

**CONTRACT FOR COMMISSION OF ARTWORK
LYONS, COLORADO**

THIS CONTRACT FOR COMMISSION OF ARTWORK (“Contract”) is entered into this _____ day of _____, 2023, by and between the **TOWN OF LYONS, COLORADO** (the “Town”), a Statutory Town of the State of Colorado, and _____ whose address is _____ (the “Artist”). The Artist and Town may be collectively referred to as the “Parties” or individually as a “Party.”

Recitals

The Town of Lyons Board of Trustees has allocated funds for a special project for 2019 called Creative Outlets, for the purpose of beautifying selected utility boxes (i.e. transformer cabinets) located throughout town, with eye-catching works of art. The Artist and artwork design were selected through a competitive process administered by the Town, acting by and through, the Lyons Arts and Humanities Commission (“LAHC”), all of which have been approved by the Town Administrator.

In consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

ARTICLE 1. SCOPE OF SERVICES

1.1 Artist’s Responsibility

A. The Artist’s services shall be performed in a professional, timely and workmanlike manner, and in strict compliance with the terms and conditions of this Contract. The Artist is responsible for all costs, expenses, fees, materials, supplies and equipment necessary to design and install the artwork (the “Artwork”) as shown in Exhibit A attached hereto and made a part hereof. The types of paint, materials and other mediums used shall be of professional grade.

B. The Artist shall coordinate the installation of the Artwork with the Town Representative as set forth in this Contract. The Artist agrees to repair and/or replace any damage caused by the installation of the Artwork, at his/her expense, whether caused by the Artist or anyone engaged by the Artist to assist them, to the satisfaction of the Town Representative.

C. The Artist will prepare and prime the boxes prior to the installation of the Artwork. After the installation is complete and approval has been given by the Town Representative, the Artist will then seal the Artwork with an anti-graffiti coating.

D. The Artist is an independent contractor and not an agent or employee of the Town and shall not be deemed by virtue of this Contract to have entered into any partnership, joint

venture, employer/employee or other relationship with the Town other than as a contracting party and independent contractor.

E. The Artist shall provide the Town with written instructions for the maintenance, care and upkeep of the Artwork with a description of all materials used.

F. The Artist agrees to complete the design and installation of the Artwork no later than the _____ day of _____, 2023.

G. The Artist agrees to secure and provide a certificate of liability insurance to the Town Clerk for the on-site installation period in the following amounts and limits stated below, including the following:

1. Comprehensive General Liability insurance shall insure the Artist and name the Town as an additional insured; shall be an occurrence policy; shall have combined single limits of \$250,000 per occurrence; and the policy shall not be cancelled, terminated or not renewed without first giving seven (7) days advance written notice to the Town.

1.2 Town's Responsibility

A. The Town Representative will determine the location(s) of the transformer box(es) to be decorated and will provide the Artist access to the site for installation of the Artwork.

B. The Town will reasonably maintain the Artwork, upon completion by the Artist, pursuant to Article 3.C. below.

C. The Town will secure any permits that may be required, if any, during the installation of the Artwork, at no expense to the Artist.

D. The Town has designated the LAHC Staff Liaison as its representative. The Town Representative has the authority to make decisions on behalf of the Town with regard to the matters described herein, including but not limited to, communication and coordination of the installation, inspection of any work in progress, approval of payments to the Artist and final approval and verification of the completed Artwork.

ARTICLE 2. PAYMENT SCHEDULE

The Town shall pay the Artist a fixed fee of \$ 1,250.00 that will constitute full and complete compensation for all services performed, materials furnished, and for the artistic value provided by the Artist under this Contract. The Town will pay the Artist as follows:

A. First payment of \$ 750.00 shall be made after this Contract has been signed by both parties.

B. Final payment of \$ 500.00 shall be made after the final approval of the Town Representative has been given for the acceptance of the completed installation.

C. Written invoices from the Artist for each installment will be required in order for the Town payment process to begin, which normally takes two (2) weeks to complete.

ARTICLE 3. NOTICES

Any notice required by this Contract shall be given as follows and shall be deemed received when hand-delivered or emailed, or three (3) days after being sent by certified mail, return receipt requested:

To the Town:
Kim Mitchell, LAHC Staff Liaison
Town of Lyons
432 5th Avenue (by hand or overnight)
P.O. Box 49 (by mail)
Lyons, CO 80540
Email: kmitchell@townoflyons.com

To the Artist:
[Name] _____
doing business as: _____
[Address] _____
[Address Cont'd] _____

Email: _____

ARTICLE 3. WARRANTY

The Artist represents and warrants the following:

A. That the design of the Artwork is unique and solely the result of the creative efforts of the Artist and is wholly original with the Artist and does not infringe upon or violate the rights of any third party.

B. That the Artist shall not duplicate or offer the same or materially similar Artwork for sale elsewhere within a 200-mile radius of the Town.

C. That all the work is performed in accordance with professional workmanlike standards, and fully guarantees the Artwork to be free from defective materials, products and workmanship for a period of one (1) year following the date of the Town's final acceptance of the Artwork as described above.

ARTICLE 4. COPYRIGHT

A. The Artist hereby assigns, transfers and conveys to the Town, all right, title and interest in and to the Artwork together with the copyright therein in accordance with the U.S. copyright law.

B. The Artist specifically agrees that the Town, and its commissions, agents, divisions, employees and officials may, without further approval from or compensation to the Artist, reproduce the Artwork graphically, in photographs, drawings, or computer generated images for any Town business, including advertising, promotions, visitor and convention

activities, and economic development activities. The Town agrees that whenever appropriate, such graphic reproductions of the Artwork will include the Artist's name, in such a manner and location, as will comply with U. S. copyright law.

C. The Artist agrees that the Artwork, and all components and elements thereof, are the property of the Town. The Artist agrees that after the warranty period described in the above Article 3. C. expires, the Town has the right to unilaterally, without Artist's knowledge or consent, repair, remove, relocate, replace, sell, or store the Artwork. While it is the Town's intent to (permanently) retain and maintain the Artwork as described herein, the Town may determine to remove or otherwise dispose of the Artwork. If the Town alters, modifies, or changes the Artwork, it will not thereafter represent the altered work as that of the Artist without the Artist's written consent.

ARTICLE 5. INDEMNIFICATION

A. The Artist shall indemnify and hold the Town harmless from any damage or injury claims made by a third party arising during the installation process and caused, or claim to be caused, by such process, including harm to the Artist, to others including the public, or to the Artwork.

B. The Artist will indemnify and hold the Town harmless from all loss and liability (including attorney's fees, court costs, and all other litigation expenses) for any infringement of the patent rights, copyright, trademark, and all intellectual property claims of any person resulting from the Town's acceptance of the Artist's work or the use by the Town, or any of its officers or agents, of all or any portion of the Artwork or the services supplied in the performance of the Contract, whether or not such claim is frivolous.

C. The parties agree that this Contract is governed by the laws of the State of Colorado.

ARTICLE 6. TERMINATION

Either party may terminate this Contract without cause upon seven (7) days prior written notice to the other. The Artist will be entitled to retain the 50% fee paid when the Contract was executed. The Town shall have the right to take possession of the Artwork, in its present state, and have it completed by another artist of its choice.

ARTICLE 7. MISCELLANEOUS

A. The Artist agrees not to assign this Contract to any third party without the prior written consent of the Town. The Parties further agree that this Contract, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns.

B. Nothing contained in this Contract is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of the Artist. Absolutely no third-party beneficiaries are intended

by this Contract. Any third-party receiving a benefit from this Contract is an incidental and unintended beneficiary only.

C. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the notices, requirements, immunities, rights, benefits, protections, limitations of liability, and other provisions of the Colorado Governmental Immunity Act, C.R.S. § 24-10-101 et seq. and under any other applicable

D. The Parties understand and acknowledge that the Town is subject to Article X, § 20 of the Colorado Constitution (“TABOR”). The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Contract. It is understood and agreed that this Contract does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Contract to the contrary, all payment obligations of the Town are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the Town's current fiscal period ending upon the next succeeding December 31. Financial obligations of the Town payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of the Town, and other applicable law. Upon the failure to appropriate such funds, this Contract shall be terminated.

E. This Contract represents the entire and integrated agreement between the Town and the Artist and supersedes all prior negotiations, representations, or agreements, either written or oral. Any amendments to this Contract must be in writing and be signed by both the Town and the Artist.

F. The individuals executing this Contract represent that they are expressly authorized to enter into this Contract on behalf of the Town and the Artist and bind their respective entities. THIS CONTRACT is executed and made effective as provided above.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties hereto have executed this Contract as of the day and year first above written.

THE TOWN OF LYONS

By _____
Victoria Simonsen, Town Administrator

ATTEST:

Date: _____

ARTIST

By _____

Title _____

Date _____

SAMPLE