

**PROFESSIONAL SERVICES AGREEMENT
TAD MCKILLOP
COLEMAN JEWETT MEMORIAL PUBLIC ART**

This agreement is between the City of Ann Arbor and Tad McKillop for the creation of two bronze Adirondack chairs to be placed at the Ann Arbor Farmers Market as public art for the Coleman Jewett Memorial.

I. PARTIES

"City" means the City of Ann Arbor, a Michigan municipal corporation with its address at 301 E. Huron Street, Ann Arbor, Michigan 48104.

"Artist" means Tad McKillop, whose address is 3061 Dexter Road, Ann Arbor, MI 48103.

II. EFFECTIVE DATE; DURATION

This agreement shall become effective on the date that all parties have signed and shall remain in effect until satisfactory performance of all services, unless terminated earlier.

III. DEFINITIONS

"Administering Service Area/Unit" means the City's Public Services Area.

"Contract Administrator" means the City's Public Services Area Administrator or designee.

"Project" means the design, fabrication, and installation of bronze public art at the Ann Arbor Farmers Market.

IV. SERVICES

A. Scope: Artist shall provide professional services for the Project as specified in Exhibit A.

B. Warranty of Skill and Quality: Artist warrants that he/she has all the skills and experience necessary to perform the services to be provided pursuant to this agreement. Artist warrants that the quality of Artist's services under this agreement shall conform to the level of quality performed by experts regularly rendering this type of service. Determination of acceptable quality shall be made solely by the Contract Administrator.

C. City Review of Services: Artist's services under this agreement shall at all times be subject to the City's general review and approval. Artist shall

confer with the City periodically during this agreement and shall provide details about the progress or adequacy of the services upon the City's request. Upon reasonable prior notice to Artist, the City shall have the right to make reasonable in-person inspections of the services. The City shall notify Artist of any defects in the services of which the City has actual notice.

- D. Reliance on City Information: Artist may rely upon the accuracy of information provided by the City except when defects should have been apparent to a reasonably competent artist or when Artist has actual notice of any defects in the information.
- E. Access: The City shall give Artist access to City staff and City-owned property as necessary to perform the services under the agreement.
- F. Compliance with Applicable Law: Artist shall perform the services under this agreement in compliance with all applicable laws, ordinances, and regulations.
- G. Additional Work: The City may desire to have Artist perform work or render services related to the Project other than those expressly provided for in the "Scope of Services" section of Exhibit A. This shall be considered extra work outside the scope of this agreement and shall not proceed unless authorized by a written amendment. Any cost incurred by either party due to the performance of extra work prior to execution of an amendment shall not be reimbursed.

V. COMPENSATION OF ARTIST

- A. Total Fee: The total fee for all services to be performed under this agreement, including administrative and overhead costs, will be \$39,500.00 to be paid by the City. The parties acknowledge that Artist's proposal for these services included a \$43,500 proposed fee. Artist acknowledges receiving \$4,000.00 from the Kerrytown District Association toward the proposed fee on September 30, 2015 (shown in the receipt attached as Exhibit D) and that the City shall only be responsible for the remaining \$39,500.00.
- B. Payment Schedule: Artist shall be paid at the times and in the manner set forth in Exhibit B. Artist must submit a completed IRS form W-9 before any payment will be made. Each payment shall be conditioned upon:
 - a. Artist's completion and the City's acceptance of the services specified for that payment; and

- b. Artist's submission of invoices and approval of those invoices by the Contract Administrator.
- C. Invoice Records: Artist shall keep detailed records of time spent and materials used so that the City may verify invoices submitted by Artist. Such records shall be made available to the City upon request and shall be submitted in summary form to support each invoice.

VI. RELATIONSHIP OF PARTIES

- A. Independent Contractor: This is not a contract of employment but is a contract to accomplish a specific result. Artist is an independent contractor performing services for the City. Nothing contained in this agreement shall be deemed to constitute any other relationship between the City and Artist.
- B. No Conflict of Interest: Artist states that they have no personal or financial interest in the Project other than the compensation to be received under this agreement. Artist states that they shall not acquire any such interest, direct or indirect, which would conflict in any manner with the performance of services under this agreement. Artist states that they do not and will not employ or engage any person with a personal or financial interest in this Project other than the compensation to be received under this agreement.
- C. No Authority to Bind City: Artist does not have any authority to execute any contract or agreement on behalf of the City, and is not granted any authority to assume or create any obligation or liability on the City's behalf or to bind the City in any way.
- D. No Default: Artist certifies that they are not and shall not become overdue or in default to the City for any contract, debt, or any other obligation, including real or personal property taxes. The City shall have the right to set off any such debt against compensation to be paid for services under this agreement.

VII. RIGHTS IN ARTWORK

- A. Waiver of "Droit Moral" and Rights Under Visual Artists Rights Act: As to Artist's rights in artwork to be produced under this agreement, the provisions of this agreement shall supersede the provisions of the Visual Artists Rights Act of 1990, 17 U.S.C. § 101 et. seq., as amended ("VARA"). Artist waives all rights in or protections applied to the artwork and any uses of the artwork set forth in VARA or in the nature of "Droit Moral."
- B. Maintenance, Repairs, or Restorations: The City shall have the

right to determine, in its sole discretion, after consultation with a knowledgeable professional selected by the City, when and if maintenance, repairs, and restorations of artwork will be made.

- C. Damage or Alteration: Subject to section VII, Paragraph D below, the City shall not intentionally alter Artist's artwork without the prior written approval of Artist. Artist acknowledges, for the benefit of the City, that installation of artwork into the building, structure, landscape or other City facility for which it has been designed may subject the artwork to destruction, damage, distortion, mutilation, or alteration upon its removal.
- D. Removal, Relocation, Sale, Donation or Destruction: Nothing in this agreement shall preclude the right of the City, in its sole discretion, to remove, relocate, sell, donate, or destroy any artwork or discrete piece thereof produced under this agreement.

VIII. OWNERSHIP OF MATERIALS; INTELLECTUAL PROPERTY

- A. Intellectual Property Rights: All intellectual property rights, including any material produced under this agreement, shall vest in and at all times remain vested in the originator of the material produced. Artist shall identify and clearly mark all materials produced or given to the City that constitute intellectual property, the rights to which are vested in or retained by any other originator, and shall identify such other originator.
- B. Copyright Identification: When displaying or reproducing any image of the artwork or preliminary materials to be produced under this agreement that are subject to Artist's or another party's copyright (as identified and marked in accordance with section VIII, Paragraph A), the parties shall acknowledge such copyright with "©," as appropriate, in immediate adjacency to the image.
- C. No Liability: The City shall accept no liability for the further interpretation, design or implementation by others of ideas, concepts, or intellectual copyright materials generated under this agreement.
- D. Ownership of Materials: The City shall own the physical embodiment of the artwork, including artwork proposals, preliminary studies, models, samples, and maquettes.
- E. Non-infringement: Artwork designs produced by Artist shall not infringe or violate any copyright, trade secret, trademark, patent, or other proprietary or personal right held by any third party. If any artwork design is, in any action, held to constitute an infringement of any third party's rights and its use is enjoined, Artist shall immediately and at Artist's expense (a) procure for the City the right to continue its use of the artwork design in

accordance with this agreement, (b) alter the artwork design to eliminate infringing portions, subject to the City's approval, or (c) replace the artwork design with a design acceptable to the City that is non-infringing.

- F. Survival: The provisions of this section VIII shall survive the expiration or termination of this agreement.

IX. RISK OF LOSS; INSURANCE; INDEMNIFICATION

- A. Protective Measures: Artist shall take such measures as are reasonably necessary to protect the artwork and any preliminary materials produced under this agreement from loss or damage until Artist has delivered them to the City and the City has accepted them.

- B. Insurance: Artist is responsible for procuring and maintaining at Artist's own expense whatever insurance is required during this agreement to protect Artist from claims for bodily injuries, death, or property damage which may arise under this agreement and to cover bodily injuries, death, property damage, or other losses that Artist may suffer while performing services under this agreement, including damage to or loss of artwork while in Artist's possession or control.

- C. Indemnification: To the fullest extent permitted by law, Artist shall indemnify, defend, and hold the City, its officers, employees, and agents harmless from all suits, claims, judgments, and expenses, including attorney's fees, resulting or alleged to result, to its proportionate extent, from any negligent, grossly negligent, reckless, or intentional, wrongful, or tortious act or omission by Artist or Artist's agents arising from the performance of this agreement.

X. TERMINATION

- A. Breach: In the case of a breach of this agreement by a party, this agreement may be terminated by the other party if the breaching party has not corrected the breach within 15 days after notice of termination.

- B. Termination With or Without Cause: The City ^{may} terminate this agreement, ^{CF} TM ^(by permission) with or without cause, at any time upon 30 days' written notice to Artist. If this agreement is terminated for any reason other than the breach of this agreement by Artist, Artist shall be compensated for reasonable time spent and reasonable quantities of materials used prior to notification of termination. As a condition of receiving compensation from the City in such a case, Artist agrees to transfer to the City title to all partially completed works of art and related preliminary items, including plans, notes, sketches, drawings, proposals, preliminary studies, models, samples, and maquettes.

XI. ASSIGNMENT

- A. Written Consent: Artist shall not subcontract or assign any portion of these services without prior written consent from the City.
- B. Pledge of Payments: Artist shall retain the right to pledge payments due and payable under this agreement to third parties.

XII. NOTICES; CONTACTS

All notices shall be in writing. Notices and other deliverables shall be deemed to have been properly transmitted upon actual receipt when delivered or mailed to the following addresses or to such other address noticed hereafter by either party:

City: Craig Hupy,
Public Services Area Administrator
City of Ann Arbor
P.O. Box 8647
Ann Arbor, MI 48107-8647

Artist: Tad McKillop
3061 Dexter Road
Ann Arbor, MI 48103

Artist's failure to keep the City reasonably informed regarding Artist's current address shall be deemed a waiver of any notice or delivery requirements provided for under this agreement.

XIII. MISCELLANEOUS

- A. Entire Agreement: This agreement represents the entire understanding between the City and Artist and supersedes all prior representations or agreements. Neither party has relied on any prior representations in entering into this agreement. This agreement may be altered, amended or modified only by written amendment signed by Artist and the City.

- B. Severability: Whenever possible, each provision of this agreement will be interpreted in a manner as to be effective and valid under applicable law. However, if any provision of this agreement or the application of any provision to any party or circumstance will be prohibited by or invalid under applicable law, that provision will be ineffective to the extent of the prohibition or invalidity without invalidating the remainder of the provisions of this agreement or the application of the provision to other parties or other circumstances.
- C. Governing Law: This agreement shall be governed and interpreted under the laws of the State of Michigan. The parties agree to venue in a court of appropriate jurisdiction in Washtenaw County for any action arising under this agreement.

XIV. SIGNATURES

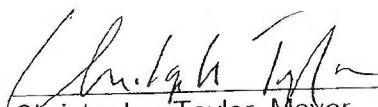
ARTIST

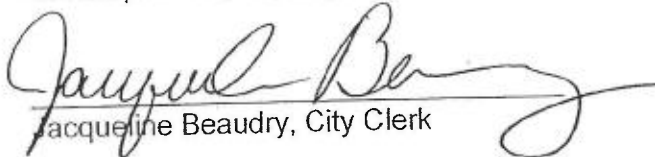
Date: 11/23/15


Tad McKillop

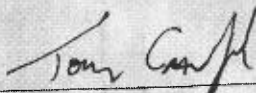
CITY OF ANN ARBOR

Date: 12/2/15

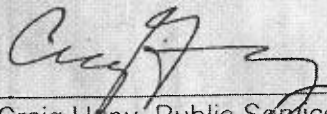

Christopher Taylor, Mayor


Jacqueline Beaudry, City Clerk

Approved as to substance



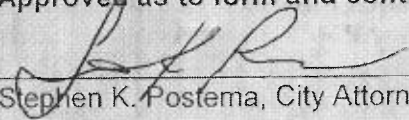
Tom Crawford, Interim City Administrator



Craig Hupy, Public Services Area
Administrator

Approved as to form and content

CF



Stephen K. Postema, City Attorney

EXHIBIT A Scope of Services

Artist shall complete the following services for design, fabrication, and installation of the Project as described and depicted in the proposal attached as Exhibit C; if a provision in the attached Proposal conflicts with a provision in this agreement, the terms of this agreement prevail:

Design and Preparation

1. Develop a project work plan and work schedule.
2. Complete a final design of all artwork in the proposal, including final fabrication and installation specifications.
3. For the site selected by the City, design appropriate foundations, anchors, members, and structural supports for all artwork and obtain City approval of the final structural engineering design.
4. Address any design or site issues with City staff.
5. Develop draft maintenance guidelines and include estimates of cost for regular and future maintenance.

Fabrication

1. Complete fabrication of artwork and prepare for transport to the installation site.

Installation

1. Schedule an appropriate time for installation with City staff.
2. Obtain all applicable permits for artwork installation and meet all applicable legal requirements.
3. Install the artwork according the design approved by the City.

Project Completion

1. Restore all areas disturbed by installation.
2. Finalize maintenance guidelines and cost estimates.
3. Submit a written description of the artwork and an artist's statement.

EXHIBIT B
Schedule of Compensation

Three payments shall be made in the following amounts. The payments shall be paid upon completion of the identified elements in the Scope of Services as set out in Exhibit A and upon receipt of invoices and evidence of completion from Artist. All payments are subject to the City's acceptance of the work invoiced, which acceptance shall be provided by the Contract Administrator. Payment shall be made within 30 days of acceptance.

First Payment - \$10,000.00

Upon execution of this agreement by all parties:

Second Payment - \$15,000.00

Upon completion of Design and Preparation services specified in Exhibit A.

Third Payment - \$14,500.00

Upon completion of all services specified in Exhibit A.