

APPENDIX [V]

Grant Agreement

By and Between

The Town of Holliston

And

Artist's Name

This Grant Agreement (“Agreement”) is made and entered into by and between the [municipality] (“City/Town”), a municipal corporation organized and existing under the laws of the Commonwealth of Massachusetts, by and through its [executive officer], duly authorized by [authorizing agent], and (**Artist's Name**) (“Artist”), alternatively “the parties.

Recitals

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

WHEREAS, Artist submitted an application to be selected to develop a completed concept for public art as requested in the Call for Artists, attached hereto as Exhibit B; and,

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

WHEREAS, pursuant to Massachusetts General Laws, Chapter 30B, section 21, 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 for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Terms and Conditions

1. Term

The Term of this Agreement shall be for [term of contract], and it shall expire on

_____.

2. Town Covenants

The Town hereby agrees that it will:

- A. Provide Artist with access to the sites selected for temporary public art.
- B. Make payments to Artist in a total amount not to exceed \$10,000. The Initial Payment to be made to the Artist shall be [20%] of the total amount at the time of execution of this Agreement. A second payment shall be upon approval of the final artistic design [40%]. Final Payment [40%] shall be upon [the successful submission and Town acceptance² of Artist's completed public art concept. Final payment shall be made within [30 days] of the successful and approved submission of the Artist's completed public art concept.
- C. Provide Artist with public attribution of its completed public art concept.
- D. Conduct a public event or events to showcase Artist's submission and facilitate a public vote as to whether Artist's public art concept shall be selected for fabrication and installation. Such public event or events shall equally showcase all prequalified artists who have successfully submitted an approved public art concept.

3. Artist Covenants

Artist hereby agrees that it will:

- A. Perform all work as an independent contractor and not as an employee of the Town. Artist shall not be deemed to be nor shall it represent itself as an employee, partner or joint venture of the City.
- B. Provide any and all materials and equipment necessary to submit an approved submission of Artist's completed public art concept.
- C. Submit its completed public art concept on time and within the requirements set forth in the Call for Artists.
- D. Allow the Town to reproduce and publicly display Artist's completed public art concept in any medium of its choice, without exception and without Artist's prior approval.
- E. Assign to 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>

- F. Affirm that it is the sole creator and owner of the completed public art 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.
- G. 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.
- H. 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 the Town to liability or is otherwise contrary to law.
- I. Affirm that the Artist will review and observe all current guidance and restrictions issued by the CDC, the Commonwealth of Massachusetts and the Town of Holliston, to maintain health and safety during the Massachusetts State of Emergency.
- J. Affirm that the Artist fully indemnifies and hold the 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 public art concept.
- K. Affirm that Artist will be responsible for the payment of any and all state and federal taxation with regards to received payments.

4. Termination for Convenience

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

5. Termination for Breach

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 Massachusetts court of competent jurisdiction.

6. Non Assignment

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

7. Notices

All notices required by this Agreement shall be in writing and mailed by First Class Mail, return receipt to:

Municipality:

Attention: _____

To the Artist: _____

Attention: _____

All notices sent to the Artist shall be to the address identified above. Failure of Artist to inform the 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.

8. 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.

9. 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.

10. 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.

11. 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.

IN WITNESS WHEREOF, each party hereto states that it has authority to legally bind their respective party and have executed this Grant Agreement on dates listed below under the pains and penalties of perjury.

For the municipality:

By: _____
Print Name

Signature

Title

Approved as to Form:

Town Counsel

Date:

For the (Name of Artist):

By: _____
Print Name

Signature

Date: