



NEW ENGLAND FOUNDATION FOR THE ARTS
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PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (this “Agreement”), entered into on September 23, 2022 is made by and between **New England Foundation for the Arts, Inc., (“NEFA”)**, a Massachusetts non-profit corporation with a principal place of business at 1000 Washington Street, 2nd Floor, Boston, MA 02118, AND **the town/city of [municipality]** with its principal place of business at **[address]**.

In this agreement **the town/city of [municipality]** is referred to as the “Contractor”; NEFA and Contractor will collectively be referred to as the “Parties”.

In exchange for valuable consideration, the sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants and promises set forth herein, the Parties collectively agree as follows:

1. **Services and Work Products.** During the term of this Agreement, the Parties shall collectively furnish the “Services and/or Work Products” as described below:

a. Services

Contractor administers a Call for for a Call for Temporary Public Art in 2023, that exemplify applied learnings from the *Making it Public* workshop series and alignment with [NEFA’s Public Art Values](#).

i. See Appendix A for a detailed Scope of Work.

b. Work Products

Contractor shall produce a Call for Temporary Public Art in 2023, in alignment with municipal procurement of public art in Massachusetts.

i. See Appendix A for details.

Contractor shall provide 2-3 high resolution images of the final temporary art work funded, along with relevant image descriptions and photo crediting information.

2. **Payments.** In exchange for the satisfactory performance of the Services and the timely completion and delivery of the Work Products prior to Termination, NEFA shall pay the Contractor the following amounts in accordance with the terms set forth below.

a. The Contractor shall be paid by NEFA, according to the following payment schedule:

	Payment Amount
20% of funding will be issued from NEFA to the municipality upon NEFA counter-signing the agreement; payment will be issued by January 30, 2023.	\$3000

<p>40% of funding will be issued from NEFA to the municipality upon:</p> <ul style="list-style-type: none"> - Approval of the Call for Temporary Public art from NEFA - Municipality publicizing the Call for Temporary Public Art 	<p>\$6,000</p>
<p>40% of funding will be issued from NEFA to the municipality upon completion of the artist selection process.</p>	<p>\$6,000</p>

3. **Term.** The term of this Agreement (the “Term”) shall commence as of the later date of the final execution of this contract, and it shall expire by December 31, 2023. All Services and Work Products are to be complete by the expiration of this Agreement. This Agreement may be renewed prior to expiration of the Term, only by the written agreement of all Parties.
4. **Termination.** This Agreement may be terminated for any reason by any party without penalty prior to the expiration of the Term by such party providing at least thirty (30) days written notice to the others, at the addresses listed above. If any party provides such written notice, this Agreement shall terminate effective on the date specified in such notice. Upon termination by either party, NEFA shall only be liable for payment of amounts earned by Contractor as a result of work satisfactorily performed prior to the effective date of the termination. The Contractor shall have no further responsibility to perform any task under this Agreement after the effective date of the termination. Contractor’ obligations under the succeeding paragraphs of this Agreement shall survive termination.
5. **Indemnification.** To the extent permitted by MA state law, the Parties agree to individually assume responsibility for any and all claims, losses, or liability arising from any act, omission, or failure of itself, its subrecipients, subcontractor, officers, agents, and employees relating to this agreement. The parties further agree to hold each other harmless from such claims to the extent permitted by law.
6. **Contractor as Independent Contractor.** The Parties agree that in all respects the Contractor’ relationship to NEFA shall be that as independent Contractor. The Parties shall not act or represent that they are acting as an agent, and shall have no authority to create, assume or incur any obligation or liability on the part, of the other party. Nothing in this Agreement is intended to limit a party’s right to contract or affiliate with any other third party. Contractor acknowledges and agrees that he/she shall not be deemed a NEFA employee and shall not be entitled to any employee benefits, including any insurance benefits, otherwise available to NEFA employees. Contractor operates free from the direction and control of NEFA in connection with the performance of the Services and shall be free to devote its/their time and resources to such other activities as he/she deems appropriate, consistent with its/their obligations under this Agreement.
7. **Conflict of Interest.** NEFA is a charitable tax-exempt organization and must therefore engage only in activities which accomplish one or more of its tax-exempt purposes. The Contractor warrants that it/they has/have received and reviewed NEFA’s Conflict of Interest Policy and is not involved, and shall not be involved during the Term, in any activity which constitutes a conflict of interest under the terms of that policy. The Contractor agrees to notify NEFA immediately in writing if any situation arises which might

constitute a conflict of interest as defined in the policy.

8. **Crediting.** NEFA shall provide attribution to the Contractor when it uses any Work Products created under this Agreement. The Contractor shall provide attribution to NEFA when it uses any Work Products under the Agreement, as follows: "Funding was provided [in part] by New England Foundation for the Arts (NEFA)."
9. **Use of Promotional Materials.** NEFA shall have the ability to use the name of the Contractor and the name of its/their project in mediums such as photography, video, reviews, and descriptive text, and other artist promotional materials related to this contract, in the promotion of NEFA programs through publications, NEFA's web site, video sampler, and the like and as otherwise necessary to carry out the terms of this Agreement. The Contractor shall not use NEFA's name, symbols, or service marks, except as specified and required under this Agreement, without the prior written approval of such use and its form by NEFA.
10. **Ownership and Rights.** The Parties shall provide one another with unlimited access to any work product created under this Agreement, including but not limited to all work papers, data, reports, questionnaires and other material prepared, produced or collected as part of this Agreement. The Parties retain the rights to reproduce, publish, and otherwise use, and authorize others to use any work developed under this Agreement.
 - a. Notwithstanding the foregoing, to the extent that any work product created under this Agreement derives from, are based upon or arise out of Contractor's pre-existing works (collectively, "Derivative Works"), Contractor shall grant a gratis, perpetual, worldwide license to NEFA in all Derivative Works.
11. **Confidentiality.** As used in this Agreement, "Confidential and Proprietary Information" means any business or technical information and materials regarding NEFA that is disclosed to the Contractor or to which the Contractor have access hereunder (including, without limitation, inventions, improvements, techniques, processes, research and development plans, data, formulas, products, technology; marketing and sales plans, financial forecasts, profits, costs, operations, donor information, grantee information, names of personnel and compensation data), which: (i) if disclosed in writing, is marked "confidential" or "proprietary" at the time of such disclosure; (ii) if disclosed orally, is identified as "confidential" or "proprietary" at the time of such disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days after any such disclosure; or (iii) under the circumstances of disclosure, a person exercising reasonable business judgment would understand to be confidential or proprietary.
 - a. Contractor will use Confidential and Proprietary Information only in the manner and for the purposes expressly set forth in this Agreement and in compliance with Massachusetts state laws, including but not limited to the Massachusetts Public Records Law, MGL c. 66. Section 10.
 - b. The Parties acknowledge that the Contractor is a public entity. It will take no affirmative steps to disclose information identified as "confidential" and/or "protected" or other similar description to third parties. In the event of a request for information pursuant to the Commonwealth of Massachusetts Public Records Law, M.G.L. c. 66, § 10, or upon the Contractor's receipt of legal process to turn over any such described information, Contractor will promptly notify NEFA of the request or order so that it can obtain legal protection to defend itself against such disclosure. Failure by either NEFA to obtain legal process within 7 business days

of Contractor's notification of a public records request or order, or earlier subject to a judicial order, shall entitle Contractor to disclose the requested information with impunity.

12. **Contractor Representations And Warranties.** Contractor represent and warrant that:
(a) Contractor has the complete power and authority to enter into this Agreement, to grant and assign the rights granted and assigned under this Agreement, and to perform its obligations hereunder; (b) Contractor have no pre-existing obligations or commitments (and will not assume or undertake any obligations or commitments) that would interfere with or restrict the Contractor' performance of its obligations under this Agreement; and, (c) None of the work product produced by Contractor under this Agreement will violate or infringe the intellectual property rights of any third party
13. **Transferability.** The Parties agree that they will not transfer or assign its rights and obligations under this Agreement to another party without express written approval of all Parties.
14. **Access to Records.** NEFA, the Federal agency whose grant funds this agreement, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this agreement for the purpose of making audits, examinations, excerpts and transcriptions.
15. **Governing Law.** This Agreement is subject to and to be construed in accordance with the laws of the Commonwealth of Massachusetts and each party consents to the exclusive jurisdiction and venue of the state and federal courts of Massachusetts for all disputes or claims hereunder.
16. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements or understandings, whether written or oral, with respect to the subject matter hereof. No terms or conditions, other than those set forth herein, and no amendments or modifications hereto shall be binding unless made in a writing signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first written above.

Town/City of [municipality], MA
By:

New England Foundation for the Arts, Inc.
By:

Signature

Jane Preston, Deputy Director, Programs;
Authorized NEFA Officer

Printed name

Employer Identification Number

Appendix A: Scope of Work

Purpose:

The [New England Foundation for the Arts](#) (NEFA) in partnership with [the Metropolitan Area Planning Council's \(MAPC\) Arts and Culture Department](#) (MAPC) and [Forecast Public Art](#) (FPA), invites municipalities in Massachusetts to participate in *Making it Public for MA Municipalities* 2023 Cohort.

Participating municipalities...

- Are expected to participate *Making it Public*, a free 5-week virtual training (March-April 2023) facilitated by FPA designed to equip administrators in strengthening local capacity to support, create, and promote more vibrant and just public art making.
- Receive technical assistance from NEFA and MAPC to put out a Call for Temporary Public Art (May-December 2023)
- Receive a \$15,000 grant from NEFA to fund artists selected through a Call for Temporary Public Art in 2023.

Through *Making it Public* and funding artists through municipalities, NEFA aims to foster a community of practice that is inspiring more vibrant and just spaces and public culture through public artmaking across MA.

Roles and Responsibilities:

[Municipality] will:

- **Support staff participation in *Making it Public*.** Commitment to supporting two municipal staff members who are interested and available to participate in the workshop series
 - Approximately 40 hours between March 2023 and December 2023 toward completion of the training and call for art divided as follows:
 - Participation in a 90-minute orientation (Virtual; February 2023) – 1.5 hrs total
 - Participation in five 90-minute weekly virtual sessions and watching 4 half-hour instructional videos (March/April 2023) – 9.5 hours total
 - Participation in two 2-hour workshoping sessions with NEFA and MAPC focused on preparing a Call for Temporary Public Art (May), and the artist selection process (June)– 4 hours
 - Creating and distributing a Call for Temporary Public Art that exemplifies applied learnings from the *Making it Public* workshop series and alignment with [NEFA's public art values](#); meeting with NEFA and MAPC staff for review and approval before publicizing (May-Dec 2023) – 3 hours
 - Administering inclusive and equitable artist(s) selection process (May-Dec 2023) – 8 hours
 - Administering grant agreement with artist(s) and support artist(s) in navigating municipal processes (e.g. permitting, insurance, liaison with other municipal departments, etc.). Artist(s) should be selected by the end of December 2023 and artmaking may take place through the end of 2024 or sooner. – 16 hours
 - **OPTIONAL:** Participating municipalities are also welcomed to invite an additional team member. This may be another municipal staff or a community-based partner who may be interested in supporting your municipality in fostering more vibrant and just public artmaking in your communities.

- **Authorize funding for a Call for Temporary Public Art.** Signature of municipal officer duly authorized to bind municipality to:
 - Receive \$15,000 of grant funding from NEFA
 - Re-granted AT LEAST 80% (\$12,000) of the NEFA grant (\$15,000) as payment directly to the select artist(s) by the municipality as either seed or match funding; The remaining 20% (\$3,000) may go towards the artist(s) selected, or be used towards participating in this opportunity and administering these funds (e.g. Provide a stipend to community-based partners to participate in Making it Public 2023, support equitable and inclusive outreach strategies and/or honoraria to reviewers in the artist selection process)
 - Commit to fund the cost of installing temporary artwork and to facilitate installation through municipal staff or Contractor.

NEFA will:

- **Co-host *Making it Public***, a free training facilitated by Forecast Public Art, to equip administrators in strengthening local capacity to support, create, and promote more vibrant and just public artmaking in MA. Including:
 - Making it Public in MA orientation (Virtual; February 2023) prior to workshop series beginning; facilitated by NEFA staff
 - And workshoping sessions with NEFA and MAPC focused on preparing a Call for Temporary Public Art (May 2023), and the artist selection process (June 2023)
- **Provide Municipality up to 2 hours of 1-on-1 consultation**, after the completion of the five-week workshop series, through the Metropolitan Area Planning Council (MAPC) and NEFA staff
- **Provide \$15,000 grant funding to Municipality.**
 - If municipality does not uphold any of the following requirements, NEFA reserves the right to withhold some or all of the grant funding:
 - Municipal commitment to authorize funding for a Call for Temporary Public Art
 - AT LEAST 80% (\$12,000) of the NEFA grant must be re-granted directly to the artist(s) selected through the Call for Temporary Public Art in 2023 as either seed or match funding.
 - Call for Temporary Public Art must exemplify applied learnings from the *Making it Public* workshop series and alignment with [NEFA's Public Art Values](#).
 - Distribute of grant payment to Municipality accordingly:
 - 20% of funding will be issued from NEFA to the municipality upon NEFA counter-signing the agreement; payment will be issued by January 30, 2023.
 - 40% of funding will be issued from NEFA to the municipality upon: Approval of the Call for Temporary Public art from NEFA and municipality publicizing the Call for Temporary Public Art.
 - 40% of funding will be issued from NEFA to the municipality upon completion of the artist selection process.

Timeline	Details
January- February 2023	Participating municipalities promote Making it Public for MA Artists, a parallel track geared towards artists interested in public artmaking. (Deadline for artist registration will be late February 2023) Making it Public for MA Municipalities Orientation , facilitated by

	NEFA (90 mins virtual meeting in February 2023); Date/Time TBD after 2023 Making it Public cohort is selected.
March- April 2023	<p>Municipal it Public for MA Municipalities begins! 5-week intensive virtual workshops. Workshops are virtual, 90 mins each week, with an additional 30-minute pre-recorded video component.</p> <p>2023 Making it Public for MA Municipalities – workshop series Tuesdays, March 14-April 11, 2023 10:00-11:30a ET</p>
<p>May- December 2023</p> <p>July 31, 2023 – Deadline to submit Concepts for Call for Temporary Public Art to NEFA for approval</p> <p>December 1, 2023 – Deadline to submit Call for Temporary Public Art to NEFA for approval before publicizing</p> <p>December 31, 2023 – Deadline for Call for Temporary Public Art to be publicized (may publicize sooner.)</p>	<p>Workshopping sessions with NEFA and MAPC focused on preparing a Call for Temporary Public Art (May), and the artist selection process (June). Multiple dates will be available to choose from.</p> <p>Municipal staff prepare a Call for Temporary Art and administers an inclusive and equitable artist(s) selection process.</p> <p>Office Hours with NEFA and MAPC available for consultation to municipalities during this period. Calls for Temporary Public Art must be reviewed and approved by NEFA before publicizing.</p>
TBD, depending on when Call for Temporary Public Art to be publicized and project timeline	Municipal staff are responsible for administering an equitable artist selection process and supporting artist(s) in navigating municipal processes (e.g. permitting, insurance, liaison with other municipal departments, etc.); artmaking may take place through the end of 2024 or sooner.