



**IN CITY COUNCIL**

**ORDERED:**

June 12, 2023

**AN ORDINANCE TO AMEND CH. 2 SEC. 125g ET AL WITH RESPECT TO A PUBLIC ART COMMITTEE**

Be it ordained by the City Council of the City of Newburyport as follows:

CHAPTER 2. ADMINISTRATION  
ARTICLE III. BOARDS AND COMMISSIONS  
DIVISION 8. PUBLIC ART COMMITTEE

THAT Chapter 2 Section 125g et al of the Code of Ordinances, City of Newburyport, Massachusetts, is hereby amended to include the following with deletions ~~double-stricken and italicized~~ and additions double-underlined and italicized:

**Sec. 2-125g. Establishment of public art committee, membership and terms**

There is hereby established a public art committee, in accordance with the public art policy adopted by the Newburyport city council and shall consist of seven (7) members with a composition and term as follows:

- (1) 2 members of the Newburyport Cultural Council for a term of three (3) years.
- (2) 1 member of the Newburyport Art Association for a term of three (3) years.
- (3) 1 local artist for a term of three (3) years.
- (4) 1 member of the Parks Commission for a term of three (3) years.
- (5) 1 City Staff
- (6) 1 representative from the Mayor's office for a term of three (3) years.

The appointments to the public art committee shall be made in accordance with the provisions of the city charter.

(Ord. of xx date)

**Sec. 125h. Powers and duties.**

A. The public art committee shall study the needs, possibilities and resources of the city regarding public art. The committee shall consult with existing municipal boards, including the city council, the planning board and the parks commission, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one (1) or more public informational hearings on the needs, possibilities and resources of the city regarding public art possibilities and resources, notice of which shall be posted publicly and published for each of two (2) weeks preceding a hearing in a newspaper of general circulation in the town.

B. The public art committee shall make recommendations to the city council for the acquisition, creation and placement of public art.

(Ord. of xx date)

**Sec. 125i. Rules and regulations.**

A. By majority vote of the members of the committee, the committee may adopt and promulgate rules and regulations for the conduct of its business on any matter within the committee's jurisdiction under the Massachusetts Constitution, Massachusetts General or Special Laws, the Code of Massachusetts Regulations (CMR), ordinance, or other legal right or authority granted to or conferred upon the commission.

The proposed rule or regulation shall be submitted to all committee members at least forty-eight (48) hours prior to any vote to adopt the same; provided, however, the committee may make such amendments to the proposed rules or regulations as it deems appropriate at the said meeting.

Upon approval of any rule or regulation by the committee, a copy of the same shall be filed with the City Clerk and become effective as of the date of filing thereof unless the specific vote of the committee establishes a later effective date.

To enhance communication, minutes of each meeting shall be sent to the City Clerk for distribution to the City Council.

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Councillor Constance Preston

**In City Council June 12, 2023:**

Motion to refer to Community Services and COTW by Councillor Preston, seconded by Councillor Wright. Roll call vote. 11 yes. Motion passes.

# **City of Newburyport**

## **Public Art Policies & Processes**

Prepared by the Public Art Policy Advisory  
Group of the Mayor's Office

Submitted to the City Council on \_\_\_\_\_

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# I. Introduction

## A. Curatorial Vision

The Curatorial Vision for the City of Newburyport is to foster the creation and collection of artworks that reflect the people, ideas, histories, and futures of Newburyport. We aim to commission and approve artworks that engage communities and directly respond to, enrich, and enliven the environment. We seek public art that is driven by an artistically strong vision, enhances the diversity and equity of the existing collection, and possesses durability appropriate to the lifespan of the work.

## B. Public Art in Newburyport

Public art is any artwork installed in a publicly accessible space where it can be experienced by everyone for free. It takes a wide range of forms, including murals, sculptures, memorials, architectural or landscape elements, and multi-media installations. The City of Newburyport recognizes the value of public art to its citizens and visitors. It is an important component of our civic and cultural fabric and an essential building block for engaging spaces that enliven the public realm, foster shared community interactions, celebrate our unique stories and collective history, and help create a unique identity for Newburyport. The City has always, and intends to continue to integrate a wide range of artworks reflecting diverse artistic disciplines and points of view into public locations throughout the community. In support of this goal, this document outlines the policies and processes that will facilitate the development of public art throughout the City. It provides a guide for City Departments, Boards and Commissions considering the placement of public art. To successfully implement this policy, City Department Heads should ensure that employees, as well as the Boards and Commissions they staff, are familiar with the procedures herein for proper compliance and execution. An FAQ for Artists (see Appendix A) is a condensed version of this document that is intended to help artists, cultural organizers and other public art proponents who are interested in proposing public art works.

## C. The Public Art Team

The Public Art Team (PAT) is an advisory committee to the Mayor that supports the commissioning, review, selection, acceptance, and care of art in public places. They aim to raise public awareness of the impact of public art and its cultural and economic contributions while establishing a diverse collection of public art that engages the community and encourages dialogue around public art. They also aim to identify and promote funding mechanisms to support public art, including grants, donations and specially designated funds. The end result of their efforts will provide a legacy of art and culture for future generations.

The Public Art Team (PAT) holds public meetings as needed to review, discuss, and vote to make recommendations to the City Council on matters concerning the City's public art collection. Meeting agendas are posted by the City Clerk's office at least 48 hours before the meeting. Constituents and stakeholders are encouraged to attend the PAT's public meetings and make comments on agenda items. Official votes will be conducted during the PAT's public meetings and the results will be recorded by the PAT in the meeting minutes. For a vote to take place, a quorum must be present. For a motion to pass, it must receive a majority of the votes of the Members present.

The PAT has exclusive authority to recommend approval and commissioning of artworks intended to be added to the City's collection or be placed on City property to the Mayor and City Council. By centralizing the responsibility of the City's artwork to the PAT, the PAT acts as a transparent, independent entity that

holds public meetings to vote on matters concerning the City's art collection. Members are nominated by their representative groups and appointed in accordance with provisions of the City Charter, and may serve for up to 3 years. The PAT is comprised of 7 members, including 2 members of the Newburyport Cultural Council, 1 member of the Newburyport Art Association, 1 local artist, 1 member of the Parks Commission, 1 City Staff and 1 representative from the Mayor's office.

#### **D. Powers and Duties:**

The Public Art Team shall study the needs, possibilities and resources of the city regarding public art. The committee shall consult with existing municipal boards, including the City Council, the Planning Board and the Parks Commission, or persons acting in those capacities or performing like duties, in conducting such studies. As part of its study, the committee shall hold one (1) or more public informational hearings on the needs, possibilities and resources of the town regarding public art possibilities and resources, notice of which shall be posted publicly and published for each of two (2) weeks preceding a hearing in a newspaper of general circulation in the town.

The Public Art Team shall make recommendations to the City Council for the acquisition, creation and placement of public art.

#### **E. Scope**

This policy applies to all works of art that are commissioned, hosted, or displayed, including both temporary and permanent works, and meet all of the following criteria:

- A. Funded in whole or in part through City funds or maintained by the City;
- B. Sited on City property, building, or right-of-way;
- C. Consistently accessible to the public.

#### **F. Limitations**

The policy does not extend to:

- A. Artworks on display within City offices or City buildings that have restricted public access or regulated access. This includes artworks acquired for the sole purpose of office adornment and not for overall public experience.
- B. Temporary exhibitions of artworks (such as gallery displays, booth displays at art festivals, individual artworks, or museum exhibits) displayed on City-owned or -managed property where the owner of such artwork has or intends to: retain ownership of the work or sell it; assume all responsibility associated with that display; remove it after an agreed upon duration has concluded.
- C. Public art on private property.

#### **G. Applicability**

The placement of public art on public property is a form of government speech and as such, is not subject to scrutiny under the Free Speech Clause. Therefore, the City has broad discretion to make decisions related to public art on public property. The City shall honor other local, state and federal laws that may apply. The City shall exercise final approval authority over all decisions regarding public art on City property.

#### **H. Definitions (see also Glossary of Terms)**

For the purposes of this policy, public art is defined as, but need not be limited to, unique, one-of-a-kind artwork conceived with its site in mind and of the following:

- A. Sculpture in the round, bas relief, mobiles, fountains, kinetic and electronic work in any approved

material or combination of materials

- B. Paintings in all media, including oils and acrylics, that are portable or permanently affixed, such as murals
- C. Graphic arts, such as printmaking, drawing and banners
- D. Mosaics, including works executed in tile, glass, stone or other materials
- E. Crafts using clay, fiber and textiles, wood, metal, plastics, stained glass and other materials, both functional and ornamental
- F. Photography, including digital and traditional photographic print media
- G. Mixed media, which may include any combination of two- and three-dimensional forms of media, including collage
- H. Earth works, environmental installations and environmental art
- I. Ornamental or functional decorative elements designed by practicing artists or other persons submitting as artists, including design professionals who are not members of the City design team for the project
- J. Light-based or luminal art that is experiential, site-specific or installation-based work that explores optical phenomena or work composed of transmitted light, artificial or natural light sources, projections or sculpture that incorporates light sources as a major compositional and expressive element
- K. Sound art or media with primarily aural-based expressive elements, including electronic, audio media, found or experimental sound sources
- L. Video and animation, projected or displayed on a video monitor
- M. Portable art that may be displayed at locations other than a substantially permanent location or adjacent to the project site

For the purposes of this policy, the following are not considered public art:

- A. Directional elements, wayfinding, signage, color-coding (except where these elements are an integral part of the artwork.)
- B. Donor bricks and plaques
- C. Decorations
- D. Non-original works of art of all media, including reproductions
- E. Mass-produced standardized art objects such as playground equipment
- F. Public improvements for safety such as area or path lighting, protective railings, etc. (except where these elements are an integral part of the artwork)
- G. Landscape design or gardens (when used for decoration unless designed by an artist and are an integral part of the artwork)

## **I. Administration**

The Public Art Team (PAT) will serve as an advisory group in support of the execution of this policy. Oversight and coordination of all works of public art acquired by the City of Newburyport, including their budgets and execution of contracts, are the sole responsibility of the Mayor. Staff member(s) designated by the Mayor will manage all operations and duties related to public art projects sited on or proposed for City of Newburyport property, including the maintenance of the public art collection.

## **J. Funding for Acquisitions**

- A. Sources of funding:
  1. Special designated funds: From time to time, special funds may be established for the express

purposes of commissioning works of art in accordance with the terms of this policy. For example, a special increment tax may be established by voters for capital projects with a portion assigned to public art.

2. Voluntary allocations: Departments may deposit additional funds into existing public art accounts or create new public art accounts at the department's discretion. These funds will be spent in accordance with this policy.
3. Donated artwork or funds: Funds or works of art may be donated to the City in accordance with Section II.C. of this policy.
4. Public art maintenance funding: The funding to maintain and conserve acquired works of art, though not governed by this policy, is a critical component of the public art program. It is recommended that City staff carefully consider and implement the necessary funding to properly care for the collection under the terms found in Section IV of this policy.

### **K. About this Document**

Our commissioning and review processes are iterative and will continue to evolve over time. We expect these policies and guidelines to change and welcome feedback on ways we can improve them. Changes to portions of this document that describe PAT reviews and approvals may be updated by the Public Art Team for clarity and responsiveness to community needs.

## **II. Procedures for the acquisition of public artwork**

### **A. Acquisition Priorities**

The following priorities shall be used when considering acquisition of artwork by purchase, commission or donation. Additional priorities may be established at the discretion of the Public Art Team (PAT) to meet the needs of individual projects.

1. Artistic aims, objectives and goals
  - What has the artist accomplished with the work and does it align with the proposed project goals?
  - Is the work relevant to the City, its values, culture and people and does it contribute to the fabric of the City? Is the work an integral component of the overall project?
  - Is the work of art appropriate for the community it serves?
2. Diversity and accessibility
  - Does the artwork reflect or advance the City's curatorial vision and policy of inclusivity?
  - Does the artwork advance lesser-told or lesser-known stories, non-traditional imagery, diverse perspectives, and/or minority voices?
3. Placement/siting
  - What is the relationship of the work to the site? Is it appropriately scaled?
  - Will the work help to anchor and activate the site and enhance the surrounding area?
  - Will there be convenient public access to the site?
  - What are the utility requirements of the artwork?
4. Fabrication, handling and installation
  - Are the projected costs accurate and realistic?
  - Have written estimates been obtained from qualified technical support and fabrication contractors?



- Does a certain site present any special obstacles to installation?
  - Can the work easily be removed if necessary?
5. Maintenance requirements
- Is the work suitable for outdoor display or special indoor environments?
  - Are the materials durable and will they last? Does the work have a limited lifespan due to built-in obsolescence or any inherent weakness?
  - What are the existing or projected maintenance requirements of the work? Are they excessive or cost prohibitive? Are any unusual or ongoing costs likely?
  - What are the artist's suggestions for protection of the work from vandalism?
6. Liability and safety
- Is any aspect of the work a potential safety hazard?
  - Will fencing or other types of security measures be required?
7. Affordability
- Is the artwork priced appropriately for the City?
  - How will the artwork impact the capacity for future acquisitions?

## B. Approval and Development Process for Public Art Commissions

Public art projects that are recommended by a proponent (i.e. the City of Newburyport, Community members such as non-profits, neighborhood groups, Friends of, etc., or individual Artists or Artist groups) for long-term or short-term installations shall be approved through the process outlined below. The proponent should review the City's existing collection of public art, the history of the proposed site, the current uses of the site, the community or communities who are regularly engaged with the site, and consider accessibility, future maintenance, and project longevity. Proponents should reach out to the PAT for guidance and information in the early stages of their design process.

Public art projects should be integrated into the selected site, with a preference for areas that are highly visible or highly impactful because of their cultural importance and their access to the public. Important considerations include how the artwork is physically integrated within the site and surrounding environment, how it responds to the public use of the space in which it resides, and how it compliments other public art projects in the immediate area. All artworks should be connected to their context, showing awareness of local cultures, histories, and the ways in which the community interacts with the project site.

Below is the recommended process for Public Art Commissions:

1. **Initial communication:** The proponent must first initiate communication with the City by submitting a signed letter of intent describing the project and its location. In order to install an artwork on City property, the property-owning department (such as Parks or DPS, etc.) must first give permission for the location of the artwork. Once approval is given by the property-owning department, a formal application may be submitted.
2. **Project initiation & site selection:** The proponent shall submit a formal application (see Appendix B) to the PAT to approve the artwork design, at least one month in advance of necessary approvals, with the following information:
  - contact information
  - a project description, including materials and dimensions
  - proposed project site
  - the property-owning department of the proposed project site
  - photos or drawings of the proposed artwork

- details of the installation and/or deinstallation including any equipment required, as well as lighting and sound plans (if pertinent)
- estimated cost and proposed funding source
- call to Artists in the form of an RFP or RFQ, if required (see #2 below)
- Artist resume and selected work samples
- a maintenance plan, depending on the length and needs of the project
- a project schedule including installation, programming and events if applicable, and deinstallation
- insurance value and information
- letters of support from community members or organizers, if available

The applicant shall review the application and scope of the project with the PAT, who will consult with appropriate City staff and the Mayor in order to provide guidance about approvals and permissions from other Boards, Offices, and Commissions that may be required. Approvals must be provided by the jurisdictional Board or Commission during this phase of the project. If the proponent is not self-funding the project, the PAT can assist in helping to identify funding sources for installation, understanding there is no current City fund specifically for public art projects. The Artist shall not begin fabrication until they have secured funding sufficient to cover 100% of all costs associated with the fabrication and installation of the artwork.

3. **Calls to Artists, Artist selection and Contracting:** Calls to Artists are required for Public Art projects with budgets over \$50,000 that are not initiated by an applicant that is currently working with an Artist or Artist group. Calls to Artists are the documents that describe the scope of the project and should provide Artists with everything they need to know to determine if they want to apply for a commission, including budget and schedule. Calls should be publicly accessible and shared with a wide variety of artists. The PAT shall advise the applicant in writing a Call to Artists. There is a sample Call to Artists in Appendix C of this document. For City-initiated public art projects, Calls to Artists are written by the PAT and must be advertised on the City website, Mayor's and NCC's social media accounts, and other public art platforms and listservs, and may be advertised in other places depending on the source of funding. A non-City entity proposing public art on City land, regardless of budget, shall consult with the City prior to sending out an RFP.

The primary metrics for Artist selection are the priorities outlined in the Call to Artists and the PAT Acquisition Priorities (Section II.A.). For City-Initiated public art projects, the PAT members review and rate each proposal independently, then meet publicly to review a select number of proposals that fit the priorities. At that meeting, they may select up to three finalists for interviews by the Public Art Team. During a public meeting, the PAT may deliberate, before voting, on which Artist or team to recommend to the Mayor for execution of a contract. Once awarded a contract, the Artist or Artists will move forward to create their design proposal. If the PAT does not approve any of the Artists who answer the call, the Call to Artists may be re-issued and a new selection process begun. The City of Newburyport, as in all contracts, RFPs, RFQs, and other Calls, retains the ability to not select any applicant for a Call to Artists or to reissue the Call to Artists for that project.

It is the sole authority of the Mayor to provide final approval of the PAT's selection of an artist, and direct staff to proceed with a contract. All contracts for the execution of artworks commissioned by the City of Newburyport shall be made by the Mayor. Commissioning Agreements and other contract appendices are written, reviewed, and negotiated by the City Solicitor, at the request of the Mayor. Depending on the funding mechanism, contracts and Artist Review processes may be subject to state (M.G.L. Chapter 30B, Section 2) and local procurement law in addition to the requirements of this policy. A sample commissioning agreement is included in Appendix D. Project deliverables and payment schedules, agreed upon by the PAT, the Artist or Artist Team, the Mayor

and City Solicitor, will be included in the contract documents.

For non-City-initiated public art projects, the City may contract with the applicant, similar to City-initiated projects. If the applicant is already working with a funder and has a contract for the artwork, the City may instead request an MOU with the applicant, the funder, or both. Each project is unique and the legal agreements will be specific to that project, but the agreements should align with the requirements outlined in this document, clearly define each party's roles and responsibilities, and follow best practices for public art commissioning. Project deliverables and payment schedules, agreed upon by the PAT, the proponent, the Mayor and City Solicitor, will be included in the contract documents.

4. **Design and Development for Short-term Public Art:** Short-term artworks are intended to be installed for five years or less. Artists should fully design and plan their project before submitting it for review by the PAT. The PAT can guide the proponent in completing their information so their project can be reviewed and voted on at a public meeting. The PAT will provide guidance about approvals and permissions from other Boards, Offices, and Commissions that may apply to public art projects. During a public meeting, the PAT may allow public comment or ask the PAT for additional information. This public review ensures transparency in the review process.

The following is the list of information requested for review. Most short-term public art projects won't require everything described, and the PAT will help the proponent determine what they should include in their Final Design.

- *Fabrication:* The proponent and Artist should provide details of all materials and methods used in the creation, installation, and de-installation of the artwork, understanding that any significant changes may require amended approvals from the PAT to be voted on at a public meeting.
  - *Community Engagement:* The applicant should provide evidence of work done to get community feedback and response, such as images from community meetings, flyers and social media postings, and letters of support from the community.
  - *Installation:* The proponent and Artist will coordinate the installation of the artwork with the site owner and update the Public Art Team. The applicant is responsible for securing any permits or approvals that are required by other City agencies. This may include approval from the Parks Commission or DPS, depending on the project site, how the project affects access to the public right of way, or if the installation of the project requires temporary street closures.
  - *Maintenance:* Depending on the length and needs of the project the proponent and Artist should submit a narrative describing how they will maintain or repair the artwork if it is damaged.
  - *Deinstallation:* Short-term projects have a specific, predetermined lifespan. The proponent and Artist should include details of the deinstallation of the artwork with their proposal, including any equipment and/or permitting required. The proponent and Artist are responsible for returning the project site to its original condition after deinstallation.
5. **Design and Development for Long-term Public Art:** Long-term artworks are intended to be installed for five years or more. We encourage applicants considering long-term commissions to think about how the artwork will be experienced in the present moment, as well as the future.
- The applicant will work with the PAT to develop a schedule that reflects any capital construction schedule associated with the project, Artist's contract milestones, other Board or Commission approvals, PAT reviews, a working budget, and Artist deliverables for each project phase. The PAT reviews and votes on the applicant's design at a public meeting and may allow public comment or ask for additional information. This public review ensures transparency in the commissioning process. During the presentation of the design at a public meeting, the PAT needs to understand the following:
- *Visualizations:* Drawings, maquettes, renderings, or other plans and renditions of the artwork as it will appear when installed, appropriately scaled and accurately depicting materials, colors, lighting effects, interpretive text, plaque, and/or signage text.

- *Public Engagement:* The applicant should describe or summarize their community engagement, showing effort to connect with and involve Newburyport's residents, and should keep in mind accessibility.
  - *Fabrication Plans:* The Fabrication Plan must detail all materials and methods used in the creation of the artwork. The applicant will work with the PAT and City partner agencies to determine design deliverables requirements. Fabrication must substantially conform to the Fabrication Plan, and any significant changes may require amended approvals from the PAT to be voted on at a public meeting.
  - *Maintenance Recommendations:* The applicant must provide a written document of the Artist's maintenance recommendations for all proposed materials, and an estimated schedule for routine maintenance and preservation of the artwork.
  - *Installation Plans:* When the artwork is associated with a capital project, installation should be incorporated into the capital construction timeline to avoid additional costs and disruptions to the finished site. Detailed installation plans may include but are not limited to site preparation, equipment requirements, and site restoration, when applicable. The applicant must coordinate the installation of the artwork with the site owner, and update the PAT and any pertinent City partner agencies and their contractors. The applicant is responsible for securing any permits or approvals that are required by other City agencies. This may include approval from the Parks Commission or DPS, depending on the project site, how the project affects access to the public right of way, or if the installation of the project requires any temporary street closures. If the artwork installation diverges significantly from the Installation Plan, the PAT may require amended approvals to be voted on at a public meeting.
  - *Plaques and Signage:* The proponent and Artist should include images showing how they will include or otherwise display their name, the title of the artwork, the year it was installed, and the medium.
  - *Description of Artwork:* The applicant must provide a narrative description of the Artwork for the City to use as a source for descriptions of the project on the City's website, public-facing arts database, and other approved uses, including a final summary of the artwork materials, dimensions, and any collaborations or subcontractors who worked on the project.
6. **Final Acceptance:** The applicant shall submit the following within 30 calendar days of completing the installation:
- Documentation that the artwork was installed in conformance with the Installation Plan.
  - A minimum of five (5) high resolution digital files in JPG format of the installed, finished artwork.
7. **Review and Vote:** At the next public meeting after installation, the PAT will review and vote to accept the artwork into the collection via accessioning.

## C. Approval Process for Donations

All proposals to donate works of art to the City must be submitted to the Public Art Team for review.

1. **The donation request shall contain the following:**
  - Provenance: includes artwork information, conservation history, and donation agreement (see Appendix E).
  - Maintenance recommendations: outlines how the artwork is to be maintained, and what materials and maintenance procedures are needed to conduct routine maintenance of the artwork (cleaning schedules and minor repairs).
  - Proposed site, if any.
2. **The PAT will review the proposed donation based on the following:**
  - Compliance with this policy.

- Acquisition priorities listed in section II.A.
  - If a site is proposed, the residents adjacent to the site or other stakeholders of the site will be notified and public feedback will be heard.
  - Depending upon the nature of the project, further public engagement and approvals by jurisdictional Boards or Commissions may be required according to the specific requirements for permit application or development review. These approvals must be obtained prior to final approval of the Mayor.
3. **All other processes and procedures**, including final approval and contract execution shall follow the guidelines outlined in this policy.
  4. **Limitations:** Approved proposals for donation must complete the full process, including installation of the artwork, by no more than one year after approval. The Donor may request an extension to the deadline of no more than one additional year. The extension request must be submitted to the PAT for review and approval by the Mayor.

The City is under no obligation to consider for acquisition unauthorized and abandoned art. Instead, the Mayor may choose, at his or her full discretion, to remove and/or dispose of it or consider the work for acquisition consistent with the donation process outlined above.

## D. Plaques for Public Artworks

Knowing who created an artwork and when can help provide the context needed to experience an artwork fully. Plaques help the public identify artworks and artists, and enable further explorations of artwork in our collection.

Although there are stand-alone commemorative plaques, tablets, and historic markers in the public art collection, the plaques addressed in this section are used to identify artworks and may provide additional interpretive and educational information.

The PAT will work with Artists and proponents to plan for the inclusion of plaques and other educational and interpretive materials as part of the design proposal.

1. **Standard Information for Plaques for Public Artwork:** Plaques for any artwork should be incidental to the artwork and not a competing focus for the viewer. It shall include the following:
  - Artist name
  - Artwork title and year
  - Brief interpretive text (optional)

*\*Plaques for public artworks may not include logos (e.g. symbols or trademarks designed for definite recognition in order to avoid the use of public art for advertising or endorsement purposes) or any other kind of advertising or sponsorship information.*

2. **Interpretation and Education:** In addition to artwork plaques, additional educational and interpretive information may be shared on the City of Newburyport's website. Such information may include biographical information about the Artist(s) and/or community proponent(s), descriptions and/or histories of the artwork, materials, scheduled repairs or conservation, and images of the design, fabrication, and/or installation process.

## E. Mural Commissions

Murals are public art works that are directly painted on walls or other existing surfaces and can be short-term or long-term commissions. They should follow the guidelines below:

1. **Reviews for murals on City-owned sites:** The PAT will help the Artist determine which City department owns the site and obtain their permission to use it. All mural proposals will follow a modified review process at the discretion of the PAT. Mural reviews should generally follow the

guidelines listed under section II.B.4, with the exception of processes that are not pertinent to mural commissions. The PAT will assist the applicant in discerning which areas of this document are pertinent.

2. **Street Murals:** Street murals are murals painted directly on a roadway. Because the wear and tear on these artworks is intense, they are usually not considered long-term projects, and should follow the process for short-term commissions described in Section II.B.3. Because they are painted on streets, the applicant and PAT shall work closely with DPS to review these projects.
3. **Murals Proposed for Private Sites:** Mural projects on private property require Artists to obtain approval from the landowner. The PAT should be notified about the project and may offer support. The PAT may be able to assist or offer guidance on approvals from other City departments, like reviews by the Historic Commission for projects in historic districts, or street occupancy permits for the installation from DPS. Murals proposed for privately owned surfaces usually don't require City review, unless they fall within special overlay districts as identified in the City's Zoning ordinance. The PAT won't review or vote on these artworks.

## F. Memorial Commissions

A memorial is a public expression designed to shape and honor a shared memory of a particular person, group, or event, and may be long- or short-term. The City of Newburyport has an expansive collection of public art memorials and is unable to accept most new long-term memorial design proposals. We are most interested in those that strongly align with the Curatorial Vision, in particular those that add to the diversity of the City's public art collection.

Memorial Commissions must also meet these additional design criteria:

- **Historical Significance to Newburyport:** The memorial subject must have a direct connection to the City of Newburyport.
- **Public Interest:** Proposals should be considerate of the broader community's interests and needs, particularly the community at the proposed project site.
- **Timing and Timelessness:** Proposed long-term memorials should retain significance and relevance in the future and be meaningful to future generations. The PAT requires a minimum of five years and recommends a minimum of ten years between an event or the passing of an individual and their commemoration to allow for sufficient historical perspective.
- **Subjects Not Previously Memorialized:** The memorial should not honor living individuals or duplicate any existing memorials. We inventory all public memorials and strongly recommend applicants review our Public Art Collections database prior to submitting a memorial proposal. We give preference to proposals that memorialize subjects not currently represented or subjects that are under-represented in the City's collection.
- **Appropriate Location:** The memorial should have a historical or thematic relationship with its proposed location. We prefer proposals for locations where memorials or other artworks do not already exist.
- **Longevity:** Applicants should consider the long-term impact of the memorial and its ability to withstand conditions such as weather or vandalism, as well as changing times and attitudes about its importance, impact on the community, and relevance to the Curatorial Vision.

Artists or community proponents can submit their memorial proposals to the PAT at least one month in advance of necessary approvals. The Artist or proponent shall present their memorial proposal for the PAT to review based on the criteria above, as well as the priorities listed in Section II.A. The PAT may invite representatives from other relevant City departments, boards or commissions relevant to the proposed memorial. Memorial proposals must also include:

- Identification of the person, group, or event to be memorialized;
- A brief narrative explaining the importance of the person, group, or event and its direct, proven relationship to the City;
- A brief explanation of the visitor experience of the proposed memorial; and
- A rationale for the proposed memorial location.

If approved, the memorial project will then follow a regular commissioning outlined in Section II.B above.

### III. Procedures for the deaccessioning of public artwork

#### A. Removal from the Collection: Deaccessioning

Deaccessioning is the formal removal of an artwork from the City's collection. Under deaccessioning, artworks are not only removed from public view but also permanently removed from the City's collection.

The decision to deaccession is only made after careful deliberation and depends in part on the artwork's accessioning. Deaccessioning requires documentation (e.g., signed Deed of Gift, bill of sale, minutes of the PAT meetings, artist's contract, etc.) proving that the PAT has the right to transfer ownership of the artwork in question. Any deaccession process should be carried out with the utmost caution, especially with regard to the determination of ownership of the artwork.

The PAT must approve the deaccessioning of an artwork by a majority vote at a public meeting. Artworks are permanently removed from the collection by sale, donation, disposal, or destruction. Additionally, the deaccessioning of all City-owned artwork may be subject to State and City procurement statutes.

The PAT will make all reasonable efforts to notify any living Artist, or the estate of any deceased Artist, whose work is being considered for deaccessioning. Any correspondence about the deaccessioning will be included in the collection file.

1. **Criteria for Deaccessioning:** Criteria for determining whether an object should be deaccessioned include, but are not limited to the following:
  - The use of the site has changed, the artwork is no longer appropriate, and the artwork cannot be reasonably protected or maintained.
  - The artwork has been damaged beyond reasonable repair and/or requires extensive conservation or restoration that is cost-prohibitive.
  - The artwork is beyond the capability of the City of Newburyport to properly display, maintain, and/or store.
  - The artwork endangers public safety in its current condition.
  - The artwork was stolen from its location and cannot be retrieved.
  - The artwork was commissioned or accepted with the provision or understanding that it was to have a limited lifecycle or installation period.
2. **Requirements for Deaccessioning:** If the PAT recommends considering an artwork for deaccessioning, the Public Art Team will draft a report including information about:
  - The Artist (if living, or their estate),
  - Provenance,
  - Current condition of the artwork and the site,
  - Project stakeholders when it was commissioned, and during its' lifespan,
  - Evidence of current public opinion and recent community engagements about the artwork,
  - Recommendations from the Public Art Team.

The PAT keeps a permanent record of the conditions and circumstances under which artworks are deaccessioned from City property. Artworks which no longer fit the Curatorial Vision, are severely deteriorated, or otherwise pose a threat to public safety will be relocated or discarded following any relevant City of Newburyport legal processes. The City of Newburyport does not sanction the sale or gift of deaccessioned artworks to its employees, officers, trustees, or to their immediate families or representatives.

3. **Process for Deaccessioning:** If the PAT recommends an artwork for deaccessioning, the following steps shall be followed:
  - Notice to the Artist: Artists whose works are being considered for deaccession will be notified by all diligent means, including a legally-verifiable means of communication,
  - Review by the PAT: the PAT will provide recommendations in the form of a report including the grounds for deaccessioning, written evaluation, photo documentation of the condition of the artwork, damage and/or theft report, and proposed removal and/or demolition work plan,
  - Public Engagement: the PAT will facilitate the opportunity for the public to provide feedback on the decision with the purpose of informing the decision of the PAT,
  - Final decision: the final decision to deaccession a public art piece shall be made by the Mayor. The Mayor may decide to a) accept the recommendation, b) reject the recommendation, or c) delay the decision and request more information,

## IV. Procedures for the care of public artwork

### A. Collection Care

1. **Use and Activities:** The City of Newburyport shall carry out the reasonable responsibilities required to provide necessary care for all collections acquired.
2. **Maintenance Plan for New Acquisitions:** All public art commissions shall be required to include maintenance recommendations that outline how the artwork is to be maintained, and what materials and maintenance procedures are needed to conduct routine maintenance of the artwork. A maintenance plan shall include the following elements:
  - Materials, and sources of the materials, used in the artwork,
  - Methods of fabrication and the name of any individual other than the Artist who was involved in the construction or creation of the artwork,
  - Installation specifications,
  - Method and frequency of required maintenance, including planning for protections against the effects of tactile/public interaction and/or environmental conditions, and;
  - Additional contacts for maintenance issues, if warranted.
3. **General Maintenance:** Maintenance of the artwork, as distinguished from technical maintenance, restoration or repair, shall be the responsibility of the host department. This may include cleaning schedules and protective measures against normal wear, weather, and vandalism.
4. **Technical Maintenance:** The City will, by its own qualified member on the PAT and/or a City staff member, be responsible for the following:
  - Maintaining a comprehensive Collection Database of all existing artwork in the City's public art collection. This inventory will include but not be limited to:
    - a. An accession number unique to the specific artwork;
    - b. Artwork information – title, year of commission, location of artwork;
    - c. Artist information – artist name, contact information, artist copyright;



- d. Gift acknowledgement, bill of sale, Artist contract, or written justification for acquisition;
  - e. Photographs;
  - f. Significant correspondence relating to the artistic intent of the artwork, provenance of the artwork, and any associated press;
  - g. Maintenance and conservation information – materials, fabrication methods, installation specifics, ongoing photographic documentation, additional parties contact information, material-specific warranties;
  - h. Commissioning information – commission amount, contract reference number, contract amendments, final contract amount, funding source, additional departments or organizations involved, warranties and insurance.
- The PAT will conduct biennial condition reports and periodic physical assessment of its public art collection.
  - The PAT will annually identify restoration and repair needs for the public art collection that surpass general maintenance. This reporting will be used in creating annual work plans and appropriating funding.
5. **Funding for Public Art Maintenance:** The host department is responsible for the care and custody of art owned by the City of Newburyport and as such will make all reasonable efforts to maintain public artworks as determined by maintenance recommendations written by the Artist or proponent. Because there is no City funding mechanism geared toward public art maintenance, the PAT shall carefully consider the maintenance implications of a public art piece during deliberations on its approval.
  6. **Insurance:** The City maintains an umbrella fine arts insurance policy, procured by the City's Finance Director. This policy is reviewed and updated annually by the PAT, the host department and the Finance Director. The policy covers objects owned by the city, subject to certain limitations. Objects are covered at the Artist's stated value. In the case of damage or loss to the collections the PAT may decide to file an insurance claim. The PAT shall request through the Finance Director to file a claim and keep all appropriate documentation in the object record.

# GLOSSARY OF TERMS

**These are working definitions provided by the Public Art Policy Advisory Group of the Mayor's Office for use with the PAT and NCC and are subject to change.**

**Accession** is the act of formal documentation and legal acceptance of an approved acquisition or loan to the City's collection of artwork.

**Acquisition** is the formal process used to accept additions to the City's art collection. It includes the initial proposal/donation, evaluation, negotiation, PAT approval, and final accessioning of works of art.

**Approval** is the action of officially agreeing or accepting a proposal or artwork put before the PAT.

**Artist(s)** refers to individuals or teams who self-define as Artists for the purpose of creating artworks for the City.

**Artistic concept** is an early narrative of what the artwork might be and does not include any visual design.

**Artwork**, alternatively **Work of Art**, refers to all paintings, mural decorations, statues, bas-reliefs, sculptures, monuments, fountains, arches, ornamental gateways, and other structures of a permanent character intended for ornament or commemoration.

**Call to Artists** is a public solicitation for submissions from Artists and Artist teams for a specific project or opportunity. Calls to Artists include, but are not limited to, Requests for Proposals (RFP) and Requests for Qualifications (RFQ).

**Collection** refers to artworks that have been commissioned, donated, purchased, or otherwise acquired by the City of Newburyport via majority vote of the PAT this includes artworks colloquially referred to as Public Art. The public art team documents artworks included within this definition as well as short-term artworks and artworks on private property such as murals and artworks that have been deaccessioned.

**Collection record** is a digital and adjoining hard-file that retains all physical and intellectual information regarding an individual or grouping of artwork(s).

**Commission** is the act of requesting and authorizing the production of a work of art.

**Commissioning Agreement** is a supplemental document to the City's standard contract form that outlines the project schedule, reviews, and votes by the PAT, Intellectual Property rights, and other legal rights.

**Community** is a group of people with a common interest, whether defined by geography, identity, experience, or activity.

**Conservation** is the treatment and/or stabilization of a collection object by qualified conservators, identified by the PAT.

**Culture** is the customs, arts, social institutions, and achievements of a particular nation, people, or other social group.

**Curator** is a person who researches and interprets a collection of artworks and/or objects.

**Deaccessioning** is the formal process used to permanently remove an object from the collection.

**Diversity**, in relation to artworks, means including or involving a wide range of distinct forms, peoples, and/or perspectives. In relation to people, diversity means having a high number of races, cultures, ethnicities and other demographic groups represented within a group, organization, or institution.

**Donations** are an existing artwork offered as a gift to the City for placement under the City's jurisdiction; alternatively, a monetary gift for the purposes of acquiring a work of art for the City.

**Equity** is the respectful treatment and fair involvement of all people in a society. It is the state in which everyone has the opportunity to reach their full potential.

**Historic** refers subjectively to a thing or an event of importance when studied as part of the past.

**Historical figure** is a person who lived in the past and may be perceived as having had a significant impact on people's lives and society through their deeds and accomplishments.

**Inclusion** means involving people of all backgrounds, abilities, perspectives, and beliefs within a group, institution, or decision. This is more than achieving diversity; it is ensuring all individuals have a true sense of belonging.

**Informational plaque** is signage that provides context or additional interpretive and educational information for public artworks.

**Long-term** refers to the projected lifespan of artworks. Long-term artworks employ durable materials and archival fabrication methods and are intended to be fixed to one site for an enduring lifespan. Long-term artworks require care and maintenance as capital assets. Long-term artworks contribute to the lasting legacy of the City's collection for a minimum of five years.

**Memorial** is a public expression designed to shape and honor a shared memory of a particular person, group, or event. In public art, memorials may be long or short-term.

**Mural** is a large painting traditionally applied to a wall or ceiling, especially in a public space. Our definition of mural extends to artworks painted or applied on the ground or other surface.

**Project theme** is a general idea that conceptualizes the subject matter to be expressed through a public artwork.

**Proponent** is an individual, group, organization, or business that proposes a work of art for placement or installation on a city-owned site, and/or, when applicable, the Artist(s) who created the proposed gift.

**Provenance** is the documentation of an object's origins and history of ownership.

**Public Art** is a colloquial term for Artworks that are intentionally experienced from, or sited upon, publicly accessible locations. These Artworks on City of Newburyport property are part of the City's formal Collection of Artworks or have been approved for temporary placement on City of Newburyport property by the PAT.

Public Art is a dynamic cultural activity from conception and design, to fabrication and installation, to formal accession or temporary approval at a PAT public meeting. Public Art may affirm or challenge existing community aesthetics and values and may critique, augment, or invite exploration of established narratives and the physical landscape.

**Public Art Team (PAT)** refers to the advisory committee to the NCC that supports the commissioning, review, selection, acceptance, and care of art in public places. They have exclusive authority to recommend approval and commissioning of artworks intended to be added to the City's collection or be placed on City property to the Mayor, and act as a transparent, independent entity that holds public meetings to vote on matters concerning the City's art collection. All of its members are residents of the City. Members are appointed by their representative groups, and may serve for up to 3 years. The PAT is comprised of 7 members, including 2 members of the Newburyport Cultural Council, 2 members of the Newburyport Arts Collective, 1 member of the Parks Commission, 1 City Staff and 1 representative from the Mayor's office.

**Quorum** is defined as a simple majority of the members of the public body, unless otherwise provided in a general or special law, executive order, or other authorizing provision.

**Request for Proposals (RFP)** is a call to Artists to submit a specific project proposal. The RFP outlines all the details of the project, including community values, vision, and site use.

**Request for Qualifications (RFQ)** is a call to Artists to submit their qualifications. The RFQ outlines all the details of the project and any qualifications needed.

**Stakeholder** typically refers to community groups, businesses, organizations, or individuals with explicit or implicit interest in a public art project.

**Short-term** refers to the projected lifespan of artworks. Works of art intended as short-term have an intended lifespan of anything from less than one day up to five years. Short-term works may be at one or more sites, and the artwork may be dynamic in nature.

# APPENDIX A: FAQ FOR ARTISTS

## City of Newburyport Public Art Policy

### FAQs for Artists

Thank you for your interest in advancing Public Art in the City of Newburyport. The City recognizes the value of public art to its citizens and visitors. We are committed to fostering a collection of artworks and public art projects that reflect our people, ideas, histories, and futures, engage our communities and directly respond to, enrich, and enliven our environment. We seek public art that is driven by an artistically strong vision, enhances the diversity and equity of the existing collection, and possesses durability appropriate to the lifespan of the work.

In order to help streamline the process for Artists and other proponents of public art, we have created this document to answer frequently asked questions and outline the steps by which public art is approved. Newburyport's Public Art Team (PAT) is a transparent, independent entity who has the exclusive authority to recommend approval and commissioning of public artwork. The PAT also acts as a resource for artists and proponents as they navigate this process, and we encourage you to reach out to them for assistance.

#### **F. What does the Public Art Policy apply to?**

- D. This policy applies to all works of art (both temporary and permanent) that are commissioned, hosted, or displayed on public property and are 1. funded in whole or in part through City funds or maintained by the City; 2. sited on City property, building or right-of-way, or 3. consistently accessible to the public.
- E. This policy does not apply to 1. artwork that is on display within City offices/ buildings that have restricted or regulated access, or 2. temporary exhibitions such as gallery displays, booth displays at art festivals, and museum exhibits displayed on City-owned or -managed property.

#### **B. What are the PAT's priorities for approving public art?**

- 8. Artistic aims, objectives and goals
  - What has the artist accomplished with the work and does it align with the proposed project goals?
  - Is the work relevant to the City, its values, culture and people and does it contribute to the fabric of the City? Is the work an integral component of the overall project?
  - Is the artwork appropriate for the community it serves?
- 9. Diversity and accessibility
  - Does the artwork reflect or advance the City's curatorial vision and policy of inclusivity?
  - Does the artwork advance lesser-told or lesser-known stories, non-traditional imagery, diverse perspectives, and/or minority voices?
- 10. Placement/siting
  - What is the relationship of the work to the site? Is it appropriately scaled?
  - Will the work help to anchor and activate the site and enhance the surrounding area?
  - Will there be convenient public access to the site?
  - What are the utility requirements of the artwork?
- 11. Fabrication, handling and installation
  - Are the projected costs accurate and realistic?
  - Have written estimates been obtained from qualified contractors?

- Does a certain site present any special obstacles to installation?
  - Can the work easily be removed if necessary?
12. Maintenance requirements
- Is the work suitable for outdoor display or special indoor environments?
  - Are the materials durable? Does the work have a limited lifespan due to any inherent weakness?
  - What are the existing or projected maintenance requirements of the work? Are they excessive or cost prohibitive? Are any unusual or ongoing costs likely?
  - What are the artist's suggestions for protection of the work from vandalism?
13. Liability and safety
- Is any aspect of the work a potential safety hazard?
  - Will fencing or other types of security measures be required?
14. Liability and safety
- Is the artwork priced appropriately for the City?
  - How will the artwork impact the capacity for future acquisitions?

### C. How do I get my public art project approved and installed?

8. **Initial communication:** The proponent must first initiate communication with the City by submitting a signed letter of intent describing the project and its location. In order to install an artwork on City property, the property-owning department (such as Parks or DPS, etc.) must first give permission for the location of the artwork. Once approval is given by the property-owning department, a formal application may be submitted.
9. **Project initiation & site selection:** The proponent shall submit a formal application (see attached) to the PAT to approve the artwork design, at least one month in advance of necessary approvals.

The applicant should review the application and scope of the project with the PAT, who will consult with appropriate City staff and the Mayor in order to provide guidance about approvals and permissions that may be required from other Boards, Offices, and Commissions. If the applicant is not self-funding the project, the PAT can assist in helping to identify funding sources for installation, understanding there is no current City fund specifically for public art projects.

10. **Process for Short-term Public Art:** Short-term artworks are intended to be installed for five years or less. Artists should fully design and plan their project before submitting it for review by the PAT at a public meeting. During the public meeting, the PAT may allow public comment or ask for additional information. This public review ensures transparency in the review process.

The following is the list of information requested for review. Most short-term public art projects won't require everything described, and the PAT will help the applicant determine what they should include.

- *Fabrication:* The applicant should provide details of all materials and methods used in the creation, installation, and de-installation of the artwork, understanding that any significant changes may require amended approvals from the PAT to be voted on at a public meeting.
- *Community Engagement:* The applicant should provide evidence of effort to get community feedback (i.e. images from community meetings, social media postings, or letters of support)
- *Installation:* The applicant is required to coordinate the installation of the artwork with the site owner and update the Public Art Team. The applicant is responsible for securing any permits or approvals that are required by other City agencies. This may include approval from the Parks

Commission or DPS, depending on the project site, how the project affects access to the public right of way, or if the installation of the project requires temporary street closures.

- *Maintenance*: Depending on the length and needs of the project, the applicant should submit a narrative describing how they will maintain or repair the artwork if it is damaged.
- *Deinstallation*: The applicant should include details of the deinstallation of the artwork, including any equipment and/or permitting required. The applicant is responsible for returning the project site to its original condition after deinstallation.

11. **Process for Long-term Public Art**: Long-term artworks are intended to be installed for five years or more. We encourage applicants considering long-term commissions to think about how the artwork will be experienced in the present moment, as well as the future.

The applicant will work with the PAT to develop a schedule that reflects any capital construction timelines associated with the project, contract milestones, other Board or Commission approvals, PAT reviews, a working budget, and Artist deliverables for each project phase. The PAT reviews and votes on the applicant's design at a public meeting and may allow public comment or ask for additional information, ensuring transparency in the commissioning process. During the presentation of the design at a public meeting, the applicant should provide the following:

- *Visualizations*: Drawings, maquettes, renderings, or other plans and renditions of the artwork as it will appear when installed, appropriately scaled and accurately depicting materials, colors, lighting effects, interpretive text, plaque, and/or signage text.
- *Public Engagement*: Describe or summarize community engagement, showing effort to connect with and involve Newburyport's residents, and being sensitive to accessibility.
- *Fabrication Plans*: Detail all materials and methods used in the creation of the artwork. The applicant will work with the PAT and City partner agencies to determine design deliverables requirements. Fabrication must substantially conform to the Fabrication Plan, and any significant changes may require amended approvals from the PAT.
- *Schedule*: Present a schedule detailing the artwork process, proposed installation date and budget.
- *Maintenance Recommendations*: Provide a written document of the Artist's maintenance recommendations for all proposed materials, and an estimated schedule for routine maintenance and preservation of the artwork.
- *Installation Plans*: When the artwork is associated with a capital project, installation should be incorporated into the capital construction timeline to avoid additional costs and disruptions to the finished site. Detailed installation plans may include site preparation, equipment requirements, site restoration, etc. The applicant must coordinate the installation of the artwork with the site owner, and update the PAT and any pertinent City agencies and their contractors. The applicant is responsible for securing any permits or approvals that are required by other City agencies. This may include approval from the Parks Commission or DPS, depending on the project site, how the project affects access to the public right of way, or if the installation of the project requires temporary street closures. If the artwork installation diverges significantly from the Installation Plan, the PAT may require amended approvals.
- *Plaques and Signage*: Include images showing how the Artist's name, title of the artwork, year it was installed, and medium used will be included or displayed.
- *Description of Artwork*: Provide a narrative description of the Artwork for the City to use as a source for descriptions of the project on the City's website, public-facing arts database, and other approved uses, including a final summary of the artwork materials, dimensions, and any collaborations or subcontractors who worked on the project.

12. **Final Acceptance**: The applicant will submit the following within 30 calendar days of installation:

- Documentation that the artwork was installed in conformance with the Installation Plan.
- A minimum of five (5) high resolution digital files in JPG format of the installed, finished

artwork.

13. **Review and Vote:** The PAT will review and vote to accept the artwork into the collection.

#### **D. When do I need an RFP?**

Calls to Artists are required for Public Art projects with budgets over \$50,000 that are not initiated by an applicant who is currently working with an Artist. If a Call to Artists is required, the PAT will assist the applicant in developing and executing one. Applicants should not initiate RFP's for projects on City property without prior discussions with the City.

#### **E. What kind of legal contract do I need?**

Legal agreements for public artworks may be executed in several ways. The City may contract with the Artist or applicant directly. If the applicant is already working with a funder and has a contract for the artwork, the City may request an MOU with the applicant, the funder, or both. Each project is unique and the legal agreements will be specific to that project.

#### **F. Can I make a donation of public art?**

All proposals to donate works of art to the City must be submitted to the Public Art Team for review. Donation requests to the PAT should contain the following:

- Provenance: includes artwork information, conservation history, and transfer of ownership.
- Maintenance recommendations: outlines how the artwork is to be maintained, and what materials and maintenance procedures are needed to conduct routine maintenance of the artwork (cleaning schedules and minor repairs).
- Proposed site, if any.
- Feedback from abutters to the proposed site or stakeholders of the site, or effort shown to connect with and involve neighbors and stakeholders, including feedback and approvals from jurisdictional Boards or Commissions.
- How the art complies with the criteria listed in section B.

#### **G. Will a plaque be allowed or required for public artworks?**

Knowing who created an artwork and when can help provide the context needed to experience an artwork fully. Plaques help the public identify artworks and artists, and enable further explorations of artwork in our collection.

The PAT will work with Artists and proponents to plan for the inclusion of plaques and other educational and interpretive materials as part of the design proposal. Plaques should be incidental to the artwork and not a competing focus for the viewer. Logos, trademarks and symbols designed for recognition and advertising or endorsement are not allowed. Plaque information should include the following:

- Artist name
- Artwork title and year
- Brief interpretive text (optional)

#### **H. Can I paint a mural?**

Murals are public art works that are directly painted on walls or other existing surfaces and can be short-term or long-term commissions. For City-owned properties, the PAT will help the Artist determine which City department owns the site and obtain their permission to use it. All mural proposals will follow a modified review process, at the discretion of the PAT, to meet the guidelines of the City's Public Art Policy. The PAT will assist the applicant in the process.

Mural projects on private property require Artists to obtain approval from the landowner. The PAT should be notified about the project and may offer support. The PAT may be able to assist or offer guidance on



approvals from other City departments, like reviews by the Historic Commission for projects in historic districts, or street occupancy permits from DPS. Murals proposed for privately owned surfaces usually don't require City review, unless they fall within special overlay districts as identified in the City's Zoning ordinance. The PAT won't review or vote on these artworks.

Street murals are painted directly on a roadway. Because the wear and tear on these artworks is intense, they are usually not considered long-term projects, and should follow the procedures for short-term public art approvals. The applicant should work closely with DPS to review these projects.

## I. Can I propose a memorial?

A memorial is a public expression designed to shape and honor a shared memory of a particular person, group, or event, and may be long- or short-term. The City of Newburyport has an expansive collection of public art memorials and is unable to accept most new long-term memorial design proposals unless they strongly align with the City's curatorial vision, in particular those that add to the diversity of the City's public art collection. Memorials must also meet these additional criteria:

- **Historical Significance to Newburyport:** The memorial subject must have a direct connection to the City of Newburyport.
- **Public Interest:** Proposals should be considerate of the broader community's interests and needs, particularly the community at the proposed project site.
- **Timing and Timelessness:** Proposed long-term memorials should retain significance and relevance in the future and be meaningful to future generations. The PAT requires a minimum of five years and recommends a minimum of ten years between an event or the passing of an individual and their commemoration to allow for sufficient historical perspective.
- **Subjects Not Previously Memorialized:** The memorial should not honor living individuals or duplicate any existing memorials. We inventory all public memorials and strongly recommend applicants review our Public Art Collections database prior to submitting a memorial proposal. We give preference to proposals that memorialize subjects not currently represented or subjects that are under-represented in the City's collection.
- **Appropriate Location:** The memorial should have a historical or thematic relationship with its proposed location. We prefer proposals for locations where memorials or other artworks do not already exist.
- **Longevity:** Applicants should consider the long-term impact of the memorial and its ability to withstand conditions such as weather or vandalism, as well as changing times and attitudes about its importance, impact on the community, and relevance to the Curatorial Vision.

Applicants can submit their memorial proposals to the PAT at least 3 months in advance of the requested installation date and follow the process for approval listed in C above. Memorial proposals must also include:

- Identification of the person, group, or event to be memorialized;
- A brief narrative explaining the importance of the person, group, or event and its direct, proven relationship to the City;
- A brief explanation of the visitor experience of the proposed memorial; and
- A rationale for the proposed memorial location.

## APPENDIX B: APPLICATION APPLICATION FOR PUBLIC ART

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Email: \_\_\_\_\_

Project Description, including title of artwork, materials and dimensions:

\*please attach photos or drawings of the proposed artwork

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Proposed project site:

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Property-owning department:

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Installation and/or deinstallation details, including equipment required, lighting and sound plans (if pertinent):

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Estimated cost and funding source:

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Artist name:

\*please attach resume and selected work samples

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Maintenance plan:

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Project schedule including installation date, programming and events if applicable, and deinstallation date:

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Insurance value:

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\*Please attach letters of support from community members or organizers, if available

Questions? Contact \_\_\_\_\_, at email \_\_\_\_\_@\_\_\_\_\_.com

Submit your application to:  
City of Newburyport, Public Art Team  
c/o \_\_\_\_\_  
60 Pleasant St.  
Newburyport, MA 01950

APPENDIX C: SAMPLE CALL TO ARTISTS

THE CITY OF NEWBURYPORT ANNOUNCES  
THE CLIPPER CITY RAIL TRAIL PHASE II  
MURAL PROJECT

in collaboration with the Newburyport Art Association

CALL FOR ARTIST PROPOSALS



Clipper City Rail Trail: Phase II



## Introduction

The City of Newburyport's Clipper City Rail Trail Phase II project offers an exciting opportunity for artists to contribute to the beautification of the trail corridor along a portion of the long fenced section between Harrison and Water Streets. The City of Newburyport, in collaboration with the Newburyport Art Association, invites artists and design professionals to submit proposals for this public art mural project. The murals will be permanently installed on the solid board fencing along this corridor. (Please see photographs of the site below.) The goals of the project include:

- Celebrating, improving, and enhancing the Trail corridor
- Bringing public art to people's everyday lives
- Contributing to the distinct identity of the area
- Responding to the physical, social, and historical characteristics of Newburyport
- Enlivening and activating the public space
- Celebrating the rich connection between the arts and the environment

## Vision

The City of Newburyport envisions a number of distinct murals celebrating the distinct setting and City history. A range of themes and subject matter will be considered, including Newburyport's culture, maritime history, landscape and nature, although overtly political, sexual, and/or religious themes will not be appropriate for this setting. Works must be appropriate for general public viewing. The final number of murals installed will depend upon the submissions. The artists selected will work with the review committee to determine the best way to curate the submissions when installed together. An artist may be selected to create more than one panel if he or she can show that he or she can meet the stated time frame.

## Site

The 500' section of the Clipper City Rail Trail Phase II corridor between Harrison and Water Streets is lined with 6' solid board white cedar fencing, some of which is raised even higher due to the mounded soil along the sides of the trail. The fence panels measure 6'x8' and have steel fence posts embedded in concrete footings. The mural panels will measure 4' x 6' and fit on the chosen fence panels between the posts.



## Mural Panels

After selection of the artwork, high resolution digital files of the artwork will be digitally printed on 4'x6' low-profile ¼" Aluminum Composite Panels, laminated to protect them from ultraviolet radiation, framed with 1.5" metal trim molding, and mounted on the wood fence panels by the City of Newburyport. The City will also install plaques with the artist's name and mural title.

## Anticipated Timeline (may vary)

March 23, 2017	Request for Proposals announced
Monday, May 1, 2017	Proposals due
Monday, May 22, 2017	Finalists notified
May 30-June 2, 2017	Selection Committee interviews Finalists
Week of June 19, 2017	Parks Commission public meeting & review
June 2017	Final selections (winners notified along with all finalists)
Friday, August 4, 2017	Digital files due for printing on panels
August 2017	Fabrication of mural panels
September 2017	City Hall exhibition of winning submissions
Week of October 2, 2017	Installation of murals
October 2017	Mural celebration ceremony

## Eligibility

Artists and design professionals from the Greater Newburyport area are eligible to submit mural proposals. Newburyport Art Association members and non-members welcome to submit proposals. Must be 18 years or older. Artist teams are also eligible to apply. Please note that if an applicant does not have the capacity to provide a high resolution digital image with good lighting of his or her artwork, then the original art can be brought to the sign company and they can photograph it to provide the image.

## Prize

In addition to publicity, the Prize for each winning mural panel is \$500 payable on delivery of a completed digital file (for reproduction on the ACM panel) satisfactory to the Committee by the delivery deadline set by the Committee.

## Submission requirements

Digital proposal submissions must be received by the City's Planning Department no later than **4:00 p.m. Monday, May 1, 2017** by email at [gvining@cityofnewburyport.com](mailto:gvining@cityofnewburyport.com) or submission of a labelled thumb drive to Geordie Vining at the Planning Office.

Digital proposal must include:

- an artist statement/letter of interest;

- up to 5 images of a mural design proposal (need not be final work, but a representation of the artist's vision);
- resume or curriculum vitae.

If artist is selected as a finalist, he or she will be required to have an interview with the selection committee. The selection committee, in consultation with the Mayor and the Parks Commission, will be comprised of: Geordie Vining, Senior Project Manager, Newburyport Planning Office; Lise Reid, Newburyport Parks Director; and Elena Bachrach, Executive Director, Newburyport Art Association.

Finalists are anticipated to be notified around Monday May 22, 2017, interviewed during the week after Memorial Day May 30<sup>th</sup> - June 2<sup>nd</sup>, and final selections made in June 2017.

### **Selection Criteria**

The selection of artwork for the Clipper City Rail Trail Phase II mural project will be based on the following criteria:

**Quality:** Concept should draw from the vision of the City's mural project, tapping historical and cultural themes, with possible subcategories of maritime, cultural landscapes, bridges and railroads, and landscape and nature, etc.

**Elements of Design:** The Artist Selection Committee will review the conceptual proposals and determine those that are the most appropriate for the project.

**Cooperation:** The artist should have a demonstrated ability to work closely and cooperatively with the committee, volunteers, other artists, and the community.

**Communication:** The artist must have the ability to clearly communicate concepts visually and through clearly written materials as well as orally during the interview process.

**Technical Feasibility:** The artist must be able to demonstrate his or her technical ability to complete the mural project proposed.

## APPENDIX D: SAMPLE COMMISSIONING AGREEMENT

THIS AGREEMENT, is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between [name of city] (hereinafter the “City”), acting by and through the [appropriate department or council] with offices at \_\_\_\_\_, and [artist’s name or artist’s name d.b.a. business name] (hereinafter the “Artist”) with offices at \_\_\_\_\_.

WHEREAS, the City has implemented [name of art program] pursuant to [applicable local, state or federal laws, ordinances and/or regulations, and/or funding source] by allocating [amount or type of funding] for the establishment and display of artwork in public places; and

WHEREAS, authority lies with the City to make payments for the [acquisition, design execution, fabrication, transportation, and/or installation] of artworks, including payments for the support of an artist [selection process, 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 [commissioning method or selection procedure] adopted by the City to [design, execute, fabricate and/or install] the Artwork, as described in Exhibit 1 in a public space located at \_\_\_\_\_ (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 (specify if not all)] as necessary for the design and 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 the Department of Public Services and, where appropriate, the project architect to ensure compliance with these objectives.
- c. The Artist shall prepare the design concept and the corresponding budget described in Section 1.3 of this Agreement. The design concept shall include a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved.
- d. Artist shall attend public information meetings with the general public, attend design and construction 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.

- e. The Artist shall complete the fabrication of the Artwork by the scheduled installation date as provided in Section 1.4(b)(i) of this Agreement.
- f. 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.
- g. 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.
- h. Artist shall provide required insurance in amounts and limits specified in Article 6 and Exhibit 4.
- i. Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor.
- j. 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.
- k. Artist shall provide photographic documentation of the Artwork.
- l. 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 provide and install a plaque on or near the Artwork containing a credit to the Artist substantially in the following form: [Artist's name, date of publication].
- 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, Public Art Team, boards, commissions, 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") with an accompanying budget, pursuant to the City's Public Art Policy, which was (selected/approved) by the Public Art Team. The Design and Budget shall be attached to this Agreement as Exhibit 1 and Exhibit 2, respectively.
- b. Approval & Development Process

- i. The Artist followed the Approval and Development Process outlined in the City’s Public Art Policy, obtaining required approvals in order to comply with any applicable laws, ordinances and/or regulations or for other reasons including, but not limited to, obtaining public input at public meetings and the ensuring the physical integrity of the Artwork or its installation at the Site.
- c. Design/Construction Documents
  - i. The Design will include: a description of the method by which the Artwork is to be fabricated and installed; a description of any operational, maintenance and conservation requirements for the Artwork; a description of the placement of the Artwork at the Site and any site preparations that may be required by the City including, but not limited to, any changes or modifications to any utility system or structure of the Site as necessary.
  - ii. If applicable, the Artist shall prepare structural drawings detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings shall indicate any risks involved in the construction, integration and maintenance of the Artwork, as well as any third-party subcontractors needed to work on the project.
  - iii. Where appropriate, the Artist shall present such drawings to a qualified engineer, licensed by the state and paid by the Artist, for certification that the Artwork will be of adequate structural integrity and the Artist shall provide the City with such a certification.
  - iv. Where appropriate, the Artist shall present the Design to a qualified conservator, who will make recommendations on the maintenance of the Artwork, and the Artist shall provide a written copy of the conservator’s recommendations to the City.

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

- a. Budget
  - i. The Artist shall prepare a budget, which shall include all goods, services and materials, with such costs itemized. The Budget shall be attached to this Agreement as Exhibit 2.
  - ii. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.
  - iii. The Artist shall keep a log of the Artist’s project hours and shall retain all original receipts pertaining directly to the project.
  - 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.
- 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 fabricate [and install] the Artwork in substantial conformity with the Design. The Artist may not deviate from the approved design without written approval of the Public Art Team.
- b. The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork such as the application of protective or anti-graffiti coatings, if applicable, unless the City disapproves. If the

Artwork is being constructed on site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. Prior to requesting authorization to transport and install the Artwork, the Artist shall be required to provide the City with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. All additional workers or subcontractors must provide proof of insurance prior to entering the site.

- c. The City shall have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice.
- d. 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.
- e. 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.
- f. 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.
- g. The City shall inspect the Artwork within [\_\_\_\_\_] 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 [\_\_\_\_\_] days of examining the fabricated Artwork. The Artist shall then have [\_\_\_\_\_] 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.
- h. 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 Public Art Team 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 Public Art Team approves the changes, the City shall promptly notify the Artist in writing. The Artist will also make the required presentations to the approval bodies [List here].
- c. If the Public Art Team 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 \_\_\_\_\_ 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 [\_\_\_ indicate City or Artist].
- b. The Artist will coordinate 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 construction team. Artist may not install the Artwork until authorized to do so by the City.
- c. The Artist shall be present to supervise the installation of the Artwork.
- d. 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.
- e. Within 30 days after installation of the Artwork, the Artist shall furnish the City with five (5) high-resolution digital files in JPG format the of the Artwork as installed. The photographs must be labeled with the name of the Artwork and the date upon which the photograph was taken. The Artist shall also furnish the City with a full written narrative description of the Artwork.
- f. Prior to the 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 \_\_\_\_ 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 \_\_\_\_\_ 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 \_\_\_\_\_ 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 contract 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 \_\_\_\_).

### 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 contract, provided that 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) ("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 the 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 in substantially the following form: [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 contract. Upon written request, the City shall remove the identification plaque and all attributive references to the Artist at its own expense within [\_\_\_\_\_] 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.

### 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.

## 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 [\_\_\_\_\_] days prior to the effective date of termination.
- b. The City may terminate this Agreement without cause upon [\_\_\_\_\_] 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.
- 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 [\_\_\_\_\_] 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 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 contract to another artist provided that the City, in the City's sole discretion, approves of the new artist.



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

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:

For Artist:

\_\_\_\_\_  
Name

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Exhibit 1 Description of the Artwork

[This exhibit should provide a detailed narrative describing the proposed artwork with explicit detail regarding the overall form or design, scale, dimensions, color, and surface treatment of the Artwork.]

## Exhibit 2 Artwork Budget

[The estimated budget for the proposed artwork should be inserted here. The following sample budget worksheet is a guide to some of the costs the budget might include.]

### SAMPLE BUDGET WORKSHEET

The following sample budget worksheet is intended to assist artists in planning and developing an estimated budget for public art projects. The following worksheet is intended as a guide only and is not necessarily inclusive of all costs which may be incurred when undertaking a public art project. Not all costs listed will pertain to every project. A contingency of ten percent (10%) of the project total is highly encouraged to cover unexpected costs. The artist's fee is generally 15%–20% of the total project budget for design and fabrication projects. This fee may vary based on the actual work undertaken by the artist and according to the experience and reputation of the artist.

The fee is generally intended to cover the creative work of the artist in developing the project concept. The fee is separate from and does not cover the artist's labor if the artist is responsible for fabrication of the project. Eligible project costs may vary from program to program.

ARTIST FEE (suggested 15%–20% of total project budget)

### FINAL DESIGN DEVELOPMENT

Includes final proposal, engineering and/or architectural documents, budget and schedule. Hourly fee for design  
Engineering

### TRAVEL

Airfare, Car Rental, Per Diem

### INSURANCE

(not all insurance is required for each project)

Artwork, Inland Marine, General Liability

Workers' Compensation

Automobile/Hired Vehicle

### PROFESSIONAL CONSULTANT FEES

Architect, Structural Engineer, Electrical Engineer, Conservator, Other

(Consultants must be licensed in the State of Massachusetts)

### ADMINISTRATIVE EXPENSES

Shop Drawings and Contract Documents, Studio Costs

Supplies, Project Documentation

### MATERIALS AND SUPPLIES

(itemize all anticipated aspects and components with per unit and total cost estimates)

### FABRICATION COSTS

(include and itemize all portions of subcontracted work and work to be completed by artist)

### SITE PREPARATION

(do not include costs covered by the City or others)

## TRANSPORTATION

Materials and finished work to the site Storage

Other

## INSTALLATION COSTS

Labor

Equipment (crane, scaffolding, or other) Base or Mounting Devices and Components Traffic Barricades/Control

Off-duty police

Landscaping, Site Restoration

Electrical modifications

## ADDITIONAL LIGHTING

Design Fixtures Bulbs

Site Preparation, Installation

## PERMITS AND TAXES

Sales Tax, Use Tax

Permits

## OTHER COSTS CONTINGENCY

(suggested 10% of project total)

## TOTAL

Exhibit 3 Payment Schedule

Payment Schedule

The City shall pay the Artist a fixed fee of \$\_\_\_\_\_, 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:

- a. \_\_\_\_\_ upon the execution of this Agreement, recognizing that the Artist will invest time and expense in preparing the Design as set forth under Section 1.3;
- [b. \_\_\_\_\_ upon submission of the Design as set forth under Section 1.3;]
- [c. \_\_\_\_\_ upon the City's notification to the Artist of its approval of the Design as set forth under Section 1.3;]
- d. \_\_\_\_\_ within \_\_\_\_\_ days after the Artist notifies the City that the Artwork is fabricated and ready for delivery and installation at the Site as set forth under Section 1.5(f);
- [e. \_\_\_\_\_ within \_\_\_\_\_ days after the Artist provides the City with photographic documentation and written instructions for the maintenance and preservation of the Artwork as set forth under Section 1.7(e) and (f).]
- f. \_\_\_\_\_ upon [or within \_\_\_\_\_ days after] final acceptance of the Artwork by the City as set forth under Section 1.8(e).



## 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 Massachusetts. 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.

## 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.
- [c. Transportation/Cartage insurance all-risk. Coverage must include loading, transportation and unloading of the Artwork. If the Artwork is to be loaded, transported or unloaded by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to Artist through the date of loading under Exhibit 3.]
- [d. All Risk Installation insurance which covers physical damage to or destruction of the Artwork. If the Artwork is to be installed by a person or entity other than the Artist, the insurance coverage must cover that person or entity. The minimum limit shall be the total amount of compensation paid to Artist through the date of the beginning of installation of the Artwork under Exhibit 3.]
- [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 Massachusetts

COUNTY OF Essex

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 of Newburyport, 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 \_\_\_\_, 20\_\_.

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
ARTIST

\_\_\_\_\_  
ADDRESS

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

SOC. SEC. NO. \_\_\_\_\_

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

## APPENDIX E: SAMPLE DONATION AGREEMENT

### City of Newburyport [Sculpture] Donation Agreement

Agreement made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and among the City of Newburyport and \_\_\_\_\_ (the “Donor”) whose address is \_\_\_\_\_.

Whereas the Donor intends to donate a [sculpture] by the Artist \_\_\_\_\_ entitled “\_\_\_\_\_” (hereinafter the “Artwork”, a photograph of which is attached hereto as Exhibit A) as part of the permanent collection of public art to be owned by the City of Newburyport and displayed in [City Park] or at another location in accordance with the provisions of this Agreement as specified below in “Display of Artwork,” and the City of Newburyport has agreed to accept this gift;

Now therefore, in consideration of the foregoing and the mutual promises and covenants herein contained, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Care and Maintenance of the Artwork:** The City of Newburyport shall provide for the care and maintenance of the Artwork as necessary.
2. **Insurance:** The City of Newburyport agrees to insure the Artwork with an insurance value of \$\_\_\_\_\_ based on documentation provided by the Donor.
3. **Display of Artwork:** The City of Newburyport agrees to display the sculpture in a public location at \_\_\_\_\_. In the future, if in the sole judgement of the City, the Artwork requires relocation, the City shall notify the Donor of its intention to move the Artwork. The Artwork may not be sold.
4. **Plaque/Sign:** The City shall arrange for a permanent plaque regarding the Artwork to be displayed with the Artwork wherever the Artwork may be located.
5. **Indemnification:** The City of Newburyport shall indemnify and hold harmless the Donor and the Artist from and against any loss, cost, damage, expense and/or claim for personal injury or other injury arising from exhibition of the Artwork in the City of Newburyport, including, without limitation, costs of defense and reasonable attorneys’ fees. The parties hereto acknowledge that G.L. c.21, Section 17C protects a property owner, manager, or agent from liability for negligence where the public is permitted to use the land for recreational or educational purposes without paying a fee.

6. **Theft, Damage or Destruction of the Artwork:** In the event the Artwork is stolen, lost, vandalized, damaged or destroyed, the City shall attempt to use available insurance payments to repair or replace the Artwork with a work of art of comparable stature and value.
7. **Publicity and Public Information:** Any online or promotional material about the Artwork should include a reference to the Donor as follows: “ \_\_\_\_\_’s [sculpture] \_\_\_\_\_ was permanently gifted to the City of Newburyport in \_\_\_\_\_ by the generous donation of \_\_\_\_\_.”
8. **Photographs and other Media or Reproductions.** The City may use photographs, video or film and written information of and about the Artwork. The Artwork cannot be sold in any digital, printed or online form without written permission from and compensation to the Artist.
9. **Claims, Disputes and Controversies:** The headings contained in this Agreement are for reference only and shall not affect the meaning or interpretation of this Agreement. This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Massachusetts. The parties submit to the jurisdiction of the courts of the Commonwealth of Massachusetts, specifically the Superior Court of Essex County, Massachusetts for all matters arising under this Agreement, and by their signatures, the parties agree to specifically exclude all other jurisdictions and venues as a choice of forum for all disputes connected to or arising from this Agreement and relationship. All claims, disputes and controversies arising out of or in relation to the performance, interpretation, application or enforcement of this Agreement, including but not limited to breach thereof, shall be referred to mediation before, and as a condition precedent to the initiation of any adjudicative action or proceeding, including arbitration. All mediation shall be held in Essex County, Massachusetts and the parties agree to specifically exclude all other jurisdictions and venues as a choice of forum for all disputes connected to or arising from this Agreement and relationship. Each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but, if any such provision is held to be prohibited or invalid, such provision will be ineffective only to the extent of such prohibition invalidity, without invalidating the remainder of the Agreement. This agreement contains the entire understanding of the parties with respect to its subject matter. There are no restrictions, promises or warranties other than as set forth herein. All additional promises or warranties must be agreed to by the parties and attached in writing to this Agreement.

**Donor(s)**

Signature(s) \_\_\_\_\_

Name(s) (type or print) \_\_\_\_\_

Date \_\_\_\_\_

Address \_\_\_\_\_

Telephone \_\_\_\_\_

Email \_\_\_\_\_

**Artist**

Signature \_\_\_\_\_

Name (print or type) \_\_\_\_\_

Date \_\_\_\_\_

**Public Art Team**

Chair signature \_\_\_\_\_

Name (print or type) \_\_\_\_\_

Date \_\_\_\_\_

**City of Newburyport**

Mayor's signature \_\_\_\_\_

Name (print or type) \_\_\_\_\_

Date \_\_\_\_\_



# Newburyport Public Art Policy

Presentation to City Council

June 12, 2023

Photo Credit: Bob Watts



# Presentation Overview

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WHY IS THIS  
IMPORTANT?



HOW WILL IT WORK?



QUESTIONS?



# Why is this important?

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- Currently no clear path toward reviewing and approving public art
- Many requests go to the Parks Commission, who does not have the skill set to review works of art, expressed discomfort in doing so
- Newburyport recognizes the value of public art to its residents and visitors, its an important part of our civic and cultural fabric and an essential building block in enlivening our public spaces
- Opportunity to clearly define our process and encourage public art

# How will it work?

## The Public Art Team

---

- Advisory committee that supports commissioning, review, selection, acceptance and care of art in public spaces, raises awareness
- Publicly held meetings and votes, transparency
- 7 members: 2 Cultural Council, 1 Newburyport Art, 1 local artist, 1 Parks Commissioner, 1 City staff, 1 representative from Mayor's office



# How will it work?

## Acquisition Priorities

---

- Artistic aims, objectives & goals
- Diversity and accessibility
- Placement/siting
- Fabrication, handling & installation
- Maintenance requirements
- Liability & safety
- Affordability



Photo Credit: Bob Watts

# What does it cover?

---

- All works of art that are commissioned, hosted, or displayed, including both temporary and permanent works, and meet all the following criteria:
  - Funded in whole or in part through City funds or maintained by the City;
  - Sited on City property, building, or right-of-way
  - Consistently accessible to the public.



Photo Credit: Bob Watts

# What doesn't it cover?

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- Artwork on display within City offices or City buildings that have restricted public access or regulated access
- Temporary exhibitions of art (gallery displays, booths at art festivals, etc.) displayed on City-owned or -managed property where the owner has or intends to retain ownership or sell it; assume all responsibility associated with the display; remove it after an agreed upon time.
- Public art on private property



Photo Credit: Bob Watts



Questions?