

TOWN OF LEXINGTON, MA
Lexington Semiquincentennial Commission
Artist Concept Development Grant Agreement
Contract Number: 24-PA-XXX

The following is a CONTRACTUAL GRANT AGREEMENT (“Agreement”) made and concluded this **X day of Month in the year 2023** by and between **Artist/Artist Teams Name**, with the business address of Artist/Artist Team Business Address (hereinafter referred to as the “Artist”) and the Town of Lexington, MA with a usual place of business at 1625 Massachusetts Avenue Lexington, MA 02420, a municipal corporation established under the laws of the Commonwealth of Massachusetts, acting by and through its Town Manager, its duly authorized Purchasing Agent, the Semiquincentennial Commission (collectively hereinafter referred to as the “Town”), alternatively referred to as “the parties”.

WHEREAS, Town publicly released a Call for Artists on or about **[date of release]**, attached hereto as Attachment A; and,

WHEREAS, Artist submitted an application in response to the Town’s Call for Artists and was selected as a Semi-Finalist and invited to develop an initial concept design for a public art commission as requested in the Town’s Call for Artists, attached hereto as Attachment A, and formally made a part of this agreement by reference; and,

WHEREAS, Town has reviewed Artist’s application and has determined that it meets all prequalification requirements; and,

WHEREAS, pursuant to Massachusetts General Laws, Chapter 30B, section 21, the Town may, as a public procurement, enter into a Grant Agreement with an individual to “carry out a public purpose”; and,

WHEREAS, the creation of public art is a public purpose to enhance the cultural nature, historical background, and beautification of public space;

NOW THEREFORE, in consideration of the mutual covenants set forth herein, and the sufficiency of which are hereby acknowledged, the parties hereby do agree as follows:

The Town hereby agrees that it will:

- Pay the Artist a total stipend of \$1,000.
The Initial Payment to the Artist shall be for ½ of the total amount of the stipend and shall be made at the time of execution of this Agreement. The Final Payment shall be made within 30 days of the successful, approved submission of the Artist’s completed public art design concept as outlined in the Town’s Call for Artists **(Attachment A)**.
- Provide the Artist with public attribution of its completed public art design concept as follows: any image of the Artists' concepts will include the Artist’s name; any press release will name the Artist as one of the semi-finalists.
- Conduct one or more public event(s) to showcase the Artist’s public art design concept and gather public feedback on the concept to inform selection of a concept for fabrication and installation. Such public event(s) shall equally showcase all prequalified semi-finalist artists who have successfully submitted an approved initial public art design concept. The number of events held pursuant to this provision shall be at the Town’s discretion but shall not exceed 3.

- Provide notice to the Artist by [DATE] regarding whether the Artist's submission has been selected to be commissioned.

The Artist hereby agrees that the Artist will:

- Perform all work as an independent contractor and not as an employee of Town. The Artist shall not be deemed to be, nor shall it represent itself as, an employee, partner or joint venture of the Town.
- Provide any and all materials and equipment necessary to submit an approved submission of Artist's completed initial public art design concept.
- Submit its completed initial public art design concept on time and within the requirements set forth in the Call for Artists (Attachment A).
- Allow the Town to reproduce and publicly display the submitted concept in any medium of the Town's choice, without exception and without Artist's prior approval.
- Assign to the Town ownership and title to Artist's final submitted and approved artistic work. Artists shall retain copyright of all artistic work created under this Agreement. See US Copyright Law Subject Matter of Copyright: <https://www.copyright.gov/title17/92chap1.html#102>
- Affirm that it is the sole creator and owner of the completed initial public art design concept and has full power and authority, unencumbered by the rights of any third party, to enter into this Agreement and to grant the rights set forth herein.
- Affirm the completed public art concept will not infringe upon any proprietary right at common law, or any statutory copyright, or trademark right, or any other right of any other third party.
- Affirm the completed public art concept contains no material that is unlawfully obscene, libelous, that violates the right of privacy or publicity of any person or is otherwise harmful to any third party, so as to subject Town to liability or is otherwise contrary to law.
- Affirm that the Artist fully indemnifies and holds Town harmless from and against any and all claims, demands, costs, expenses, liabilities, causes of action and damages of every kind and character (including reasonable attorneys' fees) which may be asserted by any third party in any way related or incident to, arising out of, or in connection with the Artist's completed initial public art design concept.
- Affirm that the Artist will be responsible for the payment of any and all state and federal taxation with regards to received payments.
- Affirm the Artist's understanding that this contract in no way promises or guarantees that the Town, or anyone else, will commission the Artist to create any art, based on the Artist's public art design concept or otherwise.

Term

The Term of this Agreement shall be for twelve months, and it shall expire on _____, _____, _____.

Termination for Convenience

Each party retains the right to terminate this Agreement for Convenience without cause and without penalty upon 10 days written notice to the other Party. Upon Notice of Termination for Convenience by either party, Artist must remit to Town all remaining unexpended funds from the Initial Payment.

Termination for Breach

Each party retains the right to terminate this Agreement for cause by providing written notice to the other Party explaining the reason for termination. In the event that either party terminates this Agreement for any breach of covenants identified herein; the parties agree to negotiate a resolution/cure of such alleged breach within 5 days of Notice of Termination of Breach. In the event that a mutual resolution/cure of the alleged breach cannot be reached after 5 days of the date of the Notice, the parties agree to seek any and all damages in a Massachusetts court of competent jurisdiction.

Notices

All notices required by this Agreement shall be in writing and mailed by First Class Mail to the addresses included in this agreement.

All notices sent to the Artist shall be to the address identified above. Failure of Artist to inform Town in writing of any change of address during the Term of this Agreement shall result in the identified address deemed as the last known address, and notice shall be deemed sufficient when sent to this address.

Non-Assignment

This Agreement is non assignable. Artist may not assign any term, in part or in whole, of this Agreement.

Amendments

Any and all amendments to this Agreement must be made in writing and signed by the both parties by a person with designated authority to bind each party.

Severability

If any term of this Agreement is held to be illegal, void or unenforceable by a Massachusetts court of competent jurisdiction, all other terms shall remain valid and enforceable.

Forum Selection and Venue

This Agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts. Any and all legal actions commenced under this Agreement shall be in a Massachusetts court of competent jurisdiction.

Entire Agreement

This Agreement constitutes the entire Agreement between the parties, and it supersedes and replaces any prior written or oral agreements or representations between the parties.

Acknowledgements and Agreements

By signing all parties are indicating that they have read and understand all rules and regulations contained within and also acknowledge that these policies are subject to change, with written notice, if warranted and in the best interest of the Town of Lexington. IN WITNESS WHEREOF, the parties have executed this Artist Concept Development Grant Agreement as of the day and year first written above and hereby do agree to all terms, conditions, and regulations held within this document under the pains and penalties of perjury.

By the Artist/Artist Team:

Authorized Officer's Signature

Authorized Officer's Print Name

By Town of Lexington, MA:

James Malloy
Town Manager

Carolyn Kosnoff
Assistant Town Manager for Finance

Elizabeth Mancini
Chief Procurement Officer

