

**AGREEMENT BETWEEN**

**THE CITY OF CAMBRIDGE  
CITY HALL  
795 MASSACHUSETTS AVENUE  
CAMBRIDGE, MA 02139**

AND

**[ARTIST'S NAME]  
[ADDRESS]**

THIS AGREEMENT ("Agreement") is entered into this \_\_\_ day of [MONTH], [YEAR], by and between the CITY OF CAMBRIDGE, a municipal corporation duly organized and existing under the laws of the Commonwealth of Massachusetts with a usual place of business at City Hall, 795 Massachusetts Avenue, Cambridge, MA 02139 (the "City"), acting by and through the CAMBRIDGE ARTS COUNCIL with a usual place of business at 344 Broadway, Cambridge, MA 02139 (hereinafter, "Cambridge Arts Council" or "CAC"), and [ARTIST'S NAME], residing at [ARTIST'S ADDRESS] (the "Artist").

**WHEREAS**, the City is in need of the services of the Artist to perform services as an artist for the City; and

**WHEREAS**, the Artist is ready, willing and able to perform these services; and

**NOW THEREFORE**, the parties do mutually agree as follows:

**1. SCOPE OF SERVICES:** The Artist agrees to perform and furnish artistic services for the City by creating a work of art (hereinafter referred to as the "Artwork") for the [NAME OF CAPITAL PROJECT/SITE (hereinafter referred to as the "Project")] located at [STREET ADDRESS OR LOCATION DESCRIPTION] in Cambridge, Massachusetts, including the description of the physical context at the site (the "Site") as set forth in this Agreement. The Artist shall provide all labor, tools, and materials necessary for the execution of the Artwork as summarized below:

a) *Research and Schematic Proposal:* The Artist agrees to do research to develop a concept for incorporating art into the Site. Based on said research and conceptual development, the Artist agrees to formulate and submit to the Cambridge Arts Council a schematic proposal for the Artwork and to discuss same with Cambridge Arts Council staff with regard to feasibility of the schematic proposal.

b) *Detailed Design Proposal:* Upon approval from the Cambridge Arts Council to proceed with the schematic proposal for the Artwork, the Artist agrees to develop a Detailed Design Proposal for the Artwork (the "Proposal") and present same to the City of Cambridge Public Art Commission for review with the aid of graphic materials and written specifications, a description of installation methods, a prefabrication review carried out by an art conservator provided by CAC, a plan for routine maintenance, a technology maintenance plan if applicable, and a detailed budget including but not limited to a cost estimate for materials, fabrication, installation, and artist fee, and a timeline demonstrating that the Artwork can be completed

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within the scope of the Agreement. The Artist agrees to participate in community meetings, accompanied and guided by City staff, to engage in a process of public review as necessary.

c) *Fabrication:* Upon approval of the Proposal, the Artist agrees to fabricate the Artwork in conformation with the Proposal or oversee fabrication and construction by a contractor hired by the City. The Artist agrees to provide, on as needed basis, clarifications of elements, to respond to requests for information, and participate in meetings as necessary to coordinate and oversee installation of the Artwork with City staff. The Artist is free to make design modifications as the work progresses, insofar as such modifications do not involve significant change to the scope, design, size, or material of the Artwork as detailed in the Proposal. The Artist shall present to CAC for further review and approval any changes in the scope, design, color, size, material or texture of the Artwork that may affect installation, scheduling, maintenance of the Artwork or the concept of the Artwork as represented in the Proposal.

d) *Installation and Maintenance:* The Artist shall notify CAC in writing when fabrication of the Artwork is completed and ready for delivery and installation. The Artist agrees to install the Artwork in coordination with the City, in accordance with the approved Proposal and in compliance with a schedule agreed upon by the Cambridge Arts Council. The Artist agrees to prepare for review and approval by the Cambridge Arts Council a maintenance plan for the Artwork as defined in Paragraph 14 below.

**2. TIME OF PERFORMANCE:** Performance of services shall commence upon signing of this Agreement and shall be completed before [DATE]. The Artist agrees to coordinate their installation schedule of the Artwork with City staff.

**3. COMPENSATION:** The City agrees to pay the Artist as total compensation for the services listed above a fixed sum of [AMOUNT IN WORDS] (\$[NUMERICAL DOLLAR AMOUNT]). The Artist's fee and all expenses for said services shall be covered by this sum. The Artist shall have the sole responsibility for cost control. No extra payments will be allowed as a result of cost overruns. It is understood that the City has no obligations regarding sale commissions, or any agreement with galleries or agents with whom the Artist may have contracted.

Payments on account of the Artist's basic services shall be made at agreed upon intervals according to the following schedule:

A. Upon execution of this Agreement:	\$
B. Upon approval of the Proposal for the Artwork:	\$
C. Upon completion of fabrication of the Artwork:	\$
D. Upon completion of installation of the Artwork:	\$
E. Upon completion of inspection, final acceptance of the Artwork by the City (as defined in Paragraph 13 below), and submission of specifications and maintenance plan for Artwork:	\$
 TOTAL:	 \$

The City shall have the sole responsibility for determining when the Artwork has reached a given stage of completion, which will not be unreasonably withheld.

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**4. INDEPENDENT CONTRACTOR STATUS OF THE ARTIST:** The Artist acknowledges that [SHE/HE/THEY] [IS/ARE] an independent consultant and not an employee of the City.

**5. LICENSES AND PERMITS:** The Artist is responsible for obtaining all licenses and permits in connection with the performance of the Artist herein. The Cambridge Arts Council staff will work cooperatively with the Artist to reasonably assist the Artist in obtaining such licenses and permits.

**6. INSPECTION OF WORK:** All services performed under this Agreement by the Artist will be subject to inspection and approval by the City for the purpose of confirming that the services, including the fabrication and installation of the Artwork, have been performed in conformance with the Scope of Services. The Artist will furnish the City with all information concerning the Artwork and provide free access at all reasonable times to the facilities where the Artwork is being performed if not on City property.

**7. WARRANTY OF QUALITY AND CONDITION OF THE WORK:** The Artist represents and warrants, except as otherwise disclosed to the City in writing, that: a) the design, fabrication and installation of the Artwork will be performed in a professional manner; b) the Artwork, as designed, fabricated, and installed, is appropriate to its location and will be free of defects in its fabrication and installation; and c) reasonable maintenance of the Artwork will not require procedures in excess of those described in the Proposal and the Maintenance Plan approved by the City (the "Warranty"). The Warranty shall survive for a period of one (1) year after the City's Final Acceptance of the Artwork. In the event of any breach of Warranty which is curable by the Artist and which cure is consistent with generally accepted professional conservation standards (including, for example, cure by means of repair or re-fabrication of the Artwork), the Artist shall, at the request of the City, cure such breach at no cost to the City. The City shall give notice to the Artist of any such observed breach of Warranty with reasonable notice, and the Artist shall cure such breach with reasonable promptness.

**8. RISK OF LOSS:** The risk of loss or damage to the Artwork will be borne by the Artist and the Artist will take appropriate measures to protect the Artwork from loss or damage until title to the Artwork has passed to the City in accordance with Paragraph 15 below.

**9. INSURANCE:** a) The Artist shall, during the period set forth in Paragraph 2, procure and maintain Comprehensive General Liability insurance covering damage to the Artwork and all claims that might arise during the installation, display or removal of the Artwork with limits of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. The City shall be named as an additional insured on all such insurance policies. All such insurance policies shall provide no less than thirty (30) days' notice of cancellation. Prior to commencing performance of any services under this Agreement, the Artist shall furnish the City with Certificates of Insurance which show that [SHE/HE/THEY] [HAS/HAVE] procured the insurance coverage required by this Agreement. b) The Artist shall, before commencing performance of services under this Agreement, provide the City with a workers' compensation plan or workers' compensation insurance policy that fully complies with Massachusetts law as to all persons to be employed under the Agreement, and the Artist shall continue such insurance in full force and effect during the term of the Agreement. Proof of compliance with the aforesaid stipulation shall be furnished to the City prior to performance of

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services under this Agreement. Copies of all such insurance policies shall be provided to the City upon request.

**10. INDEMNIFICATION:** a) The Artist shall indemnify and hold harmless the City and each officer, agent and employee of the City against all claims against any of them for personal injury or wrongful death or property damage arising out of the performance of the Artist's professional services or caused by any act, error or omission of the Artist, or anyone employed by the Artist in performance of this Agreement. Additionally, the Artist shall indemnify and hold harmless the City from and against any lien claim of the Artist, their subcontractors and suppliers, and their respective subcontractors, and/or suppliers. This provision shall survive the completion of performance of services under this Agreement or its termination.

**11. COPYRIGHT:** The Artist expressly reserves every right available under the Federal Copyright Act to control the making and dissemination of copies or reproductions of the Artwork, except as those rights are limited by this Agreement. The Artist authorizes photographs, drawings, and other two-dimensional reproductions of the Artwork by the City without prior consent of the Artist for the sole use and benefit of the City and the public, including but not limited to advertising, educational materials, descriptive brochures, and similar materials.

**12. RELEASE OF CLAIMS:** The Artist agrees to deliver the Artwork to the City free and clear of any liens and claims, arising from any source whatsoever. The City shall withhold payment for the Artwork upon the completion of installation of the Artwork until the Artist furnishes the City with a signed and sworn statement stating that all bills, wages and claims of any and every kind for the Artist's services to be performed under this Agreement have been paid.

**13. FINAL ACCEPTANCE:** The Artist shall advise the City in writing when all services described in Section 1 have been completed in substantial conformity with the Artist's Detailed Proposal ("Completion of Services"). The City shall notify the Artist of its final acceptance of the Artwork ("Final Acceptance"). Final Acceptance shall be effective as of the earliest to occur of: (a) the date of the City's notification to the Artist of Final Acceptance, or (b) the 30th day after the Artist has sent written notice of Completion of Services to the City unless the City, upon receipt of such notice and prior to the expiration of the 30-day period, gives the Artist written notice specifying and describing the services required by this Agreement which have not been completed.

**14. MAINTENANCE AND REPAIR:** a) As a condition to Final Acceptance of the Artwork by the City, the Artist shall develop a maintenance plan in cooperation with a qualified art conservator to be provided by the City as part of a Pre-Fabrication Review. Such recommendations shall include a list of materials and methodology to be used for maintenance and/or repair, a written description of the regular maintenance needs of the Artwork, and a description of the physical context relevant to the Artist's intent for the Artwork (the "Maintenance Plan").

The City shall maintain the Artwork and/or make minor or emergency repairs to the Artwork without the Artist's approval or consultation, provided such maintenance and/or repairs are performed in accordance with the Maintenance Plan if provided by the Artist. If necessary maintenance and/or repairs cannot be made in accordance with the Maintenance Plan, or if the Artist has provided insufficient recommendations under the Maintenance Plan or other information

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provided to the City, the City shall use reasonable efforts to consult with the Artist about such maintenance or repairs. In its efforts to consult with the Artist, the City shall be obligated to communicate with the Artist only at their last known address, notice of which must be given to the City as provided for herein, and if the Artist does not respond to the City's efforts to consult with the Artist, the City may proceed to maintain and/or repair the Artwork notwithstanding the provisions of the Maintenance Plan and without consultation with the Artist. Any maintenance of and/or repairs to the Artwork shall be made in accordance with the recognized principles of conservation of the American Institute of Conservation of Historic and Artistic Works (AICHAW), or other similar conservation standards acceptable to the City, subject to the prior approval of the City and the Artist except as otherwise provided for herein.

**15. TITLE:** Title to the Artwork shall pass to the City upon Final Acceptance by the City.

**16. ALTERATION OF THE WORK OR OF THE SITE:** The Artist and the City hereby acknowledge that the Artwork, when installed, will be incorporated within, and made a part of, a Site in such a way that alterations to the Site, as the City may deem necessary in order to exercise its powers and responsibilities with respect to public works and improvements in furtherance of the City's operations, may affect the character and appearance of the Artwork. If such alterations are deemed necessary by the City, the City shall notify the Artist of such proposed alterations and shall make reasonable efforts to consult with the Artist in the planning of such alterations. Notwithstanding the foregoing, the City may at its discretion relocate, remove from public display, or otherwise dispose of the Artwork with no less than ninety (90) days' prior written notification to the Artist.

Should the City decide to remove the Artwork from the Site for the expressed purpose of destruction of the Artwork, the City will make reasonable efforts to notify the Artist in writing within ninety (90) days of scheduled removal. The Artist retains the right to resume ownership of the Artwork to save it from permanent loss or remove their name from the Artwork in such event, so long as the Artist notifies the City of their intent to do so and takes all necessary steps to effectuate resumption of ownership of the Artwork and/or removal of the Artist's name from the Artwork within ninety (90) days of the date of the City's aforementioned notification to the Artist under this Paragraph 16.

**17. NON-DISCRIMINATION:** In carrying out the performance of all services under this Agreement, the Artist will not discriminate on the grounds of race, color, religion, sex, age, religious creed, disability, national origin or ancestry, sexual orientation, marital status, family status, military status, or source of income in the employment practices or in the selection or retention of subcontractors, and in the procurement of materials and rental of equipment. The City may cancel, terminate or suspend the contract in whole or in part for any violation of this Section.

**18. COMPLIANCE WITH LAWS AND REGULATIONS:** This Agreement is made subject to the laws of the Commonwealth of Massachusetts and the ordinances of the City and if any such clause does not conform to such laws or ordinances, such clause alone shall be void, the remainder or the contract shall not be affected, and the applicable laws or ordinances shall be operative in lieu thereof.

**19. TERMINATION:** This Agreement may be terminated by either party upon sixty (60) days' written notice should a party substantially fail to perform the terms of this Agreement.

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**20. SEVERABILITY:** The invalidity or unenforceability of any provision of this Agreement shall in no way affect the validity or enforceability of any other provision thereof.

**21. INTEGRATION:** This instrument contains the entire Agreement between the parties. However, either party may, from time to time, request changes in the scope of services of the Artist to be performed hereunder. Such changes which shall be mutually agreed upon between the City and the Artist shall be incorporated in written amendment to this Agreement. No change, however, shall be binding upon the City unless and until approved by the City. Any changes in the terms or conditions of this Agreement must be in accordance with all applicable Federal, State and local laws and the Cambridge Municipal Code.

In Witness whereof the parties hereto have hereunder set their hands as of the date first written above.

\_\_\_\_\_  
[NAME], Executive Director  
Cambridge Arts Council  
City of Cambridge

\_\_\_\_\_  
[ARTIST'S NAME]  
Artist  
[ARTIST'S ADDRESS]

**APPROVED AS TO FORM:**

\_\_\_\_\_  
[NAME]  
City Manager  
City of Cambridge

\_\_\_\_\_  
[NAME]  
City Solicitor  
City of Cambridge