

Agreement on delivery of Work of Art

Between: Thomas Dambo Art ApS (The Artist)
Company reg. number.: 42497266
Salløvvej 3
4621 Gadstrup
Denmark

And City of Wauwatosa Tourism Commission
Company reg. number.:
7725 W North Avenue
Wauwatosa, Wisconsin 53213
United States of America

Each separately referred to as Part, together referred to as the Parties.

1. The Parties and the subject of the Agreement

- 1.1 The City of Wauwatosa, a municipal corporation located in Milwaukee, County Wisconsin and the Wauwatosa Tourism Commission. The Commission coordinates tourism promotion and tourism development for the City of Wauwatosa and performs such services as permitted under Wisconsin Statute 66.0165.
- 1.2 The Artist is an acknowledged and critically acclaimed artist and designer who has created and delivered his unique works of art and designs throughout the world. The Artist's works are based on ideas and philosophy of recycling and including the surrounding environment in his works. The Artist has his own team of employees and other associated professionals to assist him constructing and creating the works. Artist Thomas Dambo is the sole owner of Dambo Art ApS and has a team of employees and other associated professionals to assist him constructing and creating The Work covered by the Agreement as well as tasks to be performed in connection with this. The Artist is entitled to appoint any of its competent employees for the performance of all specific tasks in relation to this agreement (the Agreement).

- 1.3 On the basis of email correspondences and online meetings between The Artist and The Client, The Client has requested The Artist to design, create, produce and deliver one (1) of the Artist's renowned troll sculptures substantially similar in size and scope to those depicted at [location] described in Appendix A, and as more particularly described pursuant to Part 2 of this Agreement, from reclaimed materials, mainly wood (in the following referred to as "The Work") to The Client under the terms of this Agreement. Examples of The Artist's similar work can be found in Appendix A - troll examples and locations

2. The Work and the scope of The Artist services as well as the Client's obligations

- 2.1 Prior to this agreement, the Artist had a site visit to the location(Wauwatosa) in May 2024 and together with the Client they reached an agreement on a concept. The concept relates to one of the artist's known troll sculptures in the process of creating a bouquet of lampposts. The Client will provide the lampposts and all necessary machinery for the installation on the Client's sole expense.
- 2.2 All travel expenses associated with the visit are paid by The Client. During the site visit, The Client must only show The Artist locations which The Client have initial permissions, or is confident to achieve these prior to phase 5 cf. section 3.1, to install The Work. If e.g. external permissions can't be given for the chosen site and The Client or The Artist deems a new site visit necessary, The Client must pay an extra 10,000 EURO and cover all associated travel expenses for such a visit.
- 2.3 No later than October 1st, 2024 The Artist submits by e-mail to The Client a uniquely created concept drawing for The Artist's characteristic Trolls with the purpose of constructing The Work in reclaimed wood, and other materials.
- 2.4 Submission of the concept drawings to The Client is provided that the Agreement is signed by both Parties and that the first installment of the contract sum is paid to The Artist cf. section 5.2. The result may vary from the concept drawings together with any specifics mentioned in Appendix A, in terms of for instance choices of material, as engineers, gardeners or other specialists later involved may suggest different designs of the construction without changing The Artist's expression of The Work.
- 2.5 The Artist has full artistic freedom in terms of the creation of the concept drawings as long as the drawing generally comply with the following overall criteria agreed by both Parties: Expressions and designs of The Work must generally correspond to the examples shown in Appendix A (photos/ drawings), however considered, that the material used in The Work may vary from materials mentioned in Appendix A. The size of The Work will be on a similar scale to the sculptures on the pictures in Appendix A. The size will vary in each Work, based on The Work's specific positions, features, and functions.

2.6 No later than November 1st, 2024 The Client approves the concept drawing based on which The Artist prepares and constructs the unique sculpture, The Work, to be installed at the following location: 1900 North 116th Street, Wauwatosa, WI, 53226 USA

2.7 It is important to point out that The Work is a *work of art*, as opposed to for instance a design installation, a piece of furniture, a trademark or part of a decoration. The Artist has full artistic freedom in the execution of The Work. The Artist will follow the measures agreed (with the possibility of deviations of up to approximately 10%).

In this connection, it should also be clarified that the finished result will differ from the concept drawing as the concept drawing does not reflect in detail the materials used nor the construction method that The Artist often uses, thus there may be details in the concept drawing that appear differently in the final Work.

Furthermore, the environment in which The Work is to be built - and also should appear as part of - will entail a need for specific adaptations, or maybe a need to change the specific location (within the designated area) which may lead to changes in the proportions, and as a result the external scope may deviate from the concept drawing, expected by no more than 10%, however.

Additionally, The Artist is entitled to change the choice of material for instance due to challenges in obtaining the originally intended material for the selected location or lack of permission to anchor the sculpture e.g. with screw foundations and/or poles in the ground, in which case changes in The Work's appearance than outlined in the concept drawing is to be expected.

None of the above-mentioned changes and alterations constitute The Artist's breach of this Agreement or affects the determination of when The Work is finally delivered according to section 2.10. The Artist notifies The Client of changes that The Artist deems relevant to the Client and which may entail that The Client requests changes, cf. section 2.6.

2.8 If The Client wishes to make changes to The Work prior to the final delivery such changes must be approved by The Artist. All such changes are at The Client's sole expense. All such expenses must be submitted to and approved in writing by The Client before the process of implementing the changes may begin.

2.9 Most preparatory work for The Work takes place outside The Client's location, for instance in Denmark, according to The Artist's specific and exclusive choices.

- 2.10 All parts of The Work are to be assembled, installed, and embedded in areas within more or less secluded nature.
- 2.11 Parts of the preparatory work in relation to building The Work at the locations, for example construction of specific parts, may take place outside the premises, for instance in Denmark, according to The Artist's specific and exclusive choices. Any expenses related to transporting these parts to The Client's premises, as well as CO2 compensation, will be at The Client's sole expense, regardless of from which place the parts are to be transported. The costs for freight are charged separately and continuously according to invoice and are paid according to the payment terms in the invoice. The Artist will arrange the shipping, in the most sustainable way, e.g. by boat. The Client must provide The Artist with all necessary information to realize the shipping and assist in the procedure if necessary, according to The Artist's instructions. The Artist takes out the usual insurance on the freight in an amount acceptable by the Client. The sole responsibility for the freight passes to The Client as soon as The Artist has transferred the freight to a shipping company, provided the shipping company and method have been approved by the Client. The Client is solely responsible for any risks and losses exceeding the approved insurance coverage. Any delay due to customs withholding of the freight or the like does not imply The Artist's breach of the Agreement in any way and may postpone the schedule according to the provisions in section 3.6 and 3.7.
- 2.12 The Artist will ship a package to the Wauwatosa Public Works Garage located at 11100 W Walnut Road Wauwatosa, WI 53226 USA prior to phase 5, from a location in the US The package contains power tools etc. necessary to build The Work. The Client must provide all necessary information necessary to this shipment and assist in receiving the package. After phase 5 The Client must store the package in a safe location and assist The Artist in shipping it to a new location within a maximum period of 12 months after the installation date. All shipping costs will be at The Clients exclusive cost.
- 2.13 The Artist is considered to have finally delivered The Work when all the individual parts of The Work according to the approved concept drawing and subsequent adjustments have been assembled and installed and when The Artist has provided The Client/The Client's staff with a written standard instruction on the maintenance of The Work in a sustainable way in accordance with The Artist's work in general.
- 2.14 The Client has the right to refuse that The Work has been delivered contractually, if the result deviates significantly from the approved concept drawing and expected subsequent adjustments according to section 2.5 and later written agreed changes thereto as set out in section 2.6, and if The Client has given written notice thereof incl. justification to The Artist within 14 days of delivery. Otherwise, The Client cannot refuse approval.

- 2.15 If The Client rightfully refuses to approve The Work as contractually delivered, immediately The Artist must be provided 120 days from the refusal of approval, to remedy the Client's objection(s). In the event The Artist has not solved the situation for his own account and delivered contractually within the deadline, The Client has the right to consider The Work as not delivered contractually and withhold the last installment, cf. section 5.2.

3. Project phases, timeline, delays, force majeure

- 3.1 The production of The Work takes place in the following 5 project phases, see Appendix B:

1. Creation, design and development of The Work
2. Preparations by client. Lamppost collection and preparation takes place.
3. Construction of premade parts in workshop on a location to be decided by The Artist.
4. Shipping of preproduced parts to The Client's location.
5. Installation, preparation of maintenance plan, handover to The Client.

- 3.2 The Parties have agreed on the timeline for the project phases of section 3.1, stipulated in Appendix B. As set out in Appendix B the time limits that appears from the timeline is on the condition, that both Parties' have signed the Agreement no later than June 30th, 2024 and that all deadlines of The Client are met according to Appendix B.

- 3.3 For phases 1, 3, and 5 The Client is required to provide and pay all costs/fees in terms of professionally competent staff including, but not limited to gardeners, landscaping planners, maintenance crew, carpenters, engineers etc to cooperate with The Artist as set out in Appendix B. The response time of the staff regarding questions from The Artist is not to exceed more than 7 business days from The Artists request.

- 3.4 The Client shall make available, at The Client's exclusive cost, and no later than 3 days after The Artist's request, all relevant tools, lifts, etc. necessary to assemble and install The Work, as set out in Appendix B. Any materials left after the installation of The Work must be recycled or disposed of as sustainably as possible.

- 3.5 The Artist must be provided all the necessary information requested by The Artist for instance regarding The Client's location as well as The Client's staff must perform the relevant work requested by The Artist.

- 3.6 Delay of delivery of The Work according to Appendix B due to external factors, of which The Artist or its contractors have no control, for instance - but not limited to - due to extreme weather

conditions and epidemics and legal restrictions as well as specific authority recommendations in terms hereof, is never to be considered breach of the Agreement, if The Artist:

- A. As soon as possible gives notice by e-mail to The Client of the delay containing,
- B. explanation the reason for delay and,
- C. provides an estimated timeframe of the delay as well as a statement of The Artists approach to reduce the delay in the attempt to be able to make a contractual delivery within the agreed timeline.

3.7 In case of delay due to external factors, of which The Artist or its staff/contractors have no control, including all factors controlled by The Client or its staff/contractors, the timeline in Appendix B is changed accordingly.

3.8 In case of delays for more than 30 consecutive days of delay due to factors controlled by The Client and which prevents The Artist from completing The Work and delivering contractually, The Artist has the right to cancel the Agreement. However, this right depends on The Artist giving written notice (by e-mail) to The Client with notice of termination of the Agreement if the conditions are not settled within 10 business days from the date of the notice. The written notice can be given after 21 consecutive days' delay of the above character but not later than 40 days after the first day of delay. The same right for The Artist applies if delays of the above character occur periodically over a period of 60 days, resulting in The Artist being prevented completing his work and delivering contractually. In this case The Artist must give written notice (by e-mail) to The Client with notice of termination of the Agreement in the event of any further delays of this nature.

3.9 Neither Party shall be under any liability whatsoever to the other Party for failure or delay in the performance of any of its obligations by reason of force majeure, such as war, labor disputes, accidents, shortages of materials, acts of government authorities or any matters (whether of the same nature as the foregoing) which are beyond the control of the Party unable to perform its obligations. In case of failure or delay of more than 60 days due to force majeure, both Parties may cancel the Agreement. Force majeure can only be invoked if a Party informs the other Party in writing and without undue delay of the cause, expected extent and expected duration of the inability to fulfill its obligations. If one of the Parties, due to force majeure, is prevented from fulfilling its obligations under this Agreement, the other Party shall have the right to withhold its corresponding benefit but shall in addition have no claim against the Party.

4. Rights, credits, marketing etc.

4.1 The Client receives upon payment of the last installment cf. section 5.2 an exclusive license to The Work for 10 years.

- 4.2 The license is subject to the following: The Client has the right to exhibit The Work only at the agreed locations. The Client must not modify The Work in any way, without written approval by The Artist. The Client has a duty to maintain The Work according to The Artist's instructions, cf. section 2.10 and to bear all maintenance costs. The Client may not transfer the license to any third Party.

The maintenance of the license also requires that The Client does not perform, or allows others to perform, acts that infringe The Artist's exclusive rights to The Work, including The Work's title, nor the rights to The Artist's name and image.

- 4.3 After the end of the license period, the Parties may either agree on an extension of the license period or a new license. If the Parties, however, do not agree to an extension of the license period or a new license within 30 days after the end of the license period, then The Client is obliged to remove The Work at its own expense and strictly according to The Artist instructions. In that event it should be noted that it is important for The Artist that the materials are recycled as far as possible, and that removal takes place in a sustainable way. If The Artist grants a third Party a license for The Work or makes use of all or some of the parts of The Work for own purposes, The Artist will bear the cost for removal and subsequent storage. The Client is not entitled to take steps moving or removing The Work without having consulted The Artist in advance. The Client is in all respects helpful in arranging the relocation of The Work. Cleaning up or restoring of the area where The Work has been located is the sole responsibility of The Client. Except as provided by the Agreement, the Artist waives all other rights regarding disposition of The Work granted pursuant to the Visual Artists Rights Act of 1990.

- 4.4 The Client has the right to use photographs or other images of The Work on The Client's own platforms (website, social medias etc.) to inform about The Work and the specific context in which The Work is included, and for tourism promotion purposes. Otherwise, this right cannot be extended to use The Work as a part of a logo and landmark etc. for the Client, nor as part of advertising and promotion of the Client unrelated to tourism promotion, the Clients products, or services of third party / third party's products or services. At all times The Artist must be credited with the following: ["Title of The Work by artist Thomas Dambo"] in addition to - where possible - a link to the website www.thomasdambo.com. When using photographic images of The Work as part of Social Media, The Artist must be "tagged" where possible. The Client must "tag" The Artist's social media channel relevant to the given media of the post within the first 4 lines of text. The Artist's channels are the following:

Facebook: <https://www.facebook.com/thomasdambos>

Instagram: <https://www.instagram.com/thomasdambo/>

Youtube: <https://www.youtube.com/user/ThomasDambo>

Twitter: <https://twitter.com/thomasdambo>

The Artist has at any time the right, upon request, to approve the Client's use of photographs of The Work as well as the use of the title of The Work and Thomas Dambo's name, regardless of whether the use is made by The Client or by a third Party connected to The Client in any way whatsoever.

The Client does not have the right to prepare, produce, or sell any merchandise containing The Work, the title of The Work or other references to The Work and/or Thomas Dambo. The rights to merchandising are not covered by the present Agreement and agreement on this must be entered into between the Parties separately and in writing and based on The Artist's standard terms for merchandising.

- 4.5 The Artist agrees to be available for interviews and photo sessions for press coverage to a reasonable extent and otherwise by further agreement, either online or in person.
- 4.6 Any intellectual property rights to The Work, incl. copyright, the title of The Work and rights to the design, belong exclusively to The Artist. The same applies to sketches, molds, and drafts etc. of any kind produced by The Artist, whether used in the final work or not. Any parts produced for The Work, regardless of used in the final Work, belong to The Artist. There is no transfer of any intellectual property rights from The Artist to The Client under this Agreement.
- 4.7 The Client furthermore acknowledges that all rights, conceptual rights, copyrights, design rights, trademark rights as other rights to the prospectus, ideas, and other elements presented to the Client or which appear from The Artist's public profiles on the Internet, or which can be experienced as published works around the world, exclusively belong to The Artist.
- 4.8 The Client agrees that any of The Client's involvement (financially or otherwise) of implementation, execution, creation etc. of sculptures and the like according to the same principles, using the same materials with the same type of expression, etc. (not exhaustive examples) which is in line with The Artist's work, ideas and expressions and which may even give the impression that The Artist is participating, approving or involved, inevitably parasitizes on The Artist's efforts and reputation and may be deemed to be plagiarism/ unauthorized copying of The Artist's concept and copyrights. Such violations of The Artist's rights may provide to the Artist remedies such as injunction or compensation to The Artist. Furthermore, Client's involvement in such activities may constitute material breach of this Agreement.
- 4.9 The Artist is prevented from producing a work identical to The Work delivered to The Client. However, The Artist is not prevented from producing Works under the theme "Trolls" with the same type of troll as delivered to The Client. Furthermore, The Artist is not prevented from taking photographs, video//live footage etc. of The Work and to use these on its websites, in all social media and in any material presented to future customers. However, in no event The Artists may display The Work together with other art works from The Client's location or The Client's private

quarters etc. without prior permission from The Client. Finally, The Artist is not prevented from using identical Parts (for instance feet or head) of The Work integrated in, or otherwise connected to, other works by The Artist, if such other works are not identical or have the same overall expression as The Work.

4.10 In case of third-Party violation of the rights retained by the Artist, in this section, The Artist has the right to all available remedies.

4.11 Failure to comply with this section constitutes a material breach of the Agreement.

5. Contract sum, payment, and other expenses.

5.1 The contract sum for The Work is agreed to the total amount 320.000 EURO to be paid to The Artist in the following 5 installments upon reception of invoice according to the terms stated in this:

1: 30% Paid by The Client upon the signing of this Agreement.

2: 20% no later than ten (10) calendar days after delivery of, and approval of the Final Concept of The Work.

3: 20 % no later than ten (10) calendar days after delivery of pre produced parts at the Client's premises.

4: 20% no later than ten (10) calendar days after the beginning of Phase 5.

5: 10% no later than ten (10) calendar days after Final Delivery of The Work, as provided hereunder.

In no event is The Client required to claim repayment of amounts already paid to The Artist. In addition to the contract sum, The Client pays for transport of any part of Work to The Client location as well as proper insurance, see for instance section 6.2.

5.2 In addition to the contract sum and other costs mentioned in this Agreement The Client provides and pays for proper accommodation for The Artist and his staff/contractors throughout these people's stay at or nearby the location during phase 1-5 and possibly prior to phase 1. Appendix

B further describes The Artist's requirements for accommodation, catering and other conditions regarding The Artist's stay in connection with the creation of The Work.

5.3 Furthermore, The Artist may request reimbursement for pre-approved expenses associated with travel and accommodations for members of The Artist's team, upon delivery of an invoice and receipts, plus per diem (as set forth below), and the details of which shall be as set forth on Appendix B. The Client shall reimburse The Artist for travel expenses and CO2 Compensation, in connection with bringing up to 7 additional people from Denmark or other locations to the location of installation. In addition to those accommodations described under Appendix B, each member of The Artist's team shall be provided with a per diem of 40 EURO per person per day for meals.

6. Warranties and liability

6.1 The Artist guarantees that The Work is created and produced by The Artist and that it does not violate any third-Party rights.

6.2 Both Parties have taken out proper insurance against injuries to third Parties and third Parties' property. The Artist has taken out insurance through the Danish insurance company TRYG. The Artist's limitation of liability equals the insurance coverage of DKK 15,000,000. Equivalent to Approx. EURO 2,016,458 depending on the current exchange rate. Both parties are required to provide the other party with a certificate evidencing proof no later than November 1st, 2024.

6.3 The Artist shall not be liable in respect of The Client or The Client's employees in the event they suffer injuries and loss during their work with The Work unless such injuries and loss arises directly from The Artist's negligence, misconduct, or intentional acts.

6.4 The Artist does not guarantee The Work's durability and The Artist cannot be held liable for damages as a result of wear and tear, etc. of any sort. The same applies to planting etc. which surrounds or is part of The Work.

6.5 The Client is solely liable for any damage to The Work, The Artist's equipment as well as The Artist himself, incl. his employees and contractors, incurred in connection with the installation of The Work on The Client's location unless such damage arises directly from The Artist's negligence, misconduct, or intentional acts. Regarding force majeure, see section 3.10.

6.6 Neither Party shall be liable to the other Party for any *indirect* loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Party, its employees or agents or otherwise) which arise out of a breach of or in connection with this Agreement, whether or not the Party has been advised of

the possibility of those damages and whether or not any or all of those damages are attributable to a Party's acts or omissions.

- 6.7 It is essential to point out that The Work is a *work of art*, not an installation designed for, for instance, playing or other physical activities. Similarly, it should be emphasized that The Work to some extent is produced by materials that are perishable and which must be constantly maintained by The Client according to The Artists instructions.
- 6.8 The Artist is at no time liable for damages or losses of any kind inflicted on The Client or on a third Party, in connection with installation of The Work, beyond those covered by insurance as described above. This applies any kind of damage to the surroundings as well as to The Work itself. The Client guarantees that The Artist will be reimbursed for claims as a result of such damages and losses. The Client will defend or pay the costs of The Artist regarding any claims for such payment including costs for handling such claims, incl. all legal and similar costs.
- 6.9 Depending on The Artist's choice, major repairs of The Work due to for instance wear and tear incl. damage from wind and weather, or possible vandalism, must be performed by The Artist or his employees at The Client's sole expense. If the location is outside Denmark, the expenses cover transport, accommodation, and meals, assisting workers etc. on the same terms as for the construction of The Work, see appendix B. Regardless of the location in question, The Artist receives 22,000 DKK (+ 2% in inflation difference per year from signing of this agreement)pr. day he contributes to the repairs. If it is not possible for The Artist to be present at the location to supervise the repair, instead The Artist can choose to be a consultant (online) on all repairs against an hourly payment of 2,500 DKK. In either event The Artists has the right to approve all steps taken in connection with the repairs incl. the type of personnel hired for this purpose. All amounts to The Artist according to this section are paid against invoice from The Artist with payment terms as stated in the invoice.

7. Termination, assignment, breach

- 7.1 This Agreement cannot be terminated by either Party except where expressly stipulated in the Agreement. If the Agreement is fully or partially terminated or lapses for whatever reason, any provisions relating to rights, liability and reimbursement are maintained.
- 7.2 Neither Party has the rights to assign their rights or obligations under the Agreement to a third Party, however, The Artist is entitled to transfer his rights to a group affiliated company.

8. Confidentiality

- 8.1 The Parties understand that the Client and its business Activities are subject to the provisions of the Wisconsin Public Records Law, and this Agreement and the non-confidential materials

associated with its performance and operation may be subject to public release as required by that law.

9. Law and venue additional terms etc.

- 9.1 In the event of any inconsistency between the terms of the Agreement and the Appendixes, the terms of the Agreement shall prevail.
- 9.2 With assistance from The Client, The Artist shall be responsible for applying for and securing all required visas and/or work permits in relation to the work required by this Agreement. Any costs related to this process, are to be covered by The Client pursuant to the billing and invoicing practices described in the Agreement.
- 9.3 For the avoidance of doubt, it is clarified that obtaining building permit - if required - is the Client's sole responsibility and must be in place, well in advance of The Artist commencing his work on the location.
- 9.4 The Agreement must be signed to be binding on both Parties. The Parties agree that such signatures may be electronic signatures, which shall be as fully binding as though they were signed in person. The Agreement and Appendixes constitute the Parties' overall Agreement, and draft Agreements, correspondence, minutes, and the like prior to the signing of the Agreement may not be invoked by any of the Parties. Changes to the terms of the Agreement must be drafted in writing and accepted by both Parties.
- 1.1 The parties agree that any disputes arising under this Agreement shall be resolved by arbitration under the LCIA (London Court of International Arbitration) Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London. The language to be used in the arbitral proceedings shall be English. The governing law of the contract shall be the substantive law of England, using CISG (International Sale of Goods (CISG) & Related Transactions).

Date: _____

Date: _____

Thomas Winther Pedersen, Artist

Melissa Cantarero Weiss,
Deputy City Administrator, City of Wauwatosa

Date: _____

CEO, Mimi Larsson Drewsen

Appendixes:

- A: Troll examples
- B: Timeline for the project phases as well as staff, necessary preparations and equipment delivered by The Client. Requirements for accommodation.