



**EXHIBIT A – Description of Commemorative Element**

**EXHIBIT B – Capitol Preservation Board Meeting Minutes from the January, 2024 Meeting**

**EXHIBIT C - Artist Release Form**

**ARTIST RELEASE FORM**

This will confirm that for valuable consideration, receipt of which is hereby acknowledged, I have and hereby assign and transfer forever to the State of Utah, all of my rights, title and interest in and to the original art described as the **Resilience and Perseverance In Honor of Utah’s Chinese Pioneers Monument** located at the Utah State Capitol, if any, including, without limitation, the copyright therein and/or the right to federally register the copyright therein, and any and all renewals and extensions of any such copyright, in the United States and every other country in the world.

The above-described work may be considered to be a “work of visual art” subject to the provisions of the federal Visual Artists Rights Act of 1990, specifically the rights of certain authors to attribution and integrity, as codified at 17 U.S.C. §106A(a). I am an author of the work(s) described herein, and am authorized to waive the rights conferred by §106A(a), in accordance with the waiver provision of 17 U.S.C. §106A(e)(1).

**STATUTORY PROVISIONS**

17 U.S.C. §106A - Rights of certain authors to attribution and integrity.

(a) Rights of Attribution and Integrity. - Subject to section 107 and independent of the exclusive rights provided in section 106, the author of a work of visual art –

(1) shall have the right –

(A) to claim authorship of that work, and

(B) to prevent the use of his or her name as the author of any work of visual art which he or she did not create;

(2) shall have the right to prevent the use of his or her name as the author of the work of visual art in the event of a distortion, mutilation, or other modification of the work which would be prejudicial to his or her honor or reputation; and

(3) subject to the limitations set forth in section 113(d), shall have the right –

(A) to prevent any intentional distortion, mutilation, or other modification of that work which would be prejudicial to his or her honor or reputation, and any intentional distortion, mutilation, or modification of that work is a violation of that right, and

(B) to prevent any destruction of a work of recognized stature, and any intentional or grossly negligent destruction of that work is a violation of that right.

17 U.S.C. §106A(e)(1) – Transfer and waiver.

The rights conferred by subsection (a) may not be transferred, but those rights may be waived if the author expressly agrees to such waiver in a written instrument signed by the author. Such instrument shall specifically identify the work, and uses of that work, to which the waiver applies, and the waiver shall apply only to the work and uses so identified. In the case of a joint work prepared by two or more authors, a waiver of rights under this paragraph made by one such author waives such rights for all such authors.

**WAIVER**

As author of the above-described work, I hereby permanently waive my rights pursuant to 17 U.S.C. §106A(a)(3) to prevent any distortion, mutilation, modification or destruction of that work, for whatever reason and for whatever use of the work such distortion, mutilation, modification or destruction of the work is undertaken. This waiver does not extend to the rights of attribution conferred by 17.U.S.C. §106A(a)(1) or §106A(a)(2).

Name: \_\_\_\_\_

Date: \_\_\_\_\_, 202\_\_\_\_

**EXHIBIT D - Design-Build Contract**

**DESIGN-BUILD CONTRACT**

This Design-Build Contract ("Contract") is made and entered into as of the \_\_\_ day of \_\_\_, 20\_\_\_, by and between ("Owner"), and \_\_\_\_\_ ("Contractor").

Contractor's Address: \_\_\_\_\_

Contractor's Phone: \_\_\_\_\_ Contractor's Email: \_\_\_\_\_

**1. Project Location.** Utah State Capitol / Capitol Hill Grounds

**2. Scope of Work.** Contractor's Scope of Work shall be as follows or shall be as set forth on the referenced Exhibit attached hereto and incorporated herein, as such Scope of Work may be modified by Change Order and/or Change Directive pursuant to paragraph 4 of the Contract Conditions:

\_\_\_\_\_  
*(Describe Scope of Work here or reference attached Exhibit)*  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
**3. Design-Build Documents.** The Design-Build Documents consist of this Contract and the Contract Conditions, attached Exhibits, and the following Bid(s), Drawing(s), Specification(s) and/or other Contract Documents, if any:  
*(List Contract Documents or reference attached Exhibit)*

\_\_\_\_\_  
\_\_\_\_\_  
**4. Commencement / Completion.** Contractor shall commence the Work on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, or as follows: \_\_\_\_\_ (“Commencement Date”) and complete the Work by the \_\_\_\_ day of \_\_\_\_\_, 20\_\_, or as follows: \_\_\_\_\_ (“Completion Date”). Contractor shall pay Owner Liquidated Damages in the amount of \$ \_\_\_\_\_ for each calendar day that Contractor fails to complete the Work after the Completion Date.

**5. Compensation.** Owner shall pay Contractor for the Contractor’s Work the Contract Price consisting of the following *(mark applicable basis for compensation)*:

- A Stipulated Sum of \_\_\_\_\_  
*(Insert amount in words)*  
(\$ \_\_\_\_\_)  
*(Insert amount in numbers)*
- Unit Prices \_\_\_\_\_  
*(Insert Units / Rates or Incorporate attached Schedule)*
- The Cost of the Work plus a Contractor’s Fee of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), subject to a Guaranteed Maximum Price (“GMP”) of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_)  
*(If no GMP is intended, leave blank)*
- Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONTRACTOR:**

**OWNER:**

*(Print Name)*

By \_\_\_\_\_

*(Signature)*

Its \_\_\_\_\_

*(Title)*

*(Print Name)*

By \_\_\_\_\_

*(Signature)*

Its \_\_\_\_\_

*(Title)*

## GENERAL CONDITIONS

**1. The Work.** The term “Work” means the construction and design services required by the Design-Build Documents and includes all construction services, labor, materials, equipment, architectural services, engineering services, consultant services, other professional services and any other items necessary for the proper execution and completion of the Work by Contractor. All minor details of work which are not shown in the Design-Build Documents, but are necessary for the proper completion of the Work, shall be considered as incidental, and as a part of and included with the Work to be performed by Contractor for the Contract Price.

**2. The Design-Build Documents.** Contractor shall perform the Work in strict compliance with the Design-Build Documents. Contractor waives the execution of any unexecuted Design-Build Documents and agrees to be bound by the terms of such Design-Build Documents to the same extent as if they were executed at the time of execution of this Contract. Design-Build Documents shall be the property of Owner and shall not be used by Contractor for any other project without the written permission of Owner.

**3. Payment.** Owner agrees that Owner will make Progress Payments every thirty (30) days for properly completed Work, subject to retention of five percent (5%) which retention shall be paid to Contractor as required by Utah Code Ann. § 13-8-5. Payment of undisputed amounts is due upon Owner’s receipt of Contractor’s invoice. Any payment of undisputed amounts not received by Contractor within ten (10) calendar days of Owner’s receipt of Contractor’s invoice shall bear interest from the date payment was due at the rate of ten percent (10%) per annum. If Contractor’s Compensation is based on the Cost of the Work: (A) the term “Cost of the Work” includes reasonable and customary cost items

incurred by Contractor in the performance of the Work but excludes any costs not described in Article 7 and/or excluded by Article 8 of AIA Document A102 - 2007; and (B) the Contractor shall include evidence satisfactory to the Owner of the Cost of the Work with Contractor's invoice.

**4. Changes.** Owner may order changes in the Work by issuing a written Change Order (which shall be countersigned by Contractor) which shall: (A) describe the changes in the Work; (B) state the change in the Completion Date agreed to by Owner and Contractor, if any; and (C) state the adjustment to the Contract Price, if any, agreed to by Owner and Contractor for the cost or credit to Owner resulting from the change. If Owner and Contractor cannot agree on a change to the Completion Date and/or the cost or credit to Owner resulting from a change in the Work, Owner may issue a written Change Directive directing a change in the Work and stating an adjustment to the Completion Date and/or Contract Price as unilaterally determined by Owner, and Contractor shall promptly proceed with the Work, as changed. If Contractor does not agree with Owner's final adjustment to the Completion Date and/or Contract Price resulting from a Change Directive such dispute shall be resolved in accordance with paragraph 17. The Completion Date and Contract Price may be changed only by a Change Order or Change Directive. Under no circumstances will the Contractor be entitled to additional compensation for changes in the Work not authorized in a written Change Order or Change Directive.

**5. Time.** Time is of the essence of this Contract. Contractor acknowledges that Owner will suffer damage if the Work is not completed by the Completion Date. Contractor shall be liable for and shall pay to Owner liquidated damages as provided in the Contract for Contractor's failure to complete the Work by the Completion Date.

**6. Quality / Warranty.** Contractor shall perform the Work in a good and workmanlike manner, using high quality materials and personnel skilled in the type of work required and in compliance with all applicable laws, regulations, ordinances, industry standards and requirements of governmental entities having jurisdiction over the Work and all architectural, engineering and other professional services provided by Contractor shall comply with the prevailing standard of care. If there are any conflicts or inconsistencies within or between documents comprising the Design-Build Documents, Contractor shall provide the better quality or greater quantity of Work or materials, as applicable, unless directed otherwise by Owner in writing. Owner may reject Work which is not in accordance with the Design-Build Documents or which is otherwise defective in which event Contractor shall correct such Work at Contractor's cost. If within one (1) year of the Completion Date any of the Work is found to be not in accordance with the Design-Build Documents or is found to be otherwise defective, Contractor shall promptly correct it at Contractor's cost, however this one (1) year correction period shall not alter the terms of any special warranties required by the Design-Build Documents or limit any other remedy available to Owner.

**7. Owner Occupancy.** In the event Owner occupies the Project Location during the performance of the Work Contractor shall conduct the Work so as to minimize interference with the Owner's occupancy at the Project Location.

**8. Safety.** Contractor is responsible for the safety of Contractor's employees and property at the Project Location and for the safety of all other persons and property at the Project Location and shall at all times protect such persons and property at the Project Location from Contractor's operations.

**9. Responsibility for Acts / Omissions of Others.** Contractor shall be responsible and liable for the acts and omissions of Contractor's employees at the Project Location, Subcontractors, Sub-Subcontractors and anyone directly or indirectly employed by them or anyone for whose acts any of them may be liable.

**10. Taxes / Fees / Permits.** Contractor shall pay all taxes and fees and shall secure and pay for all permits, licenses, tests and inspections necessary for proper execution and completion of the Work.

**11. Hazardous Materials.** Contractor shall be responsible for any release of Hazardous Material(s) on or from the Project Location which release is caused in whole or in part by Contractor or by any Subcontractor, Sub-Subcontractor and/or any one directly or indirectly employed by any of them or anyone for whose acts any of them may be liable and Contractor agrees to indemnify, defend and hold harmless Owner and the other parties indemnified pursuant to paragraph 13 of this Contract from and against all remediation costs, claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from such release. In the event Contractor encounters any Hazardous Material(s) at the Project Location, Contractor shall immediately cease work, notify Owner of such condition by the most expeditious means available and Contractor shall not resume work until any such Hazardous Material(s) have been removed from the Project Location or rendered harmless and Contractor has been directed in writing by Owner to resume work.

**12. Liens.** Contractor shall indemnify, defend and hold harmless Owner and the State of Utah from and against any liens arising out of the performance of the Work and shall immediately cause any such liens to be released at Contractor's expense. Owner and the State of Utah shall have the right, but not the obligation, to obtain the release of any lien asserted by any person other than Contractor by paying such claimant directly, in which case the amount of any such payment shall be deducted from any payment owed by Owner to Contractor hereunder or otherwise, or, if amounts owed by Owner to Contractor hereunder or otherwise are not sufficient to fully reimburse Owner or the State of Utah for such payment, Contractor shall pay Owner and/or the State of Utah the amount necessary to fully reimburse Owner of the State of Utah for such payment on demand. Should the Owner exercise the Owner's rights under Utah Code Ann. § 38-1a-804 the costs thereof shall be borne by and chargeable to the Contractor to the same extent as the payment(s) described in the previous sentence. Contractor shall not be entitled to

receive progress payments until Contractor has provided Owner with a Utah Conditional Waiver and Release Upon Progress Payment in the form prescribed by Utah Code Ann. § 38-1a-802 from Contractor and Contractor's Subcontractors, Sub-subcontractors and material suppliers, if any, and Contractor shall not be entitled to receive final payment and/or release of retention until Contractor has provided Owner with a Utah Waiver and Release Upon Final Payment in the form prescribed by Utah Code Ann. § 38-1a-802 from Contractor and Contractor's Subcontractors, Sub-subcontractors and material suppliers, if any. Upon final completion of the Project as defined in Utah Code Ann. § 38-1a-102 Contractor shall assure that a Notice of Completion complying with Utah Code Ann. § 38-1a-507 is timely filed with the Utah State Construction Registry Database ("Database"). Contractor shall be liable for and shall pay to Owner any losses suffered by Owner as a result of Contractor's failure to timely and properly file a Notice of Completion with the Database.

**13. Indemnity.** To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless Owner, persons who hold an interest in Owner and entities in which Owner and/or persons who hold an interest in Owner hold an interest and their officers, agents, employees and independent contractors and the State of Utah, Capitol Preservation Board ("CPB") and Division of Facilities Construction and Management ("DFCM") from and against all claims, damages, losses and expenses, including, but not limited to, attorneys' fees, arising out of or resulting from the performance of the Work, provided that such claim, damage, loss or expense: (A) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom; and (B) is caused in whole or in part by any negligent act, omission or other fault of Contractor, any Consultant, any Subcontractor, any Sub-Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by the negligence, omission or other fault of a party indemnified hereunder or whether liability is imposed upon such indemnified party by applicable laws, rules or regulations regardless of the negligence, omission or other fault of such indemnified party. This indemnity obligation is intended to include the indemnification of parties indemnified hereunder for damages apportioned to any one or more of them in cases of comparative negligence or fault, where any portion of such damages are also apportioned to Contractor, any Consultant, any Subcontractor, any Sub-Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not negate, abridge or reduce any other right or obligation of indemnity which may exist in favor of the parties indemnified hereunder. In any and all claims against the parties identified hereunder by any employee of Contractor, any Consultant, any Subcontractor, any Sub-Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this paragraph shall not be limited in any way by any limitation on the amount or types of damages, compensation or benefits payable by or for Contractor, any Consultant, any Subcontractor or any Sub-Subcontractor under worker's or workman's compensation acts, disability benefit acts or other employee benefit acts.

**14. Insurance.** Prior to the Commencement Date Contractor shall purchase from and maintain in a company or companies licensed to do business in the State of Utah and rated A- or better by the A. M. Best Company the following insurance coverage (or greater if required by law) with deductibles per claim/occurrence of not greater than \$10,000: (A) Workers' compensation—statutory limits; (B) Employer's liability—\$100,000; (C) Comprehensive Automobile Liability Insurance—combined single limits (covering bodily injury liability, death and property damage) of not less than \$2,000,000 each occurrence and \$2,000,000 annual aggregate and which names Owner, the State of Utah, CPB and DFCM as an additional named insured; and (D) General Liability Insurance written on a Commercial General Liability Coverage Form (provided on an "occurrence" form and not on a "claims made" form) which shall name Owner, the State of Utah, CPB and DFCM as an additional named insured and which coverages shall include Broad Form Property Damage, Blanket Contractual Liability, Independent Contractor's Liability, Products-Completed Operations (which shall be maintained without interruption by Contractor for a period of 2 years from the Completion Date), Personal and Advertising Injury and X, C and U (explosion, collapse and underground) hazards. The limits of Contractor's General Liability Insurance shall be not less than \$2,000,000 combined single limit (bodily injury, death and property damage combined) each occurrence, \$2,000,000 general annual aggregate limit, \$2,000,000 Products-Completed operations annual aggregate limit and \$2,000,000 personal and advertising injury limit. Contractor shall require Contractor's Subcontractors to secure and maintain the same insurance coverages, with the same minimum deductibles, the same minimum limits of liability and for the same period of time as required of Contractor by this paragraph unless this requirement is waived in writing by Owner. Contractor shall require all Design Professional(s) employed, directly or indirectly, by Contractor in connection with this Project to secure and maintain throughout the period of this Project and for a period of 3 years after the Completion Date professional liability insurance for errors or omissions in the design services provided by the Design Professional(s) with respect to this Project, procured from companies authorized to do business in the State of Utah and rated A- or better by the A. M. Best Company, with deductibles per claim of not greater than \$25,000, and with limits of liability of not less than \$1,000,000 per claim; \$1,000,000 annual aggregate. If the professional liability insurance required by this Contract contains a design-build exclusion applicable to the design services required by the Design-Build Documents, the policy shall be endorsed to delete such exclusion for the Project. Contractor will supply Owner with satisfactory evidence of the insurance required by this Contract prior to the Commencement Date. Should Contractor (or any Subcontractor or Design Professional directly or indirectly employed by Contractor) fail to obtain and maintain the insurance required by this paragraph Owner may, but shall not be obligated to, purchase such insurance, the cost of which shall be charged to Contractor and deducted from the Contract Price. Contractor shall bear full responsibility for and shall pay on demand any and all damages suffered by Owner and/or other parties indemnified pursuant to paragraph 13 of this Contract which result from Contractor's failure to comply with the insurance requirements of this Contract.

**15. Termination for Cause.** Owner may terminate this Contract for cause if Contractor: (A) fails to supply adequate skilled workers or proper materials and/or equipment; (B) fails to make payment of money Contractor owes Subcontractors; (C) disregards laws, ordinances, rules, regulations or orders of a public authority having jurisdiction of the Work; or (D) otherwise is guilty of a substantial breach of any of the Design-

Build Documents. Upon any such event Owner may, without prejudice to any other right or remedy and after giving Contractor three (3) days written notice, terminate employment of Contractor and may take possession of all materials, equipment, tools and machinery owned by Contractor at the Project Location and may finish the Work by whatever method Owner may deem expedient. In such case, Contractor shall not be entitled to receive any payment until the Work is finished. If the Contract Price exceeds the costs of finishing the Work, including compensation to Owner for its damages arising directly or indirectly from the default and services and expenses made necessary by the default, such excess shall be paid to Contractor and shall constitute payment in full under this Contract. If such costs, damages, services and expenses exceed the Contract Price, Contractor shall pay the difference to Owner upon demand.

**16. Termination for Convenience.** Owner may, without cause, terminate this Contract at any time and for any reason upon three (3) days prior written notice to Contractor. Upon such termination, Contractor agrees to waive any claim for damages including loss of any anticipated profits, consequential damages or lost opportunity costs on account thereof, and as the sole right and remedy of Contractor, Owner shall pay Contractor the portion of the Contract Price, adjusted by any Change Order and/or Change Directive, on a percentage completion basis, of all Work properly completed by Contractor to the date of termination.

**17. Disputes.** The Contract shall be governed by the law of the State of Utah and any action arising out of or relating to the Contract or the Work shall be brought only in a court having jurisdiction in the County of the Project Location, State of Utah. In any action arising out of or relating to the Contract or the Work the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and expenses.

**18. Notices.** Delivery of notices and/or correspondence to Contractor shall be deemed complete when mailed to Contractor's address or transmitted to Contractor's fax number or email address. Unless otherwise directed in writing by Owner, notices and correspondence from Contractor shall be mailed to Owner via first class mail.

**19. Assignment.** Contractor shall not assign this Contract, any money due to Contractor under this Contract and/or any claims arising under this Contract without the written permission of Owner. Owner may assign this Contract provided that: (A) such assignment is not to the substantial detriment of the Contractor under this Contract; and (B) Owner's assignee shall assume Owner's obligations under this Contract (in which case Owner shall be relieved of Owner's obligations under this Contract).

**20. Third Party Rights.** Except for third-parties expressly indemnified under this Contract, and then only to the extent of such indemnity, nothing in this Contract shall create a contractual relationship or cause of action in favor of a third party against either Owner or Contractor. Provided, however, notwithstanding anything in this Contract or other Design-Build Documents to the contrary, the State of Utah, CPB and DFCM are express intended third-party beneficiaries of this Contract.

**21. Successors and Assigns.** This Contract shall be binding upon and inure to the benefit of the successors, transferees, assigns and heirs of Owner and Contractor.

**22. Interpretation / Severability.** In interpreting this Contract, there shall be no presumption or standard of construction in favor of or against either Owner or Contractor. Invalidation of any provision of this Contract shall not affect the enforceability of any other provision of this Contract.

**23. Entire Agreement.** This Contract represents the entire and integrated agreement between Owner and Contractor and supersedes prior negotiations, representations or agreements, either written or oral.

**24. Other Provisions.**

---

---

---

---

---

---

---

---

---

---

*Attach additional pages if necessary.*