. **Artist's Representations and Warranties.** The Artist represents and warrants that:
  - a. The Artwork is original, authentic, and was created by the Artist.
  - b. The Artist has full legal right and authority to enter into this Agreement, to make the representations and warranties contained in this Agreement, and to complete the transaction contemplated by this Agreement.
  - c. The Artist is the sole and absolute owner of the Artwork and has good and marketable title to the Artwork, and the Artwork, at the time of transfer of title to the City, is free and clear of any and all rights, claims, liens, mortgages, security interests, or other encumbrances held by any person or entity.
  - d. The Artwork does not infringe the rights of any person or entity, including trademark, copyright, privacy, or publicity rights.
10. **City's Representations and Warranties.** The City represents and warrants that:
  - a. The City will not permit any intentional destruction, distortion, damage, or modification of the Artwork. If the Artwork is damaged, the City will contact and consult the Artist before any restoration is undertaken and will give the Artist first opportunity to restore it, if practicable.
  - b. The City will not knowingly permit any use of the Artist's name or misuse of

the Artwork that would dishonor or reflect discredit on his/her reputation as an artist, or which would violate the spirit of the Artwork.

- c. The Artist may have access to photograph the Artwork at no expense to the Artist and upon reasonable notice to the City.
- d. During public exhibition of the Artwork, the City will acknowledge the Artist as the creator and will include the Artist's name (or, if requested, pseudonym or designation of anonymity), the title of the Artwork, and the year the Artwork was made.

11. **Ownership of Artwork.** As of the Effective Date the Artwork shall become the sole property of the City, and the Artist shall not make any duplicate works or works of substantially similar size and appearance of the Artwork, nor shall Artist grant permission to others to do so except with the advance written permission of the City.

a. **Ownership of Copyright.** The City acknowledges and agrees that the copyright to the Artwork shall remain with the Artist, his successors and assigns, and at no time, unless otherwise agreed to by the parties, shall the copyright pass to the City. The copyright to the Artwork shall remain the sole property of the Artist, his successors and assigns, including but not limited to copyrights under the Copyright Act of 1976, 17 U.S.C. §§101, et seq., as amended, or any rights provided by the Visual Artists Rights Act of 1990 ("VARA") (17 U.S.C. §106A, as amended) unless otherwise granted by the Artist to any other party. All future decisions regarding the use and continued ownership of the copyright of the Artwork will be within the sole and unconditional discretion of the Artist, his successors and assigns.

b. **Reproduction Rights.**

- 1. The Artist irrevocably licenses the City, its representatives, employees, officers, and agents the right to make photographs, two-dimensional reproductions and images, and adaptations of the Artwork for educational, public relations, arts-promotional and other non-commercial purposes, including display on the City's official web site. For purposes of this Agreement, the following, among others, are deemed to be reproductions, images and/or adaptations for non-commercial purposes: reproduction in exhibition catalogues, web sites, books, slides, photographs, postcards, posters, and calendars; in art and news sections of newspapers; in general, books and magazines not primarily devoted to art but of an educational, historical or critical nature; slides, videos and film strips not intended for a mass audience; and television from stations operated for educational purposes or on programs for educational and news purposes from all stations.

2. All reproductions of the Artwork by the City shall contain a credit to the Artist and, if the Artist provides the City with proof of copyright of the Artwork, a copyright notice shall be included in substantially the following form: Copyright/Copyright mark, Artist's name, publication date.
  3. If the City wishes to make a reproduction of the Artwork for commercial purposes, the City and the Artist shall execute a separate agreement to address the terms of the license granted by the Artist and any royalty the Artist shall receive.
  4. The City is not responsible for any third-party infringement of the Artist's copyright or ownership and is not responsible for protecting the intellectual property rights of the Artist.
12. **Entire Agreement; Amendment; Severability.** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing, signed by the parties. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, such unenforceable provision shall be deleted from this Agreement, and the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the parties.
  13. **Survival of Agreement Provisions.** The benefits of the representations, warranties, and covenants contained in this Agreement shall survive completion of the transaction contemplated by this Agreement.
  14. **Review of Agreement.** The parties understand, agree, and represent to each other that they have had the opportunity to retain independent legal counsel to review the terms and conditions of this Agreement before its execution, irrespective of whether they in fact have retained or consulted with such legal counsel.
  15. **Waiver.** The failure of the City or the Artist to exercise any right given hereunder or to insist upon strict compliance with any term, condition or agreement specified herein, shall not constitute a waiver of either party's right to exercise such right or to demand strict compliance with any such term, condition or agreement under this Agreement.
  16. **Applicable Law; Venue; Dispute Resolution.** This Agreement shall be governed by and construed under the laws of the State of Texas, and shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, successors, and assigns. Venue shall be exclusive in Collin County, Texas. The parties agree that in the event any dispute should arise between them concerning this Agreement, they will make a good faith, concerted

effort to resolve the dispute in an amicable manner without the necessity of litigation, and that they shall first engage in mediation before suit may be brought.

17. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one instrument.

Agreed to and executed this \_\_\_ day of \_\_\_\_\_, 2017 (“Effective Date”).

**ARTIST**

By: \_\_\_\_\_  
Name: Artist

**CITY OF MCKINNEY, TEXAS**

By: \_\_\_\_\_  
Paul Grimes  
City Manager