

## MEMORANDUM OF AGREEMENT

Memorandum of Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 2005

### BETWEEN:

**VICTORIA AIRPORT AUTHORITY**  
#201 - 1640 Electra Blvd.  
Sidney, BC V8L 5V4

Facsimile #: 250.953.7509

(the "**Purchaser**")

### AND:

Facsimile #:

(the "**Artist**")

### WHEREAS:

- A. The Purchaser wishes to commission a work of art to be displayed at Victoria International Airport;
- B. The Artist has submitted a proposal to the Purchaser for such a work of art.

### THE PARTIES HEREBY AGREE AS FOLLOWS:

- 1. The Artist agrees to design and fabricate and the Purchaser agrees to purchase a final piece of art which:
  - (a) shall be prepared according to the Artist's Proposal, dated \_\_\_\_\_, 2005 attached as Annex "A", and

(b) shall conform to the design and composition illustrated by the maquette accepted by the Purchaser on \_\_\_\_\_, 2005, a photograph of which is attached as Annex "B",

(collectively the "Artwork")

subject to the terms and conditions of this Agreement.

2. The Artist warrants that any work submitted by the Artist for the competition is the original artwork of the Artist and the Artist shall have full ownership up to such time as the ownership is transferred to the Purchaser in accordance with the terms of this Agreement. The Artist hereby indemnifies the Purchaser from breach of this warranty.
3. The Artist agrees to apply its best efforts toward completing and installing the Artwork by \_\_\_\_\_, 2005.
4. The Artist will be responsible for its own studio space.
5. The purchase and installation price of the Artwork shall be \$ \_\_\_\_\_ plus PST and GST payable as follows:
  - (a) 30% upon execution of this Agreement;
  - (b) 35% upon substantial completion of the Artwork;
  - (c) 30% upon installation and certification by the project engineer;
  - (d) 5% hold back payable 60 days after installation and certification.
6. The cost of installing the Artwork shall be borne by the Artist.
7. The Artist shall be responsible for the fabrication and installation of the Artwork to the agreed upon site.

8. The Artist shall submit sealed engineered shop drawings approving the installation and fastening of the Artwork to the building. The design shall comply with all current codes and shall be approved by the Purchaser's project engineer confirming capacity of existing structure to accept Artwork loading. The engineer shall inspect installation and submit a letter upon completion, certifying that the installation has been completed in accordance with the approved shop drawings.
9. The Artist agrees to take all necessary steps, at its own expense, to prepare and protect the Artwork for shipping and delivery to the Purchaser.
10. Although it is presently the intention of the Purchaser to install the Artwork as described in the Purchaser's Request for Proposal, the Artist understands and agrees that the Purchaser cannot guarantee that the Artwork will be installed at any location at all, or than once installed it will remain installed for a fixed length of time.
11. Following initial installation, the Purchaser agrees to notify the Artist in the event the Artwork is to be installed elsewhere or removed.
12. No additions or modifications will be made to the Artwork by the Purchaser without prior consultation with the Artist.
13. Copyright of the Artwork and the Proposal, including any and all drawings, designs, images, specifications, photographs and documents incidental thereto, is the property of the Artist.

Ownership of the Artwork shall pass to the Purchaser immediately upon payment of the final fee.

The Purchaser can reproduce an image or images of the Artwork or the Proposal for non-profit public relations and documentation purposes only. If the Artwork or Proposal is displayed in any publications by the Purchaser, the name of the Artist is to be displayed.

If any person request permission, from the Purchaser, to reproduce the Artist's Artwork in any form for commercial purposes, the Purchaser will not grant such requests unless written permission is obtained in advance from the Artist.

14. The Artist will repair the Artwork for a period of one year from the date of installation and certification, ordinary wear and tear, and vandalism only excepted. Notwithstanding the above, the Artist will not be responsible to repair any damage resulting from relocation of the Artwork by the Purchaser.
15. The Purchaser will add the Artist as an Additional Names Insured on the Purchaser's Wrap-Up Comprehensive Liability Insurance Policy.
16. In the event of any dispute arising between the parties with respect to the matters referred to herein, the same shall be determined by one arbitrator (provided the parties agree on such arbitrator) in accordance with the provisions of the *Commercial Arbitration Act of British Columbia, R.S.B.C. 1996 c.55* as amended, (or any replacement statute) except shall all proceedings shall take place in Greater Victoria. If the parties do not agree upon an arbitrator within twenty (20) business days of notice of arbitration each party will appoint their own arbitrator, who will then appoint a third arbitrator and the dispute referred to arbitration will be determined by three arbitrators in accordance with the provisions of the *Commercial Arbitration Act of British Columbia, R.S.B.C. 1996 c.55*.

For the purpose of this clause "business day" shall not include a Saturday, Sunday or statutory holiday.

17. Whenever in this Agreement it is required or permitted that notice be given or served by either party to or on the other, such notice or demand will be in writing and will be validly given or sufficiently communicated if personally delivered, or sent by courier, priority post or registered mail, return receipt requested, to the Artist or the Purchaser, as appropriate, at their respective addresses which appear on page 1 of this Agreement.

Such addresses may be changed from time to time by either party giving notice to the other as above provided.

Notices given hereunder will be deemed given to the Artist of the Purchaser on the date upon which they were personally delivered or, if mailed, three days after mailing.

18. If the Artist dies or becomes incapacitated and unable to complete the work this Agreement is terminated with effect from the date of said death or incapacity.
19. The Annexes hereto shall form part of this Agreement.
20. This Agreement shall be binding upon the Artist and its heirs, executors, administrators, successors and assigns.
21. This Agreement cannot be assigned or transferred.
22. Time is of the essence in this Agreement.
23. This Agreement constitutes the sole and entire agreement between the parties.

**EXECUTED** by the parties as at the date first written above.

**VICTORIA AIRPORT AUTHORITY:**

\_\_\_\_\_  
Richard Paquette  
President & CEO

\_\_\_\_\_  
Witness

**ARTIST:**

\_\_\_\_\_  
Witness

**ANNEX 'A'**

**ARTIST'S PROPOSAL**

## **ANNEX 'B'**

# **PHOTOGRAPH OF ACCEPTED MAQUETTE**