

## AGREEMENT FOR COMMISSION OF PUBLIC ARTWORK

THIS AGREEMENT, is entered into this \_\_\_\_ day of \_\_\_\_\_, 2023, by and between [the City of Fitchburg] (hereinafter the “City”), acting by and through the Department of Community Development and Planning with offices at 718 Main Street, and [artist’s name or artist’s name d.b.a. business name] (hereinafter the “Artist”) with offices at \_\_\_\_\_.

WHEREAS, the City has implemented a Downtown Temporary Art Banner Project pursuant to the New England Foundation for the Arts’ Making It Public Program by allocating Ten Thousand Dollars for the establishment and display of artwork in public places; and

WHEREAS, authority lies with the City to make payments for the design execution, fabrication, transportation, and/or installation of artworks, including payments for the support of an artist design, execution and/or placement of Art; and

WHEREAS, the Artist is a recognized artist whose work and reputation make the Artist uniquely qualified to create the Artwork; and

WHEREAS, the Artist was selected by the City through a Call for Art adopted by the City to design, fabricate and install the Artwork, as described in Exhibit 1 in a public space located at 675 Main Street (hereinafter the “Site”); and

WHEREAS, the Artist and City wish to undertake the obligations expressed herein;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

### Article 1 Scope of Services

#### 1.1 Artist’s Obligations

- a. The Artist shall perform all services and furnish all supplies, material and/or equipment as necessary for the design and secure a professional vendor for the fabrication of the Artwork at the Site in accordance with the specified schedule. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- b. The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the City as set forth in this Agreement. To ensure that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site, the Artist’s proposal shall be reviewed and approved by the City or Commission, other applicable city departments such as Public Works or Parking and Traffic and, where appropriate, the project architect to ensure compliance with these objectives.
- c. The Artist shall prepare the design concept described in Section 1.3 of this Agreement.

- Artist shall attend design and fabrication coordination meetings with City, general contractor, architect and other parties, as appropriate, to communicate about the Artwork and to ensure appropriate integration and/or installation of the Artwork.
- d. The Artist shall ensure the complete the fabrication of the Artwork by the scheduled installation date as provided in Section 1.4(b)(i) of this Agreement.
  - e. The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation and maintenance of the Artwork at the Site.
  - f. The Artist shall arrange the transportation and installation of the Artwork in consultation with the City. If the Artist does not install the Artwork himself or herself, Artist shall supervise and approve the installation.
  - g. Artist shall provide required insurance in amounts and limits specified in Article 6 and Exhibit 4.
  - h. Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
  - i. Artist shall provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep involved.
  - j. Artist shall be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.

## **1.2 City's Obligations**

- a. The City shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- b. The City shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist in order to perform.
- c. The City shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and shall explain any limitations imposed by such laws and/or regulations to the Artist.
- d. The City shall prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement. The City shall be responsible for [all expenses, labor and equipment (specify if not all)] to prepare the Site for the timely transportation and installation of the Artwork. The City shall complete the Site preparations by the scheduled installation date as provided in Section 1.4(b)(i) of this Agreement or shall contact the Artist in writing informing him or her of any delays.
- e. The City shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the City's control.
- f. The City shall be responsible for leading the Artist through the required review process. The City shall be responsible for organizing and scheduling meetings with review entities, [listed here, for example, Art Commission, community boards, etc.] and for providing the Artist written instructions for the materials required at such meetings.

### **1.3 Design**

- a. Concept/Schematic
  - i. The Artist submitted a design concept/schematic (the “Design”) which was selected and approved by the City. The Design and Budget shall be attached to this Agreement as Exhibit 1 and Exhibit 2 respectively.
- b. Approval
  - i. Within 7 days after Artist Selection, the City shall notify the Artist if it requires any revisions to the Design in order to comply with any applicable laws, ordinances and/or regulations or for other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the Design.
  - ii. Once the City has approved the Design, the City will schedule the presentation of the Design to the required approval bodies Mayor’s Office, Main Street Studios, Fitchburg State University. If the approval bodies require any revisions to the Design, the City will submit those in writing to the Artist. The Artist will have 14 days to comply with such revisions. If agreed upon by both parties, such revisions will become a part of the Design.
- c. Final Documents
  - i. The Artist shall prepare a final design in a form suitable for manufacturing by the selected banner manufacture.

### **1.4 Budget, Payment Schedule, Construction Schedule and Progress Reports**

- a. Budget
  - i. The City has been awarded a total of Ten Thousand Dollars from the New England Foundation for the Arts, through the Making it Public initiative. The City agrees to compensate the Artist a total of Ten Thousand Dollars, including the costs of manufacturing and installing the final temporary art installation.
  - ii. The Artist agrees to perform all work described in the scope of for not more than the agreed upon Budget.
  - iii. The Budget shall be attached to this Agreement as Exhibit 2.
  - iv. If the Artist incurs costs in excess of the amount listed in the budget, the Artist shall pay such excess from the Artist’s own funds unless the Artist previously obtained approval for such costs from the City (or such costs were the result of actions or inaction of the City).
- b. Schedule
  - i. The Artist shall notify the City of the tentative schedule for the fabrication and

installation of the Artwork, including a schedule for the submission of progress reports and inspections if any. The Schedule may be amended by written agreement.

ii. A schedule for the payment of budget installments is attached to this Agreement as Exhibit 3.

## **1.5 Fabrication Stage**

- a. The Artist shall have fabricated and installed by a bona fide Sign Manufacturer, the Artwork in substantial conformity with the Design. The Artist may not deviate from the approved design without written approval of the City.
- b. The City shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice.
- c. If the City, upon review of the Artwork, determines that the Artwork does not conform to the Design or Revised Design, the City reserves the right to notify the Artist in writing of the deficiencies and that the City intends to withhold the next budget installment.
- d. The Artist will promptly cure the City's objections and will notify the City in writing of completion of the cure. The City shall promptly review the Artwork, and upon approval shall release the next budget installment. If the Artist disputes the City's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to the City within [ ] days of the City's prior notification to the contrary. The City shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this Agreement shall remain with the City.
- e. The Artist shall notify the City in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site.
- f. The City shall inspect the Artwork within 10 days after receiving notification pursuant to paragraph (f), prior to installation, to determine that the Artwork conforms with the Design and to give final approval of the Artwork. The City shall not unreasonably withhold final approval of the fabricated Artwork. In the event that the City does withhold final approval, the City shall submit the reasons for such disapproval in writing within 15 days of examining the fabricated Artwork. The Artist shall then have 15 days from the date of the City's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the Artist has willfully and substantially deviated from the Design without the prior approval of the City. The Artist shall then be held responsible for any expenses incurred in correcting such deviation.
- g. The City shall promptly notify the Artist of any delays impacting installation of the Artwork. Any additional storage fees incurred as a result of such delays are the responsibility of the City. The Artist shall be required to inspect the Site prior to the transportation and installation of the Artwork and shall notify the City of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction.

## **1.6 Changes to Design**

- a. Prior to the execution of any change in the approved design, Artist shall present proposed changes in writing to the City for further review and approval. The Artist must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved design. Such

notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of the Artwork or the concept of the Artwork as represented in the Design.

- b. If the City approves the changes, the City shall promptly notify the Artist in writing. The City will also make the required presentations to the approval bodies: The Mayor, Main Street Studios, and Fitchburg State University.
- c. If the City disapproves of the changes, the City shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the Design.
- d. The Artist's fee shall be equitably adjusted for any increase or decrease in the Artist's cost of, or time required for, performance of any services under this Agreement as a result of revisions made to the Design under Section 1.6(a). Any claim of the Artist for adjustment under this paragraph must be asserted in writing within 10 days after the date of the revision by the Artist.

### **1.7 Installation**

- a. Upon the City's final approval of the fabricated Artwork, as being in conformity with the Design, the Artist shall deliver [and install] the completed Artwork to the Site in accordance with the schedule provided for in Section 1.4(b). Transportation fees shall be paid by the Artist, if applicable.
- b. The Artist will coordinate with a bona fide sign and banner manufacture to fabricate and install the final approved design.
- c. The Artist closely with the City to ascertain that the Site is prepared to receive the Artwork. Artist must notify City of any adverse conditions at the Site that would effect or impede the installation of the Artwork. The Artist is responsible for timely installation of the Artwork. The Artist will confer and coordinate with the City to ensure timely coordination with the City's banner manufacturer. Artist may not install the Artwork until authorized to do so by the City.
- d. The Artist shall be present to supervise the installation of the Artwork.
- e. Upon written acceptance of the installation, the Artwork shall be deemed to be in the custody of the City for purposes of Article 4 and Article 6 of this Agreement.]
- f. Upon installation of the Artwork, the Artist shall provide the City with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. Artist must ensure that all maintenance requirements will be reasonable in terms of time and expense. The City is responsible for the proper care and maintenance of the Artwork.

### **1.8 Approval and Acceptance**

- a. The Artist shall notify the City in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the Design.
- b. The City shall promptly notify the Artist of its final acceptance of the Artwork within 10 days after the Artist submitted written notice pursuant to paragraph (a) above. The effective date of final acceptance shall be the date the City submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the City acknowledges completion of the Artwork in substantial conformity with the Design, and that the City confirms that all

- services as required of both Parties by this Agreement prior to paragraph (c) of this section have been completed. Title to the Artwork passes upon final acceptance and final payment.
- c. If the City disputes that all the services have been performed, the City shall notify the Artist in writing of those services the Artist has failed to perform within 15 days after the Artist submitted written notice pursuant to paragraph (a) above. The Artist shall promptly perform those services indicated by the City.
  - d. If the Artist disputes the City's determination that not all services have been performed, the Artist shall submit reasons in writing to the City within 15 days of the City's prior notification to the contrary. The City shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the City.
  - e. Upon the resolution of any disputes that arise under paragraphs (c) and (d) of this section, the City shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (b).
  - f. After final acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by the City and the Artist to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork.
    - i. During such public presentations by the Artist, the Artist shall acknowledge the City's role in funding the Artwork.
    - ii. The City shall be solely responsible for coordinating public information materials and activities related to public presentations.

## Article 2 Taxes

Any state or federal sales, use or excise taxes, or similar charges relating to the services and materials under this Agreement shall be paid by the Artist in a timely fashion. The City shall report payments made to the Artist annually to the Internal Revenue Department in a 1099 statement.

## Article 3 Term of Agreement

- a. Duration

This Agreement shall be effective on the date that this GRANT AGREEMENT has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by the City under Section 1.8(b), or submission of final payment to the Artist by the City under Exhibit 3, whichever is later. Extension of time of performance hereunder may be granted upon the request of one Party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall be in writing, signed by both parties, and attached to the schedule under section 1.4(b)(i). (which is attached as Exhibit 2?)
- b. Force Majeure

The City shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of GRANT AGREEMENT, provided that

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such obligations shall be suspended only for the duration of such conditions.

#### **Article 4 Risk of Loss**

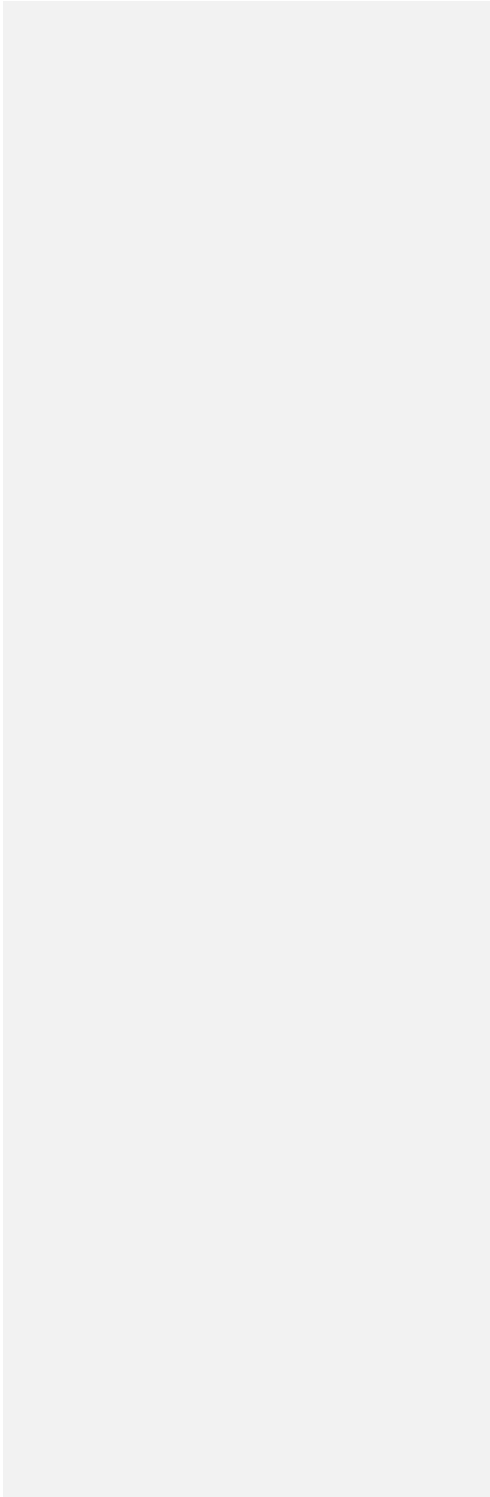
The Artist shall bear the risk of loss or damage to the Artwork until the City's final acceptance of the Artwork under Section 1.8(b). The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The City shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time, the partially or wholly completed Artwork is in the custody, control or supervision of the City or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

#### **Article 5 Artist's Representations and Warranties**

##### **5.1 Warranties of Title**

The Artist represents and warrants that:

- a) the Artwork is solely the result of the artistic effort of the Artist;
- b) except as otherwise disclosed in writing to the City, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c) the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d) the Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork



- or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- e) the Artwork is free and clear of any liens from any source whatsoever.
  - f) all Artwork created or performed by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others, shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party.
  - g) the Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement.
  - h) all services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence.
  - i) these representations and warranties shall survive the termination or other extinction of this Agreement.

## **5.2 Warranties of Quality and Condition**

- a. The Artist represents and warrants that all work will be performed in accordance with professional “workmanlike” standards and free from defective or inferior materials and workmanship (including any defects consisting of “inherent vice,” or qualities that cause or accelerate deterioration of the Artwork) for [one] year after the date of final acceptance by the City under Section 1.8(b).
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.7(f).
- d. If within [one] year the City observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the Artist shall, at the request of the City, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the City. The City shall give notice to the Artist of such breach with reasonable promptness.
- e. If after [one] year the City observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the City shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist’s lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the City may seek the services of a qualified restorative conservator and maintenance expert.
- f. If within [one] year the City observes a breach of warranty described in this Section 5.2 that is not curable by the Artist, the Artist is responsible for reimbursing the City for damages, expenses and loss incurred by the City as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the City accepted that it may occur, it shall not be deemed a breach for purposes of this Section 5.2 of this Agreement.]
- g. Acceptable Standard of Display. Artist represents and warrants that:
  - i. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
  - ii. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.
  - iii. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust,



fracturing, staining, chipping, tearing, abrading and peeling.

iv. **Manufacturer's Warranties.** To the extent the Artwork incorporates products covered by a manufacturer's warranty, Artist shall provide copies of such warranties to the City.

The foregoing warranties are conditional, and shall be voided by the failure of the City to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the City fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired.

## **Article 6 Insurance**

### **6.1 General**

- a. The Artist acknowledges that until final acceptance of the Artwork by the City under Section 1.8(b), any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs.
- b. Terms for the procurement and duration of insurance are provided in Exhibit 4.
- c. Required insurance policies are described in Exhibit 4.

### **6.2 Indemnity**

Artist shall indemnify, protect, defend and hold harmless the City and its subdivisions, officials, employees and agents (each a "Covered Person") from and against all liabilities, obligations, losses, damages, judgments, costs or expenses (including legal fees and costs of investigation) ("collectively "Losses") arising from, in connection with or caused by: (a) any personal injury or property damage caused, directly or indirectly, by any act or omission of Artist; or (b) any infringement of patent, copyright, trademark, trade secret or other proprietary right caused by Artist. Notwithstanding the foregoing, Artist shall have no obligation under this Section with respect to any Loss that is caused solely by the active negligence or willful misconduct of the Covered Party and is not contributed to by any act or omission (including any failure to perform any duty imposed by law) by Artist. Artist acknowledges and agrees that its obligation to defend in this Section: (i) is an immediate obligation, independent of its other obligations hereunder; (ii) applies to any Loss which actually or potentially falls within the scope of this Section, regardless of whether the applicable allegations are or may be groundless, false or fraudulent; and (iii) arises at and continues after the time the Loss is tendered to Artist.

## **Article 7 Ownership and Intellectual Property Rights**

### **7.1 Title**

Title to the Artwork shall pass to the City upon the City's written final acceptance and

payment for the Artwork pursuant to Section 1 and Exhibit 5. Artist shall provide City with a Transfer of Title in substantially the form attached hereto as Exhibit 5.

## **7.2 Ownership of Documents**

One set of presentation materials prepared and submitted under this Agreement shall be retained by the City for possible exhibition and to hold for permanent safekeeping.

## **7.3 Copyright Ownership**

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright.

## **7.4 Reproduction Rights**

- a. In view of the intention that the final Artwork shall be unique, the Artist shall not make any additional exact duplicate [three]-dimensional reproductions of the final Artwork, nor shall the Artist grant permission to others to do so except with the written permission of the City. However, nothing shall prevent the Artist from creating future Artworks in the Artist's manner and style of artistic expression.
- b. The Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.
- c. All reproductions by the City shall contain a credit to the Artist and a copyright notice in substantially the following form: Copyright © [Artist's name, date of publication].
- d. The Artist shall use the Artist's best efforts in any public showing or resume use of reproductions to give acknowledgment to the City in substantially the following form: "an original Artwork commissioned by and in the public art collection of the City."
- e. The Artist shall, at the Artist's expense, cause to be registered with the United States Register of Copyrights, a copyright in the Artwork in the Artist's name.
- f. If the City wishes to make reproductions of the Artwork for commercial purposes, including, but not limited to, tee shirts, post cards and posters, the Parties shall execute a separate agreement to address the terms of the license granted by the Artist and the royalty the Artist shall receive.
- g. Third Party Infringement. The City is not responsible for any third party infringement of Artist's copyright and not responsible for protecting the intellectual property rights of Artist.

## **Article 8 Artist's Rights**

### **8.1 General**

- a. The Artist retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- b. The City agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the Artist.
- c. If any alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork in addition to any remedies the Artist may have in law or equity under

this GRANT AGREEMENT. Upon written request, the City shall remove the identification plaque and all attributive references to the Artist at its own expense within 15 days of receipt of the notice. No provision of this Agreement shall obligate the City to alter or remove any such attributive reference printed or published prior to the City's receipt of such notice. The Artist may take such other action as the Artist may choose in order to disavow the Artwork.

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## 8.2 Alterations of Site or Removal of Artwork

- a. The City shall notify the Artist of any proposed significant alteration of the Site that would affect the intended character and appearance of the Artwork. The City shall make a good faith effort to consult with the Artist in the planning and execution of any such alteration. The City shall make a reasonable effort to maintain the integrity of the Artwork.
- b. The City agrees not to arbitrarily remove or relocate the Artwork without first making a good faith effort to contact the Artist. The Artist shall not unreasonably withhold approval of removal or relocation of the Artwork. Should the Artist agree to such removal or relocation, the Artist shall provide the City with written handling instructions. In the event that the Artist is deceased or unable to otherwise give the Artist's consent, the current owner of the copyright of the Artwork shall not unreasonably withhold permission, keeping in mind the intentions of the Artist at the time of commission and fabrication.
- c. The Artist agrees that this work is temporary in nature and may be removed 18 months from installation date.

## Article 9 Permanent Record

The City shall maintain on permanent file a record of this agreement and of the location and disposition of the Artwork.

## Article 10 Artist as an Independent Contractor

The Artist agrees to perform all Artwork under this Agreement as an independent contractor and not as an agent or employee of the City. The Artist acknowledges and agrees that the Artist shall not hold himself or herself out as an authorized agent of the City with the power to bind in any manner.

The Artist shall provide the City with the Artist's Tax Identification Number and any proof of such number as requested by the City.

## Article 11 Nondiscrimination

The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

## Article 12 Assignment of Artwork

The Artwork and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the City. The City shall have the right to assign or transfer any and all of the City's rights and obligations under this Agreement,

subject to the Artist's consent, if ownership of the Site is transferred; if the Artist refuses to give consent, this Agreement shall terminate.

### Article 13 Termination

- a. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature; war or warlike operations; superior governmental regulation or control, public emergency or strike or other labor disturbance. Notice of termination of this Agreement shall be given to the non-terminating Party in writing not less than 15 days prior to the effective date of termination.
- b. The City may terminate this Agreement without cause upon 15 days written notice to the Artist. The City shall pay the Artist for services performed and commitments made prior to the date of termination, consistent with the schedule of payments set forth in Exhibit 3 of this Agreement. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date under Exhibit 3 with allowance for lost opportunities, unless the parties come to a settlement otherwise.
- c. If either Party to this agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other Party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting Party of its intent to terminate specifying the grounds for termination. The defaulting Party shall have 15 days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate.
- d. If the Artist defaults [for cause other than death or incapacitation], the Artist shall return to the City all funds provided by the City in excess of expenses already incurred. The Artist shall provide an accounting. All finished and unfinished drawings, sketches, photographs and other Artwork products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. **【The City [shall] retain the right to have the Artwork completed, fabricated, executed, delivered and installed.】** However, the Artist shall retain the copyright in the Artwork and all rights under Article 7 and Article 8.
- e. If the City defaults, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. The City shall pay the Artist for services performed and commitments made prior to the date of termination, consistent with the schedule of payments set forth in Exhibit 3. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date with reasonable allowance for lost opportunities. The Artist shall retain possession and title to the [studies, drawings, designs, maquettes and models] already prepared and submitted or prepared for submission to the City by the Artist under this Agreement prior to the date of termination.
- f. Upon notice of termination, the Artist and his subcontractors shall cease all services affected.

### Article 14 Death or Incapacity

If the Artist becomes unable to complete this Agreement due to death or incapacitation, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for the purpose of Article 13. However, nothing in this Article shall obligate the City to accept the Artwork.

- a. In the event of incapacity, the Artist shall assign the Artist's obligations and services under this GRANT AGREEMENT to another artist provided that in the City's sole discretion, approves of the new artist. Alternatively, the City may elect to terminate this Agreement. The Artist shall retain all rights under Article 7 and Article 8. The Artwork and any reproductions thereof shall contain a

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credit to the Artist and a copyright notice in substantially the following form: Copyright © [Artist's name, date of publication].

- b. In the event of death, this Agreement shall terminate effective the date of death. The Artist's heirs shall retain all rights under Article 6 and Article 7. [The Artist's executor shall deliver to the City the Artwork in whatever form or degree of completion it may be at the time. Title to the Artwork shall then transfer to the City. However, the Artwork shall not be represented to be the completed Artwork of the Artist unless the City is otherwise directed by the Artist's estate.]

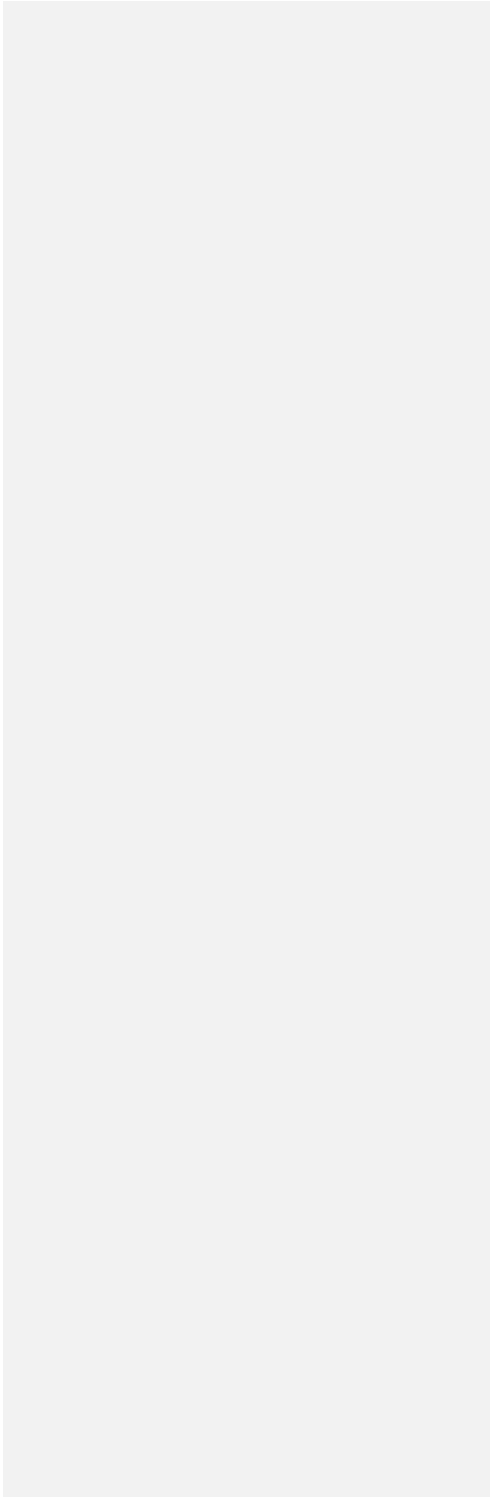
**Article 15 Notices and Documents**

Notices required under this Agreement shall be delivered personally or through the [registered or certified mail, return receipt requested] mail, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party:

For the City:                      City of Fitchburg  
   718 Main St.  
   Suite 308  
   Fitchburg MA, 01420

For the Artist:                    [Artist]  
   [mailing address]  
   [City, State, Zip]

Notice shall be deemed effective on the date personally delivered or, if mailed, [three (3) days] after the postmarked date.



**Article 16 Waiver**

The Parties agree that a waiver of any breach of violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term of condition.

**Article 17 Audit**

The City shall maintain records of all documents, notices, checks, and other records required or produced under this Agreement or related thereto. The Artist agrees to the maintenance of such records for archival purposes. Such records shall be made available for inspection or audit, at any time during regular business hours, upon written request by [the City Attorney, City Auditor, City Manager, or a designated representative of any of these officers]. Copies of such documents shall be provided to the City for inspection when it is practical to do so. Access to such records and documents shall also be granted to any Party authorized by the Artist, the Artist’s representatives, or the Artist’s successors-in-interest. The City will comply with any open records law applicable to these records.

**Article 18 Conflict of Interest**

The Artist and the City shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

**Article 19 Arbitration**

If, during the creation of the Artwork, its installation and subsequent existence, either Party breaches this Agreement, each Party agrees to submit to arbitration upon the request of the other provided that the breach is not cured within a reasonable time under paragraph (c) of Article 13.

If an ambiguity arises regarding this Agreement upon which the parties cannot agree or a dispute arises as to the completion of a provision, the Parties shall submit to [arbitration] [mediation].

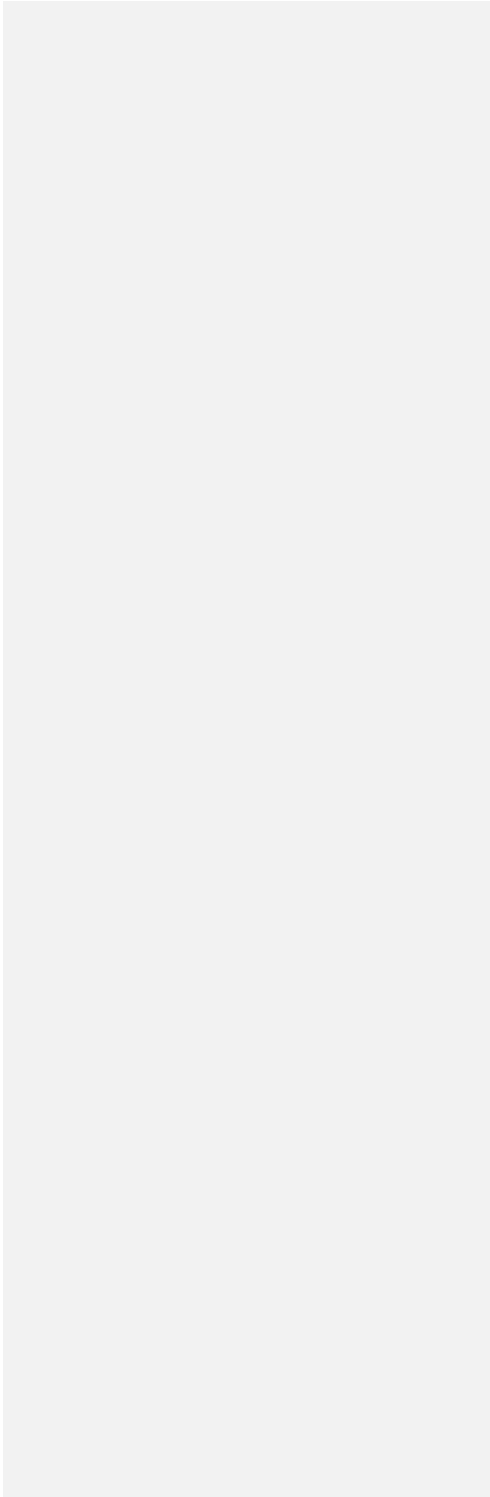
Each Party agrees to be responsible for its own attorney’s fees except as otherwise provided by statute.

**Article 20 Amendments**

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

**Article 21 Conflicts of Law**

If any term, covenant, condition or provision of this Agreement, or the application thereof to any



person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel or mediation procedure to be in conflict with the laws, rules, and/or regulations of the United States or the State of Massachusetts, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

## Article 22 Choice of Law

This GRANT AGREEMENT shall be governed by the laws of the State of Massachusetts both as to interpretation and performance.

Commented [KS4]: Use grant agreement

## Article 23 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements, and conditions between the parties. No verbal agreements or conversations between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligations.

For City:

Liz Murphy

Executive Director

\_\_\_\_\_  
Date

For Artist:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**Exhibit 1**

**Description of the Artwork**

Fitchburg is seeking to expand its identity as an arts and culture destination within the North Central MA region. A place for creatives and residents to learn, connect, engage and create economic opportunities through arts and culture. This design is temporary in nature and should last for 18 months.

Design will depict the variety and diversity of creativity, art, and artists in our Fitchburg community. Installation should also invite the public to think about what types of art they would like to see in their community. The temporary art created shall be in eight panels, each three feet wide by nine feet long, (3' x 9'), be installed on eight of the sixteen vertical brick columns of the façade and must be removable after 18 months without damage or alteration of the existing building. The selected artist will work with a local banner company identified by the City to manufacture and install the eight banners based on the above specifications. Banners shall be installed using masonry anchors attached in the mortar between bricks.

Adding an interactive element such as a QR code linked to a survey or a more analog method inviting residents to share what art they would like to see is encouraged, but not required.

**Exhibit 2**

**Artwork Budget**

**ARTIST FEE** \$10,000 less the cost of manufacture, installation and removal.

**FABRICATION AND INSTALLATION COSTS**

**PERMITS AND TAXES**

Included in cost of installation

**TOTAL**

\$10,000



**Exhibit 3**

**Payment Schedule**

**Payment Schedule**

The City shall pay the Artist a fixed fee of Ten Thousand Dollars, (\$10,000), which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

**Deliverable 1:** Signed agreement and initial design **Payment:** \$500  
**Due Date:** March 31, 2023

**Deliverable 2:** Finalized design.  
Draft Fabrication and Timeline  
Approval from Officials, City, Fitchburg Cultural Council and FSU  
**Payment:** \$2,500  
**Due Date:** April 21, 2023

**Deliverable 3:** Certificate of Insurance identifying artist and City as the insured. Confirmation of fabrication date and date of installation.  
**Payment:** \$500 + fabrication costs  
**Due Date:** April 30, 2023

**Deliverables 4:** Confirmation of permit to install by installation company (Building Department)  
**Payment:** \$1,000 + installation cost  
**Due Date:** May 15, 2023

**Deliverable 5: Installation and Inspection**  
Artwork fabricated according to design  
Site(s) prepared for art  
Successful Installation  
Sign off from City Authorities, (inspection of proper installation)  
**Payment:** balance of \$10,000 less \$500  
**Due Date:** June 1, 2023

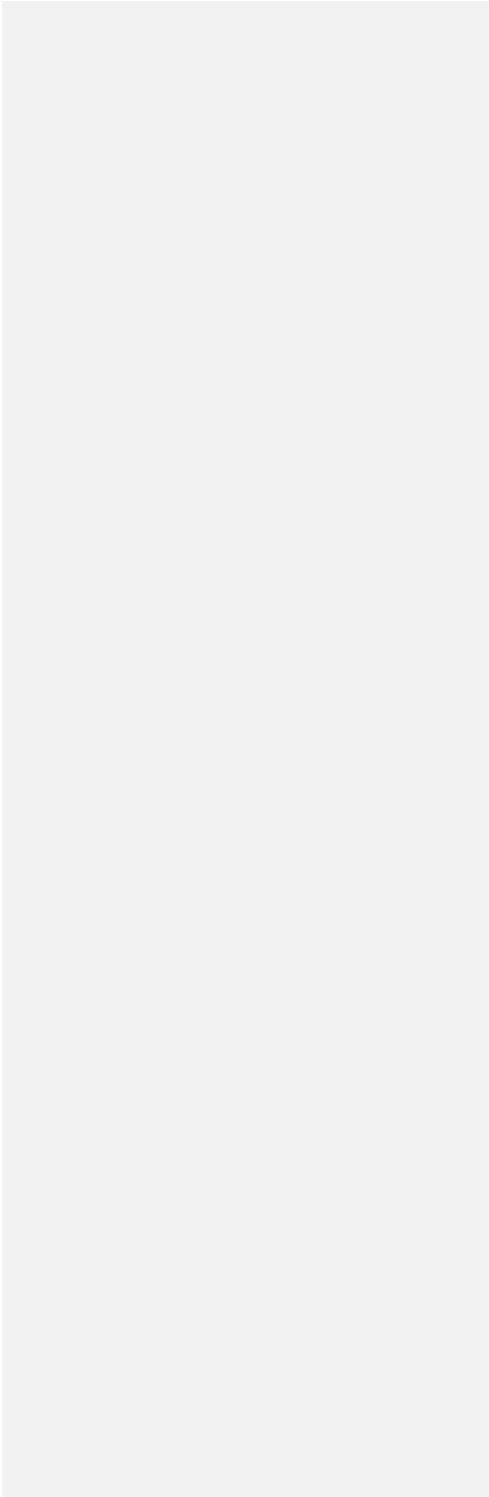
**Deliverable 6: Maintenance and De-Installation**  
Removal of Banners after 18 months  
**Payment:** \$500 –or cost of removal  
**Due Date:** June 15, 2023

*Sample Payment Schedule:*

<u>Payment</u>	<u>Amount</u>	<u>Percentage of Total</u>
1	\$500	5%
2	\$2,500	30%
3	\$500+fabrica	%

4	\$1,000 + install	
5	\$balance less \$500	%
6	\$500	5%

**Total Amount Not To Exceed \$10,000 100%**



**Exhibit 4**

**Insurance**

**Insurance – General**

- a. The Artist shall procure and maintain for the duration of this Agreement, at the Artist's expense, insurance in the kinds and amounts as provided in this Exhibit 4 with insurance companies authorized to do business in Fitchburg. The required insurance shall cover the Artist's employees, agents, contractors or subcontractors. The City, its officials, employees, agents and contractors shall be named as additional insureds. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, agents and contractors.
- b. The duration of the general liability insurance described in Exhibit 4 shall extend for \_\_\_\_ years after the termination of this Agreement.
- c. The Artist and the Artist's subcontractors' insurance coverage shall be the primary insurance as respects the City, its officials, employees, agents and contractors. Any insurance or self-insurance maintained by the City, its officials, employees, agents and contractors shall be in excess of the Artist's or the Artist's subcontractors' insurance and shall not contribute with the Artist's or the Artist's subcontractors' insurance. The coverage shall state that the Artist's or the Artist's subcontractors insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- d. Prior to undertaking any Artwork under this Agreement, the Artist, at no expense to the City, shall furnish to the City a certificate of insurance with original endorsements affecting coverage for each of the insurance policies provided in Exhibit 4. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates must be current and the Artist must submit replacement or renewal certificates of insurance for all the policies expiring during the term of this Agreement. Each certificate shall clearly indicate that the Artist has obtained insurance in the type, amount, and classification as specified in Exhibit 4 and that no material changes, cancellation, suspension or reduction in limits of insurance shall be effective except after [30] days prior written notice to the City. Each certificate shall indicate that the subcontractors are additional insureds or the Artist shall furnish separate certificates for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including, but not limited to, naming the parties as additional insureds.
- e. Any deductibles or self-insured retentions must be declared to, and approved by, the City. At the option of the City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officials, employees, agents and contractors; or the Artist shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses in the amount of \$[\_\_\_\_\_].
- f. Despite any changes to or cancellation of insurance, the Artist remains responsible for maintaining the required insurance coverage for the duration of the Agreement.
- g. Failure of the Artist to comply with any of the terms of this Article 6 shall be considered a material breach of this Agreement and cause for its immediate termination.
- [h. Should the Artist not be able to secure acceptable insurance coverage, the City may place coverage at cost to the Artist on behalf of the Artist on a project basis.]

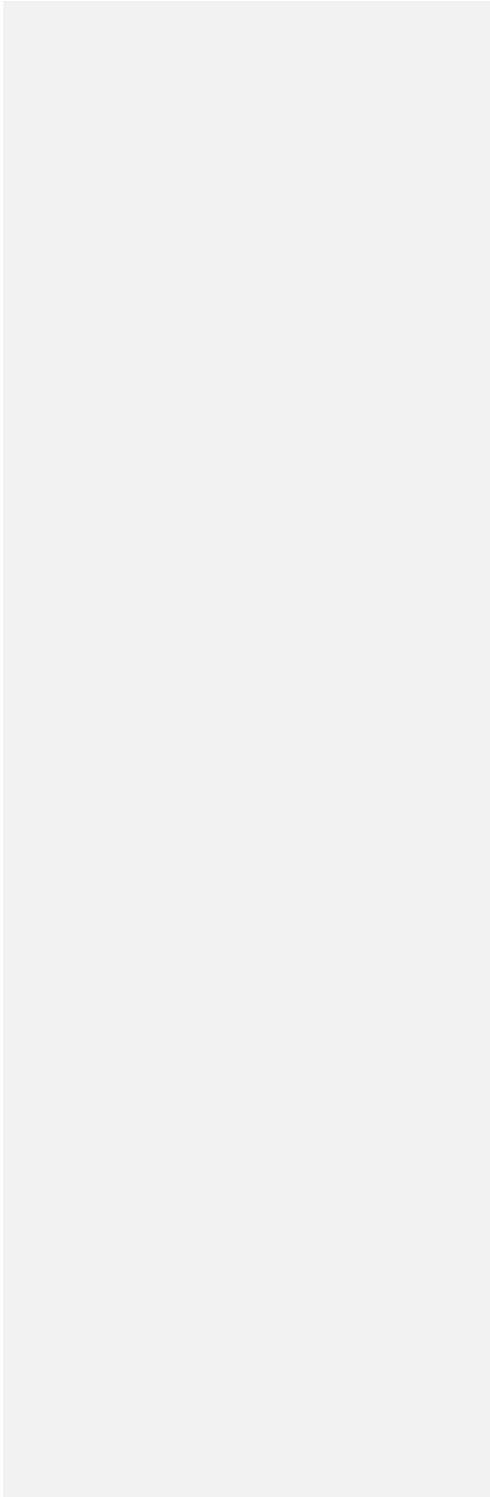
**Insurance Policies**

- a. Commercial General Liability insurance policy, written on an occurrence form, including all the usual coverages known as:
  - i) premises / operations liability
  - ii) products / completed operations
  - iii) personal / advertising injury
  - iv) contractual liability
  - [v] broad-form property damage]
  - [vi] independent contractor’s liability]Said policy must provide the following minimum coverage:
  - i) \$[1,000,000] combined single limit per occurrence for bodily injury, personal injury and property damage.
  - ii) \$[1,000,000] annual aggregate
- b. Automobile liability insurance policy, including coverage for owned, non-owned, leased or hired vehicles, providing the following minimum coverage:
  - i) bodily injury liability of \$[50,000] for each person,
  - ii) \$[300,000] per occurrence,
  - iii) property damage liability of \$[25,000] for each occurrence.The Artist agrees to keep in good standing a valid driver’s license at all times, where appropriate, during the term of this Agreement.
- [e. Worker’s Compensation and Employers’ Liability insurance in accordance with the statutory requirements of the State of \_\_\_\_\_ providing coverage for any and all employees of Artist. The Artist shall require all subcontractors to carry this coverage also. The minimum coverage for the Worker’s Compensation and Employers’ Liability insurance shall be \$[100,000]. If, however, the Artist does not have any employees as defined by state statutes and regulations and does not wish to cover himself or herself for Worker’s Compensation, the Artist shall sign the following statement:

[“I, do not have, nor intend to have for the full term of this Agreement, any employees. Furthermore, I do not wish to obtain or be covered under any Worker’s Compensation insurance coverage and, therefore, am signing this statement in lieu of providing the above require Worker’s Compensation coverage.”]

\_\_\_\_\_  
(Artist’s signature)

\_\_\_\_\_  
(Print Artist’s name)



**Exhibit 5**

**Transfer of Title**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

**TRANSFER OF TITLE**

**FOR VALUABLE CONSIDERATION**, the receipt of which is hereby acknowledged, the undersigned Artist located at the address noted below does hereby sell, transfer and convey to the City, located in F i t c h b u r g , M a s s a c h u s e t t s , its assigns and successors, all right, title and interest in the ownership of the Artwork commissioned by Agreement of \_\_\_\_ and as described therein.

Title: \_\_\_\_\_.

Location: \_\_\_\_\_.

**IN WITNESS WHEREOF**, Artist has executed this written transfer of title on this the \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
ARTIST

Sworn to and subscribed  
before me this \_\_\_\_ day  
of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
ADDRESS  
\_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_  
(NOTARY SEAL)

