

ATTACHMENT B: ART AROUND AVON AGREEMENT

between

THE TOWN OF AVON

And

[_____]

Information about the Town's Art Around Avon Program in the Town of Avon

(for informational purposes only)

Background. The Town of Avon ("Town") established the Town of Avon Art Around Avon in 2021 to promote the display of visual art throughout the Avon community for the benefit of residents and visitors.

Art Around Avon Application Process. The Town uses the web-based service, CallforEntry.org™, also known as CaFÉ™, to manage Artist application and selection processes for the first annual Art Around Avon exhibition. Artists must upload contact information, digital images of their work, the weight, height and depth of the work, the price of the work, and all special display and installation requirements for each entry. The deadline for entries is March 26, 2023. The Town selects up to twenty-five (25) sculptures for exhibition and will make its selections by approximately April 27, 2023. The Town will pay selected artists a \$900.00 honorarium at installation as described in the Request for Proposal ("RFP"). All selected artists must execute a copy of this Art Around Avon Agreement.

Requirements of Work.

1. Safe for pedestrians.
2. Of appropriate scale for street display.
3. Able to withstand high winds and/or substantial temperature changes.
4. Easy to maintain in an outdoor mountain environment.
5. Freestanding but attachable to cut stone pedestal, reinforced concrete pedestal, steel base or mounting plate (provided by the Town) for exhibit purposes.

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2023 Art Around Avon Agreement

THIS AGREEMENT is made and entered into this _____ day of _____ 2023, by and between the Town of Avon, a home rule municipality and political subdivision of the State of Colorado (“Town”) and the undersigned artist, _____, whose address is _____ (“Artist”).

RECITALS

A. The Town has established the Art Around Avon art program, which is a two year-long street exhibition showcasing outdoor sculptures in visible places around the Town of Avon.

B. Artist applied in response to the Town’s “Call for Entry” for the 2023 Art Around Avon exhibition, including Artist’s contact information, digital images of the artwork, weight of the artwork, price of the artwork, and all special display and installation requirements for the artwork (collectively, the “Proposal”).

C. Artist has been selected by the Town to design, execute, fabricate, deliver, assemble, and install the artwork, consistent with the Proposal and as ultimately conceived, designed, fabricated, transported, delivered, engineered for assembly, and ultimately installed by Artist (the “Work”) in accordance with the Major Dates Schedule, attached to this Agreement as **EXHIBIT A** and incorporated into this Agreement by this reference.

D. A depiction of and title to the Work, given by the Artist, is attached to this Agreement as **EXHIBIT B** and incorporated into this Agreement by this reference.

E. Artist seeks to install the Work, consistent with the Proposal, at a Town-selected display site within the Town of Avon (the “Site”) as part of the Art Around Avon exhibit period, and the Town seeks to pay Artist a \$900.00 honorarium.

AGREEMENT

In consideration of the premises and the mutual covenants herein contained, and subject to the terms and conditions hereinafter stated, the Town and Artist agree as follows:

1. ASSEMBLE, INSTALL, DISPLAY, & REMOVAL.

(a) General.

(i) Artist shall perform all services and furnish all supplies, material, and equipment as necessary for the design, execution, and fabrication of the Work, and shall, either directly or through qualified sub-consultants, undertake the transportation of the Work to the Site.

(ii) The Work shall be committed to the Town for the duration of the Art Around Avon, the Town exhibit period, even in the event of a sale.

(b) Consistency of Work with Artist's Proposal.

(i) After the Town's written approval of the Proposal, the Artist shall complete the fabrication and transportation of the Work in conformity with the Proposal.

(ii) The Artist shall present to the Town thirty-days (30) prior to installation and in writing for further review and approval of any significant changes in the scope, design, color, size, material, or texture of the Work. If there is a significant change to the Work, as determined in the Town's sole discretion, or if Artist seeks to substitute the artwork described in the Proposal with different artwork, the Town may elect not to include Artist in the Art Around Avon exhibit and terminate this Agreement.

(c) Delivery, Assembly, and Installation of Work.

(i) The Artist is responsible for ensuring that the Work is made to be installed for public display, including ensuring that the Work is safe for pedestrians, of appropriate scale for street display, able to withstand high winds and/or substantial temperature changes, easy to maintain in an outdoor mountain environment, and freestanding but attachable to concrete pedestal, steel base, or mounting plate (provided by the Town) for exhibit purposes.

(ii) The Artist shall identify to the Town all special display and installation requirements for welding or bolting the Work to a concrete pedestal, steel base, or mounting plate for exhibit purposes.

(iii) The Artist shall deliver the Work ready for installation to the Town designated Site in accordance with the Major Dates Schedule, attached to this Agreement as **EXHIBIT A** and incorporated into this Agreement by this reference.

(iv) The Town shall pay the Artist a nine hundred-dollar (\$900.00) honorarium.

(v) The Town shall provide traffic control, assist with maneuvering the Work to the installation site, and anchoring the Work to the base or platform with all necessary assistance and support from Artist as required by the Town. The Town reserves the right to make all installation and placement decisions and to make emergency repairs to the Work, when necessary, as determined by the Town in its sole discretion.

(vi) The Town shall install signage for the Work to identify the Artist, the Work's title, if any, and the Work's price, in accordance with the Proposal.

(d) Marketing, Sale, & Donation of Work.

(i) Town shall produce and distribute informational materials regarding the Work for marketing purposes, including photographs of the Work for publicity or study.

(ii) The purchase price for any sale shall be consistent with the price listed in Artist's proposal unless Artist has provided sixty (60) days' advance written notice to the Town of a price increase or decrease for the Work.

(iii) In the event of a sale of the Work during the exhibit period or ninety (90) days following the exhibit period, the Town will act only as an agent for the collection and distribution of the proceeds of the sale; and the sale is between the purchaser and the Artist, and all state and local sales taxes are applicable. The Town shall receive the full purchase price from the purchaser, and the Town shall then remit to Artist the purchase price less the Town's commission of 20% of the purchase price.

(iv) In the event either Artist or a third party seeks to donate the Work to the Town, Artist, Town, and any such third-party shall enter into a donation agreement.

(e) Decommission & Removal of Work.

(i) Upon conclusion of the Art Around Avon exhibit period and by the Decommission & Removal Deadline set forth on **EXHIBIT A**, Artist shall decommission and remove the Work.

(ii) If Artist fails to remove the Work by the Decommission & Removal Deadline, the Town may decommission, remove, and store the Work, without liability whatsoever, in an interim storage area selected by the Town in its sole discretion. If Artist does not remove the Work from the interim storage area on or before the Disposal Deadline set forth on **EXHIBIT A**, the Work shall automatically become the property of the Town at no cost to the Town, and the Town may donate, sell, or otherwise dispose of the Work.

(f) Risk of Loss. The risk of loss or damage to the Work shall be borne by the Artist during delivery and installation of the Work, and Artist shall take such measures as are necessary to protect the Work from loss or damage.

(g) Waiver of Rights Under Visual Artists Rights Act of 1990 ("VARA"). Artist understands and agrees that, as to his or her rights in the Work, the provisions of this Agreement shall supersede the provisions of the Visual Artists Rights Act of 1990 ("VARA"), 17 U.S.C. §101 et. seq., as amended, including but not limited to §106A(a) and §113, as to the Work, and that execution of this Agreement by Artist shall constitute a waiver by Artist, as permitted in 17 U.S.C. §106A(e), as amended, of any and all rights or protections in the Work, and any uses of the Work whatsoever, set out in or otherwise granted by 17 U.S.C. §101, et seq., as amended, including but not limited to §106A(a) or §113, or otherwise in the nature of "Droit Moral" under which artists claim an interest in the Work. Artist understands that, despite the Town's commitment not to intentionally damage, alter, or modify the Work without the prior written approval of Artist, installing, exhibiting, removing, or storing the Work may subject the Work to destruction, distortion, mutilation, or other modification.

2. **COORDINATION AND LIAISON**

Town orders and directs all services under this Agreement and, until otherwise notified by the Town Council, is designated as the authorized representative of the Town through whom services performed under this Agreement shall be coordinated. Artist agrees that during the term of this Agreement, Artist shall fully coordinate all work hereunder as directed by the Town and other the Town agencies or departments.

3. WARRANTIES REGARDING THE WORK

Artist represents and warrants to the Town that: the Work is available for purchase; the Work is solely the result of Artistic effort of Artist; the Work is unique and original and does not infringe upon any copyright; the Work is free and clear of any liens or claims from any source whatsoever; the Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects consisting of “inherent vice” or qualities which cause or accelerate deterioration of the Work; the Work is professionally constructed of durable materials; the Work does not have easily damaged parts, is suitable for indoor and/or outdoor public display, and is constructed in a manner to avoid potential liability, safety risks to the general public, or maintenance (except cleaning).

4. SUBJECT TO LOCAL LAWS; VENUE

The provisions of Colorado law, the Town of Avon Home Rule Charter, the Town of Avon Municipal Code, ordinances, and regulations, as the same may be amended from time to time, are hereby expressly incorporated into this Agreement as if fully set out herein by this reference. The venue for any action arising hereunder shall be Eagle County, Colorado.

5. INSURANCE

The Town and Artist stipulate and agree that the value of the Art is \$[_____]. The Town shall insure the Art against loss or damage to the Art itself, but only up to that stipulated value. The Town shall not, however, insure Artist against any third-party claims arising out of or connected with the Art or Artist's activities under this Agreement – any such insurance shall be the sole responsibility of Artist.

6. INDEMNIFICATION

Artist shall defend, release, indemnify and save and hold harmless the Town against any and all damages to property or injuries to or death of any person or persons, including property and employees or agents of the Town, and shall defend, release, indemnify, and save and hold harmless the Town from any and all claims, demands, suits, liabilities, actions, causes of action, or legal or equitable proceedings of any kind or nature, of or by anyone whomsoever, in any way resulting from or arising out of Artist's activities in connection herewith, including acts or omissions of Artist or his or her officers, employees, representatives, suppliers, invitees, licensees, subconsultants, contractors, and agents; provided, however, that Artist need not indemnify and save harmless the Town, its officers, agents, and employees from damages proximately resulting from the sole negligence of the Town's officers, agents, and employees. This indemnity clause shall also cover payment of the Town's defense costs in the event that the Town, in its sole discretion, elects to provide its own defense.

7. NO THIRD-PARTY BENEFICIARY

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Town and Artist, and nothing contained in this Agreement shall give or allow any such claim or right of

action by any other or third person on such Agreement. It is the express intention of the Town and Artist that any person or entity other than the Town or Artist receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

8. NOTICES

All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon the delivery or receipt thereof, as the case may be, by e-mail only as follows:

If to the Town: Danita Dempsey
 Email: ddempsey@avon.org

If to Artist: The address first above written.

9. SEVERABILITY

It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is held by the Courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid.

10. SURVIVAL OF CERTAIN AGREEMENT PROVISIONS

The parties understand and agree that all terms, conditions and covenants of this Agreement, together with the exhibits hereto, any or all of which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or termination of this Agreement (by expiration of the term or otherwise), shall survive such expiration or termination and shall continue to be enforceable as provided herein for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period.

11. AUTHORITY TO ENTER INTO AGREEMENT

The person or persons signing and executing this Agreement on behalf of Artist, do hereby warrant and guarantee that he/she or they have been fully authorized by Artist to execute this Agreement on behalf of Artist and to validly and legally bind Artist to all the terms, performances and provisions herein set forth.

12. COUNTERPARTS OF THIS AGREEMENT

This Agreement shall be executed in counterparts, each of which shall be deemed to be an original of this Agreement.

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

TOWN:

By: _____

Name: _____
(please print)

ARTIST:

By: _____

Name: _____
(please print)

EXHIBIT A
Major Dates Schedule

1. Artist Call for entry: December 9, 2022
2. Deadline for entry: March 26, 2023
3. Proposed selection notification: April 27, 2023
4. Installation of work: June 8, 2023
5. Exhibition period for work: June 9, 2023, through May 29, 2025
6. Decommission and removal of work: May 29 through May 30, 2025
7. Disposal deadline: June 6, 2025

EXHIBIT B

**Depiction & Title of the Work
As provided by artist in application**