AN AGREEMENT BETWEEN
THE CITY OF LINCOLN, NEBRASKA
AND LARRY ROOTS STUDIO
FOR A WORK OF ART

THIS AGREEMENT, is made and entered into this _____ day of _____, 2007, by and between **Larry Roots Studio**, hereinafter called "Artist," and the **City of Lincoln, Nebraska**, hereinafter called "City."

RECITALS

1. The City owns a public skywalk bridge across 12th Street connecting the buildings located in Block 57, Original Plat, Lincoln, Lancaster County, Nebraska, and Block 1, Centrum Block Addition, Lincoln, Lancaster County, Nebraska, hereinafter called "Skywalk II."

2. The City desires to commission the Artist to create two works of art, hereinafter called "Murals."

3. The Artist is willing to create the Murals and install them on Skywalk II on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above recitals and the following mutual covenants, promises, and representations, it is agreed by and between the parties as follows:

1. <u>The Murals</u>. Two 86' x 8' vinyl photo murals to be located on the north and south sides of Skywalk II showing ten individuals representing diverse backgrounds walking in front of a brick wall, each with an over-lamination 8620 with matte finish having a three-five year warranty will be fabricated by the Artist for the City based upon the concept submitted by the Artist in response to the competitive call for artists by the 12th Street Arts Corridor Committee to create a highly visible public art piece to further enhance the 12th Street Arts Corridor and Downtown Entertainment District, subject to minor changes and adjustments as suggested by the City or the Artist. Each Mural will be covered

by an 86' x 7' vinyl perforated screen having a two year warranty to allow internal users of Skywalk II to see outside, while maintaining a consistent appearance from the exterior. Any changes other than minor changes or adjustments shall receive written approval from the City and the Artist. The Artist is responsible for the installation of the Murals on Skywalk II. The City shall provide a work site and any necessary traffic control for the installation of the Murals.

2. <u>Fee to Artist</u>. The Artist will create and install the Murals for the City for a fee of Fifty-five Thousand Two Hundred and No/ 100ths Dollars ($55,200.00). In the event the Artist obligates himself or incurs costs and expenses for an amount greater than $55,200.00, the Artist will be personally responsible for the additional cost and such an occurrence shall in no way affect Artist's responsibility to create and install the Murals. The $55,200.00 fee includes an artists's fee in the amount of Twenty-Four Thousand and No/100ths Dollars ($24,000.00) to be paid to Artist within seven (7) days of the execution of this Agreement. When final proofs of the Murals are completed, the Artist shall notify the City. The City shall have the right to view the proofs and if the City is not satisfied with the proofs, the Artist has the option to make the necessary changes or refund the City its advance payment of $24,000.00. When the Murals have been installed on Skywalk II, the Artist shall be paid a final payment of $31,200.00 upon proof from Artist that all sub-contractors involved in the creation, fabrication, and/or installation of the Murals have been paid in full.

All payments under this Agreement shall be made directly to the Artist.

3. <u>Completion Schedule</u>. The Murals shall be created and installed on Skywalk II on or before June 15, 2007.

4. <u>Transportation</u>. The Artist shall be responsible for all costs of transporting the Murals to the Skywalk II work site.

5. <u>Installation</u>. The Murals will be installed on Skywalk II under the supervision of the Artist. The Artist will complete the installation within the time frame provided in Paragraph 3 above.

6. <u>Risk of Loss</u>. Risk of loss or damage to the Murals shall rest with Artist up to completion of the installation and acceptance thereof by the City.

7. <u>Releases</u>. The Artist shall furnish the City will written releases from any person whose photograph appears on the Murals consenting to the use of their picture. The releases shall be in a content and form satisfactory to the City.

8. <u>Ownership Rights</u>. Artist hereby assigns and transfers forever to City all of Artist's rights, title, and interest in and to the original art depicted in the Murals and the Murals themselves 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 copyright in the United States or any other country in the world and all related intellectual property interests such as trademarks.

9. <u>Warranty and Representation</u>. The Artist hereby warrants that the Murals are Artist's original work, that it has never been published, and that Artist has no contractual or other arrangements which would interfere with or permit the above-mentioned assignment or transfer of all of Artist's rights, title and interest in said material.

The Artist also warrants and represents that Artist is the sole legal owner of all right, title and interest in the Murals, including all related intellectual property interests such as trademarks, and the sole and exclusive copyright in all artwork, and has the full right and authority to enter this Agreement and grant the rights granted in this Agreement.

The Artist also warrants and represents that the display of the Murals does not and will not infringe or violate the rights of any other party, including any copyright interest.

10. <u>Assumption of Liability and Indemnification</u>. The Artist shall indemnify and hold harmless the City from and against all losses, claims, damages, and

expenses, including attorney fees, arising out of or resulting from the performance of this Agreement that results in bodily injury, sickness, disease, death, or injury to or destruction of tangible property, including the loss of use resulting therefrom, and which is caused in whole or part by the Artist, any subcontractor, anyone directly or indirectly employed by Artist or subcontractor, or anyone for whose acts Artist or subcontractor may be liable. This does not require the Artist to indemnify or hold harmless the City for any losses, claims, damages, and expenses, arising out of or resulting from the negligence of the City or any of the City's employees.

The Artist shall further indemnify and defend and hold the City harmless from any losses, claims, damages, awards, penalties or injuries incurred, including reasonable attorney fees, which arise from any claim by any third party of an alleged infringement of copyright or any other property right arising out of the display of the Murals.

11. <u>Display of Murals</u>. The Artist understands that the length of time the Murals will be displayed is subject to the sole discretion of the City and any portion or all of the Murals may be immediately removed from Skywalk II at any time at the sole and exclusive discretion of the City.

12. <u>Insurance</u>. The Artist agrees that any contractor employed by the Artist to install the Murals on Bridge No. 2 shall take out and maintain during the term of this Agreement insurance in the form and minimum amounts specified below:

A. The applicable statutory Workmen's Compensation Insurance with an insurance company authorized to write such insurance in this state covering all of his/her employees.

B. Public Liability Insurance, naming and protecting Contractor and the City of Lincoln, its officials, employees, and volunteers as insureds, against claims for damages resulting from (a) bodily injury, including wrongful death, (b) personal injury liability, and (c) property damage for all operations of Contractor, his/her agents and employees under and by virtue of the terms of this Agreement. The minimum acceptable limits of liability to be provided by such insurance shall be as follows:

Bodily Injury and Property Damage	$2,000,000 Each Occurrence
Personal Injury Damage	$1,000,000 Each Occurrence
Contractual Liability	$1,000,000 Each Occurrence
Products Liability	$1,000,000 Each Occurrence

The Public Liability Insurance required by the preceding paragraph shall include the following extension of coverage:

(a) The coverage shall be provided under a Commercial General Liability form or similar thereto.

(b) The property damage coverage shall include a Broad Form Property Damage Endorsement or similar thereto.

(c) Contractual Liability coverage shall be included.

(d) Products Liability coverage shall be included.

(e) Personal Injury Liability shall be included.

C. Such Automobile Liability Insurance as shall protect Contractor against claims for damages resulting from bodily injury, including wrongful death, and property damages which may arise from the operations of any owned, hired, or non-owned automobiles used by or for Contractor in any capacity in connection with the carrying out of this Agreement. The minimum acceptable limits of liability to be provided by such Automobile Liability Insurance shall be as follows:

Bodily Injury and Property Damage	$2,000,000 Combined Single Limit

All Liability Insurance policies shall be written on an "occurrence" basis only. All insurance coverages are to be placed with insurers authorized to do business in the State of Nebraska and must be placed with an insurer that has an A.M. Best's Rating of not less than A:VII unless specific approval has been granted by the City of Lincoln.

Artist agrees to provide to the City, within seven (7) days of the execution of this Agreement, all Certificates of Insurance from its contractor on the standard ACORD CERTIFICATE OF INSURANCE form showing the specific limits of insurance coverage

required by this section and showing the City of Lincoln as an additional insured. Such certificate shall specifically state that insurance policies are to be endorsed to require the insurer to provide the City of Lincoln thirty (30) days notice of cancellation, non-renewal, or any material reduction of insurance coverage.

13. <u>Performance Bond</u>. The Artist shall provide the City with a performance bond executed by the Artist and by a corporate surety authorized to transact business in the State of Nebraska acceptable to the City Attorney in the amount of $24,000.00 to guarantee Artist's obligation to create and install the photographic Murals. Said performance bond shall be submitted to the City within seven (7) days of the execution of this Agreement.

14. <u>Termination</u>. The City may terminate this Agreement without penalty or expense to the City if Artist fails to provide the certificates of insurance and performance bond as required in paragraphs 12 and 13 above.

15. <u>Amendments</u>. This Agreement constitutes the entire understanding of the parties with respect to the subject matter herein and no modifications or amendment of any of its provisions shall be valid unless in writing and signed by both parties.

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

LARRY ROOTS STUDIO, Artist

By: _____
Larry Roots, Owner

THE CITY OF LINCOLN, NEBRASKA
A Municipal Corporation,

By: _____
Coleen J. Seng, Mayor

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Larry Roots as owner of Larry Roots Studio.

_____
Notary Public

STATE OF NEBRASKA)
) ss.
COUNTY OF LANCASTER)

The foregoing instrument was acknowledged before me this _____ day of _____, 2007, by Coleen J. Seng, Mayor of the City of Lincoln, Nebraska, a municipal corporation.

_____
Notary Public