



## SMALL COMMEMORATIVE ELEMENT/PLAQUE AGREEMENT

THIS SMALL COMMEMORATIVE ELEMENT / PLAQUE AGREEMENT (this “**Agreement**”) is made the \_\_\_\_ day of \_\_\_\_ 202\_ (the “**Effective Date**”) by and between the STATE OF UTAH, CAPITOL PRESERVATION BOARD (“**CPB**”) and \_\_\_\_\_, a \_\_\_\_\_ (“**Donor**”).

### RECITALS

A. As provided in Utah Code § 63C-9-301 the CPB has complete jurisdiction and stewardship of the State of Utah “Capitol Hill Complex”, located in Salt Lake City, Utah, as that term is defined in Utah Code § 63C-9-102, which Capitol Hill Complex includes the unpaved areas of the Capitol Hill Complex (“**Capitol Hill Grounds**”).

B. Donor has proposed placing a Small Commemorative Element / Plaque on the Capitol Hill Grounds as more particularly described in Exhibit “A”, attached hereto and incorporated herein (the “**Element**”) which proposal was accepted by the CPB at the January 11, 2023, CPB meeting, subject to the conditions stated in the official minutes of such meeting, attached hereto as Exhibit “B” and incorporated herein by reference.

### AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the conditions set forth below, CPB and Donor agree as follows:

1. **Deed of Gift / Donation.** Donor does hereby irrevocably donate, give, transfer and assign to CPB and CPB’s successors and assigns absolute and unconditional ownership of the Element in perpetuity, including, but not limited to, all copyright, trademark, patent and/any and all other intellectual and/or other property rights in, to, connected with and/or related to the Element (“**Ownership Rights**”).

2. **Representation as to Ownership Rights.** By execution of this Agreement, Donor expressly represents and warrants to CPB that as of the Effective Date Donor is the owner of the Element, including, without limitation, all Ownership Rights. Donor will defend, indemnify and hold the CPB and State of Utah harmless from and against any and all third-party claims arising from, related to or connected with such representation being untrue and/or breach of the foregoing warranty by Donor.

3. **Artist Release.** Contemporaneous with execution of this Agreement, Donor shall deliver an executed Artist Release to CPB in the form attached hereto as Exhibit “C”, attached hereto and incorporated herein by reference.

4. **Installation / Design & Construction.** Donor agrees to install the Element and perform all reasonably necessary associated design services and construction work (collectively, the “Design-Build Work”) at Donor’s sole cost and expense. Donor shall, at all times, coordinate and cooperate with CPB in connection with the Design-Build Work. Donor shall perform no Design-Build Work without prior review and approval to proceed by CPB. Donor shall install the Element and perform the Design-Build Work to the reasonable satisfaction of CPB. Donor shall contract for the installation of the Element and the performance of the Design-Build Work on the form attached hereto as Exhibit “D”, attached hereto and incorporated herein by reference. Donor shall provide a copy of Exhibit “D” to CPB upon its execution by Donor and Donor’s Contractor.

5. **Temporary License.** CPB hereby issues to Donor and Donor’s Design-Build Contractor(s) (“**Contractor**”) a temporary license on, over, across, under and through the Capitol Hill Grounds (the “**License**”) for the purpose of facilitating the installation of the Element and the performance of the Design-Build Work. Donor and its Contractor shall have the right to enter upon the Capitol Hill Grounds solely for the purposes permitted by this Agreement, provided, however, at all times Donor shall ensure Donor and Donor’s Contractor shall enter upon the Capitol Hill Grounds at their sole risk and hazard, and Donor hereby releases CPB and the State of Utah from any and all claims relating to the condition of the Capitol Hill Grounds. At all times, Donor shall use reasonable efforts to minimize any interference or disruption to the State of Utah’s use and occupancy of the Capitol Hill Complex, as that term is defined in Utah Code § 63C-9-102. The License shall commence on the Effective Date and automatically terminate on installation of the Element and completion of the Design-Build Work or December 31, 2024, whichever is earlier.

6. **Indemnification.** To the fullest extent permitted by law, Donor shall indemnify, release and defend, with counsel of CPB’s choice, and hold CPB and the State of Utah and the State of Utah’s employees, agencies, elected and appointed officers and officials and authorized volunteers (collectively, the “**Indemnitees**”) and hold the Indemnitees harmless from and against any loss, damage, injury, accident, fire, or other casualty, liability, claim, cost, or expense (including, but not limited to, reasonable attorneys’ fees) of any kind or character to any person or property, including the property of the Indemnitees (collectively the “**Claims**”, or a “**Claim**”) from or by any unaffiliated third party, Donor, and/or Donor’s respective agents, arising from or relating to (i) any use of the Capitol Hill Grounds and/or adjacent areas by Donor or Contractor, (ii) any act or omission of Donor or Contractor, (iii) any bodily injury, property damage, accident, fire or other casualty to or involving Donor or Contractor and its or their property on the Capitol Hill Grounds and/or adjacent areas, (iv) any violation or alleged violation by Donor or Contractor of any law or regulation now or hereafter enacted, (v) the failure of Donor and/or Contractor to maintain the Capitol Hill Grounds, Element and/or the Design-Build Work in a safe condition during construction, (vi) any loss or theft whatsoever of any property or anything placed or stored by Donor or Contractor on or about the Capitol Hill Grounds and/or adjacent areas, (vii) any breach by Donor of its obligations under this Agreement, and (viii) any enforcement by CPB of any provision of this Agreement against Donor and any cost of removing Donor or Contractor or its or their property or equipment from the Capitol Hill Grounds and/or adjacent areas; provided, however, that the foregoing indemnity shall not apply to the extent any such Claim is ultimately established by a court of competent jurisdiction to have been caused solely by gross negligence, recklessness or willful misconduct of the Indemnitees.

The indemnity provided by Donor in favor of the Indemnitees in this Agreement shall not require payment as a condition precedent. The terms and conditions of this indemnification provision shall remain effective, notwithstanding the expiration or termination of this Agreement.

7. **Insurance.** During the term of this Agreement, Donor will maintain in force, and will ensure that the Contractor maintains in force, the following insurance coverage and policies:

7.1 **Liability Insurance Coverage and Limits.** A commercial general liability insurance policy insuring the insured's interests against claims for personal injury, bodily injury, death, property damage occurring on, in or about the Capitol Hill Grounds and the ways immediately adjoining the Capitol Hill Grounds, with a "Combined Single Limit" covering personal injury liability, bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000.00). CPB must be endorsed as an additional insured on such policy on ISO Form CG 20 10 (10/93) or its equivalent. The coverage set forth above shall be primary coverage and shall apply specifically to the Capitol Hill Grounds and adjacent areas.

7.2 **Workers' Compensation Insurance.** All Workers' Compensation and Employers' Liability Insurance required under applicable Workers' Compensation Acts and/or applicable law. In addition, the insured shall maintain Employers' Liability Insurance with a minimum limit of not less than One Hundred Thousand Dollars (\$100,000.00) for Donor and Five Hundred Thousand Dollars (\$500,000.00) for Contractor.

7.3 **Automobile Insurance.** With respect to Contractor only, Automobile Liability Insurance with a minimum limit of not less than Two Million Dollars (\$2,000,000.00) Combined Single Limit per accident, and coverage applying to "Any Auto".

7.4 **Additional Terms.** Donor shall provide CPB with a Certificate of Insurance from Donor and Contractor demonstrating that required insurance is in place prior to entry on the Capitol Hill Grounds. Neither the amount nor the scope of any of the obligations of Donor under this Agreement or otherwise, shall be limited to the amount of the insurance Donor is required to maintain hereunder. Any policies or certificates of insurance required under the provisions of this Section must contain an endorsement or provision that not less than thirty (30) days' prior written notice is given to CPB prior to cancellation or reduction of coverage or amount of such policy.

8. **Liens.** Donor shall keep the Capitol Hill Grounds free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Donor, and shall indemnify, hold harmless and agrees to defend CPB and the State of Utah from any liens that may be placed on the Capitol Hill Grounds and/or Capitol Hill Complex pertaining to any work performed, materials furnished or obligations incurred by, through, for, or under Donor or any of Donor's respective agents.

9. **Notices.** Except as otherwise required by law, any notice, demand or request given in connection with this Agreement shall be in writing and shall be given by personal delivery, overnight courier service, electronic mail, or United States certified mail, return receipt requested, postage or other delivery charge prepaid, addressed to CPB or Donor, as the case may be, at the following addresses (or at such other address as CPB, Donor or the person receiving copies may designate in writing given in accordance with this section):

IF TO CPB: Dana Jones  
Executive Director / CPB  
350N. State Street, Ste. 120  
Salt Lake City, Utah 84103  
Phone: (801) 538-1189  
Email: danajones@utah.gov

WITH A COPY TO: Mike Kelley  
Assistant Attorney General  
4315 S. 2700 W., 3<sup>rd</sup> Floor  
Taylorsville, Utah 84129  
Phone: (801) 957-7239  
Email: mkelley@agutah.gov

IF TO DONOR:

IN WITNESS WHEREOF, the CPB and Donor have executed this Agreement as of the date first above written.

**CPB:**

CAPITOL PRESERVATION BOARD

By: \_\_\_\_\_  
Dana Jones, Executive Director

APPROVED AS TO FORM  
/S/ Mike Kelley, Assistant Attorney General

**DONOR:**

\_\_\_\_\_

By: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Its: \_\_\_\_\_