

## EXHIBIT A TO RESOLUTION 2025-036

### ARTWORK DONATION AGREEMENT

THIS ARTWORK DONATION AGREEMENT (the “Agreement”) is made and entered this \_\_\_\_\_, 2025 (the “Effective Date”) by and between the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60<sup>th</sup> Avenue, Commerce City, Colorado (the “City”), and SAND CREEK REGIONAL GREENWAY PARTNERSHIPS, INC., a Colorado nonprofit corporation, whose address is 3990 Ulster Street, Denver, Colorado 80207 (“Donor”) and KALLIOPI MONOYIOS (“Artist”).

WHEREAS, Artist created certain artwork more specifically defined herein as part of Donor’s Greenway Guardianship Program; and

WHEREAS, Donor is the titleholder of the artwork and desires to donate the artwork to the City; and

WHEREAS, in accordance with the Public Art Master Plan, the Commerce City Cultural Council (the “Cultural Council”) has recommended that the City accept a donation of artwork from Donor and place and install the artwork at Eagle Pointe Recreation Center; and

WHEREAS, City Council has accepted the recommendation of the Cultural Council and desires to accept the donation of the artwork pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the sufficiency of which is hereby acknowledged, the parties agree as follows:

#### ARTICLE I. ARTWORK; OWNERSHIP

- A. Description of Artwork. Donor agrees to donate to the City artwork titled “Protecting Commerce” (the “Artwork”) as a charitable gift. The Artwork is more particularly described as a fiber glass bison, with three yellow cubes that was created pursuant to Donor’s Greenway Guardians Project. Donor agrees to donate the Artwork to the City for no compensation now or in the future. Upon taking possession of the Artwork, the City will place and install the Artwork in the interior of Eagle Pointe Recreation Center, 6060 Parkway Drive, Commerce City, Colorado 80022 (the “Site”). The exact location of the placement of the Artwork shall be in the sole discretion of the City.
- B. Ownership and Reproduction Rights.
1. Title. Upon the Effective Date, ownership of the Artwork shall pass to the City. By entering into this Agreement, Donor hereby irrevocably assigns, conveys, and otherwise transfers to the City and its respective successors and assigns title to the Artwork.
  2. Alteration, Removal, Sale, Donation, or Destruction of the Artwork.
    - a. Alteration of Artwork
      - i. The City shall not consent to intentional alteration, modification or change to the Artwork without first consulting Artist. “Alteration” of the Artwork

## EXHIBIT A TO RESOLUTION 2025-036

includes, but is not limited to, a change in the interrelationship or relative locations of parts of the Artwork.

- ii. In the event of any alteration or damage, whether or not intentional, Artist shall have the right to disclaim authorship of the Artwork and upon written request to the City may remove the identification plaque at Artist's expense. Artist may otherwise disavow the Artwork as it may choose.
  - b. Nothing in this Agreement shall preclude any right of the City to: (1) remove the Artwork from public display; (2) move or relocate the Artwork to another location selected solely by the City for public display; (3) donate the Artwork; (4) sell or transfer the Artwork; or (5) correct any unsafe or hazardous condition of the Artwork, provided the City gives Artist reasonable notice thereof in writing. Notwithstanding the foregoing, any donee, transferee, or buyer of the Artwork shall be assigned and shall assume all of the City's duties to Artist stated herein, and shall take the Artwork subject to all of Artist's rights set forth herein. Moreover, such donee, transferee or buyer shall be given a copy of this executed Agreement at the time of donation, transfer, or sale.
  - c. Furthermore, nothing in this Agreement shall preclude any right of the City to destroy the Artwork, provided the City must provide Artist written notice at least ninety (90) days prior to taking such action. Following Artist's receipt of such notice, Artist shall have the opportunity to take possession of the Artwork at no cost to Artist. In such event, title to the Artwork shall pass to Artist at the time Artist takes possession.
3. Duplication or Reproduction. Neither Donor nor Artist shall not make any additional exact duplicate, two or three-dimensional reproductions of the Artwork, nor shall Donor or Artist grant permission to others to do so except with express, written permission from the City. This restriction shall not apply to Artist's use of photographic reproductions of the Artwork in portfolio or in critical and scholarly writings. Artist grants to the City and its respective assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in advertising brochures, media publicity and catalogues or other similar publications. All such reproductions by the City shall contain credit to the Artist and a copyright notice.
4. Credit to Public Art Program in Commerce City. Donor and Artist shall use its best efforts to give a credit reading substantially, "an original work donated to the Public Art Program in Commerce City, Colorado," in any public showing of a reproduction of the Artwork under Donor or Artist's control.

## EXHIBIT A TO RESOLUTION 2025-036

### E. Rights in the Artwork – Retention and Waiver.

1. Federal Rights. Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. §§101 et seq., except for Artist's rights under 17 U.S.C. §106A(a)(2), 17 U.S.C. §106A(a)(3), and 17 U.S.C. §113(d), which are specifically waived by this Agreement, or otherwise granted to the City under this Agreement. Artist hereby expressly waives all other rights in and to the Artwork, including, but not limited to, all rights in the nature of "Droit Morale" in regard to any continuing interest Artist may have in the maintenance or modification of the Artwork, and, insofar as such rights are transferable, they are hereby assigned to the City. Artist may, at its expense, cause to be registered, with the United States Register of Copyrights, a copyright of the Artwork in Artist's name.
2. Waiver of Rights under 17 U.S.C. §106A(a). Artist understands and agrees that, as to its rights in the Artwork, the provisions of this Article shall control over the provisions of 17 U.S.C. §106A(a)(2) and 17 U.S.C. §106A(a)(3), and shall constitute a waiver by Artist of any rights in the Artwork set out in or otherwise granted by the provisions of 17 U.S.C. §106A(a)(2) and 17 U.S.C. §106A(a)(3). Artist acknowledges and represents it has been informed and is aware of the method and location of installation of the Artwork at the Site and, to the extent the Artwork is incorporated into the Site in such a way that removing the Artwork from the Site will cause the distortion, mutilation, or other modification of the Artwork, Artist agrees that execution of this Agreement satisfies the requirements for waiver of the requirements of 17 U.S.C. §106A(a)(2) and 17 U.S.C. §106A(a)(3).
3. Waiver of Rights under 17 U.S.C. §113(d). Artist understands and agrees that, as to its rights in the Artwork, the provisions of this Article shall control over the provisions of 17 U.S.C. §113(d), and shall constitute a waiver by Artist of any rights in the Artwork set out in or otherwise granted by this provision.

## ARTICLE II. MAINTENANCE, REPAIR AND RESTORATION

### A. Maintenance.

1. Donor or Artist shall provide detailed instructions for the maintenance required for the Artwork, which instructions shall include the materials used, finishes applied, recommended processes, and/or solutions appropriate for cleaning, and a schedule for maintenance of the Artwork.
2. For a period of two (2) years after the installation of the Artwork at the Site, Donor shall perform any and all maintenance required on or to the Artwork (the "Donor Maintenance Period"). Upon the expiration of the Donor Maintenance Period, the City shall be responsible for the maintenance of the Artwork.
3. The City shall have the right to determine, in its sole discretion, if and when maintenance of the Artwork will be made.

### B. Repair and Restoration.

## EXHIBIT A TO RESOLUTION 2025-036

1. The City will consult with Donor or Artist, as applicable, to the extent practical as to recommendations with regard to repair or restoration of the Artwork. To the extent practical and in accordance with recognized principles of professional conservation, Artist or its representative shall be given the opportunity to accomplish such repair or restoration.
  2. Donor or Artist may inspect the Artwork at any time after installation and shall notify the City in writing if Donor or Artist, as applicable, determines any repair or restoration is required; provided, however that the City shall have final authority to determine whether repair or restoration will be made.
- C. Alteration of the Site. The City shall notify Donor and Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork.

### ARTICLE III. WARRANTIES

- A. Warranty of Title. Donor and Artist represent and warrant that:
1. The Artwork is solely the result of Artist's artistic and creative efforts;
  2. Except as otherwise disclosed in writing to the City, the Artwork is unique and original and does not infringe upon on any copyright;
  3. The Artwork has not been accepted for exhibition, sale, or lease elsewhere; and
  4. The Artwork is free and clear of any liens from any source whatever.
- B. Warranties of Quality and Condition. Artist represents and warrants that:
1. The Artwork, as fabricated and installed, shall be free of defects in material and workmanship, including any defects of "inherent vice" or qualities which cause or accelerate deterioration of the Artwork; and
  2. Reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist to the City according to Article II.A (Maintenance).
- C. Warranty – Survival; Breach; Cure. The warranties described in this Section shall survive this Agreement. The City shall with reasonable promptness give notice to Donor or Artist, as applicable, of any observed breach of warranty. Donor or Artist, as applicable, shall, at the request of the City and at no cost to the City, promptly cure the breach to the extent reasonably possible and which cure is consistent with professional conservation standards (including, by way of example, but not as a limitation, cure by means of repair or re-fabrication of the Artwork).

### ARTICLE IV. INSURANCE

## EXHIBIT A TO RESOLUTION 2025-036

Donor shall, during the term of the Donor Maintenance Period, procure and keep in force workers' compensation insurance, or provide a completed Declaration of Independent Contractor Status Form, and a commercial liability insurance policy that names the City as an additional insured with policy limit of not less than one million dollars (\$1,000,000) per occurrence combined single limit and if the policy contains a general aggregate limit, that limit shall not be less than two million dollars (\$2,000,000), and all other insurance required by any applicable law. Donor must send proof of insurance to the City within thirty days (30) of the effective date of this Agreement.

### ARTICLE V. NOTICES

- A. Addresses. Written notices required under this Agreement and all other correspondence between the parties shall be directed to the following and shall be deemed received when hand-delivered or three (3) days after being sent by certified mail, return receipt requested. If both parties agree, notice by electronic mail shall suffice:

If to the City:

Melissa Sumner  
Community & Cultural Liaison  
7887 East 60<sup>th</sup> Avenue  
Commerce City, CO 80022

If to Donor:

Sand Creek Regional Greenway Partnership, Inc.  
Attn: Elena Smith  
3990 Ulster Street  
Denver, Colorado 80207

- B. Changes. The parties shall notify each other of address changes within thirty (30) days of such change. Artist's failure to do so shall constitute a waiver of Artist's right to enforce the provisions requiring Artist's express approval. Notwithstanding the foregoing, City shall make every reasonable effort to locate the Artist when matters arise relating to the Artist's rights.

### ARTICLE VI. GENERAL PROVISIONS

- A. Independent Contractor; No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the relationship between the City and Donor and Artist shall be as independent contractors, and neither the City nor Donor or Artist shall be deemed or constitute an employee, servant, agent, partner, or joint venturer of the other. Donor and Artist are obligated to pay federal and state income tax on any money earned pursuant to this Agreement, and neither Donor and Artist nor Donor and Artist's employees, agents or representatives are entitled to workers' compensation benefits or unemployment benefits from the City.

## EXHIBIT A TO RESOLUTION 2025-036

- B. Specific Performance; Other Rights and Remedies. In the event of a breach of this Agreement by Donor, the City shall have the right, but not the obligation, to obtain specific performance of the Services in addition to any other remedy available under applicable law. Nothing contained in this Agreement shall be construed as a limitation on any rights and remedies available to the parties under the law, which may now or in the future be applicable.
- C. Governing Law and Venue; Recovery of Costs. This Agreement shall be governed by the laws of the State of Colorado. Venue for state court actions shall be in the 17<sup>th</sup> Judicial District in Adams County, Colorado, and venue for federal court actions shall be in the United States District Court for the District of Colorado. In the event legal action is brought to resolve any dispute among the parties related to this Agreement, the prevailing party in such action shall be entitled to recover reasonable court costs and attorney fees from the non-prevailing party.
- D. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*
- E. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the parties. It is the express intention of the parties that any person other than the City, Donor, and Artist shall be deemed to be only an incidental beneficiary under this Agreement.
- F. No Assignment. Except as otherwise provided herein, neither Donor nor Artist shall not assign this Agreement without the City's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.
- G. No Waiver. The waiver of any breach of a term, provision or requirement of this Agreement shall not be construed as or deemed a waiver of any subsequent breach of such term, provision or requirement or of any other term, provision or requirement of this Agreement.
- H. Entire Agreement; Binding Effect. This Agreement contains the entire agreement of the parties relating to the subject matter hereof and, except as provided herein, may not be modified or amended except by written agreement of the parties. This Agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective heirs, personal representatives, successors and assigns.
- I. Authority. The parties represent and warrant that they have taken all actions necessary to legally authorize the undersigned signatories to execute this Agreement on behalf of the parties and to bind the parties to its terms.
- J. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument. Signature pages may be executed via

## EXHIBIT A TO RESOLUTION 2025-036

“wet” signature or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud-based server, e-signature technology or other similar electronic means.

- K. Headings. Paragraph headings used in this Agreement are for convenience of reference and shall in no way control or affect the meaning or interpretation of any provision of this Agreement.
- L. Severability. In the event a court of competent jurisdiction holds any provision of this Agreement invalid or unenforceable, such holding shall not invalidate or render unenforceable any other provision of this Agreement.
- M. Acknowledgement of Open Records Act – Public Document. Contractor hereby acknowledges that the City is a public entity subject to the Colorado Open Records Act, C.R.S. § 24-72-201, et seq., and as such, this Agreement may be subject to public disclosure thereunder.
- N. Appropriation. This Agreement will neither constitute nor be deemed a multiple fiscal-year debt or financial obligation of the City based on the City’s ability to terminate this Agreement. Artist acknowledges that the City has made no promise to continue to budget funds beyond the current fiscal year and that the City has and will pledge adequate cash reserves on a fiscal-year by fiscal-year basis.
- O. Indemnification. Donor and Artist will be liable and responsible for any and all damages to persons or property caused by or arising out of the negligent or willful actions or omissions in the performance of any obligations of Donor or Artist, their employees, agents, or other persons acting under their respective direction or control. Donor and Artist will indemnify and hold harmless the City, its elected and appointed officials and its employees, agents and representatives (the “Indemnified Parties”), from any and all liability, claims, demands, actions, damages, losses, judgments, costs or expenses, including, but not limited to, attorney fees, which may be made or brought or which may result against any of the Indemnified Parties as a result or on account of the negligent, grossly negligent, willful and wanton, or intentional actions or omissions of Donor or Artist and/or their employees, agents or representatives or other persons acting under Donor or Artist’s direction or control. Donor will include the provisions of this Section in any such subcontracts engaged to perform any part of Donor’s obligations. The provisions set forth in this Section will survive the completion of the services and the satisfaction, expiration or termination of this Agreement.

**[Remainder of this page intentionally left blank – signature page(s) follow(s).]**

**EXHIBIT A TO RESOLUTION 2025-036**

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

**CITY OF COMMERCE CITY**

\_\_\_\_\_  
CITY MANAGER OR DESIGNEE

ATTEST:

\_\_\_\_\_  
Dylan A. Gibson, City Clerk

Approved as to form:

\_\_\_\_\_  
Eliot C. Schaefer, Assistant City Attorney

**DONOR**

SAND CREEK REGIONAL GREENWAY  
PARTNERSHIPS, INC.  
a Colorado nonprofit corporation

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

Title:

**ARTIST**

\_\_\_\_\_  
Kalliopi Monoyios