

## ART CREATION AND PURCHASE AGREEMENT

This agreement, made this \_\_\_\_\_ day of August, 2016, by and between the CITY OF CHARLOTTE, a Michigan municipal corporation, with its principal office located at 111 East Lawrence Avenue, Charlotte, Michigan, 48813 (“Purchaser”) and Frank Balluff, 909 Pinch Highway, Charlotte, Michigan, 48813 (“Artist”);

### PRELIMINARY RECITALS:

A. The City of Charlotte seeks to acquire and display a monumental sculpture in downtown Charlotte. This piece will be displayed on property located at 101 W. Lovett Street, for which the City has an easement.

B. The Purchaser issued a Request for Proposals (“RFP”) seeking proposals from interested individuals or groups of artists to design, fabricate and install a new landmark sculpture at the above-cited location, setting a total budget for the project not to exceed \$15,000.

C. On July 24, 2016, at a meeting of the City of Charlotte Ad Hoc Public Art Committee, the Committee received and considered all qualified proposals for the public art sculpture and selected the proposal submitted by the Artist as the most responsive and acceptable public art sculpture proposal meeting the project goals of the City as set forth in the RFP.

D. The Lansing Economic Area Partnership (“LEAP”) has awarded the City of Charlotte a grant in the amount of \$10,000, the proceeds of which shall be the sole source of funding for the creation of the public art sculpture. The City of Charlotte will provide an amount not to exceed \$5,000 for costs associated with installation.

NOW THEREFORE, in consideration of the foregoing recitals, the parties mutually agree as follows:

1. The Artist shall design and fabricate a standing sculpture to be installed on property located at 101 West Lovett Street. The sculpture shall be designed and fabricated in a manner consistent in all respects with the Artist’s proposal to the City, a copy of which is attached hereto and incorporated herein as a material part of this contract.

2. Installation of the sculpture onto the base is to be coordinated with City and the property owner, and installation costs not to exceed \$5,000 will be borne solely by the city.

3. Installation of the sculpture shall be considered complete at such time as the Artist shall communicate to Purchaser's agent, in writing or by electronic mail, that the Artist deems the total work completed in accordance with the terms of the Artist's proposal to the City.

4. The price of the sculpture installed on the base, not including the cost of the base, shall total no more than \$10,000. It is understood that this price shall include all of the Artist's service and work in connection with the creation of the sculpture design, including diagrams, sketches, materials, metal, fabrication, finishing, freight, shipping and insurance, Artist's design fee, and all travel-related expenses by the Artist and any assistants.

5. The sale price is inclusive of all sales, use and excise taxes that might be imposed upon this transaction by any taxing jurisdiction. The Purchaser is exempt from the payment of Michigan sales tax on purchases of personal property and will provide its exemption certificate to the Artist upon signing of this contract.

6. Payment of the \$10,000 shall be made as follows:

- a. 50% down upon signing of this agreement,
- b. 25% when artist demonstrates half-way completion of the sculpture to the satisfaction of the Purchaser's agent,
- c. 25% upon successful installation by the Artist of the sculpture in the design location and approval of the final sculpture and installation by the Purchaser, which approval shall be in form of a written memorandum to the Artist indicating Purchaser's acceptance of the completed work.

7. Title and risk of loss of the sculpture will remain with the Artist until the sculpture is installed by the Artist and accepted by the Purchaser, after which acceptance title to the work and risk of loss shall be vested in Purchaser.

8. The Artist hereby grants and Purchaser accepts and shall have a purchase money security interest in the sculpture and all of its materials and components immediately upon the Purchaser's payment of its initial deposit pursuant to the provisions of section 9103 of the Michigan Uniform Commercial Code. Artist shall cooperate in the filing of any required UCC filings with the Secretary of State.

9. All expenses of materials, fabrication, and shipping shall be the Artist's responsibility, except as provided elsewhere in this agreement.

10. The Purchaser shall be responsible for any damages or injury caused by or resulting from the sculpture and/or base, or its installation after completion of the installation and shall hold the Artist harmless from same.

11. Upon acceptance of the Art Creation and Purchase Agreement, the Purchaser shall acquire all rights to publish photographs or renderings of the work for all media, marketing and fundraising purposes.

12. Upon acceptance and final payment, the Purchaser shall acquire all rights of the work, including all rights to copy and reproduce the work and to publish photographs or renderings of the work for all media, etc. The Artist shall retain a limited non-transferable license to reproduce images of the completed work for the purposes of use in the Artist's professional portfolio of work.

13. The Artist will provide, upon installation, documentation regarding the maintenance, repair and parts replacement of the sculpture. Upon acceptance of the completed work by Purchaser, the Artist shall have no obligation hereunder to maintain or repair the completed statue and/or base.

14. The Artist agrees at his sole expense to defend, indemnify, and hold the City and its elected and appointed officers and employees, harmless from all liability for all claims, damages, lawsuits, costs and expenses that may result from any act or omission of the artist or his agents or employees as a result of this agreement.

15. The sole source of funds from which the Purchaser shall be obligated to pay the purchase price under this agreement shall be the funds being made available to the Purchaser by LEAP pursuant to its grant contract agreement dated May 23, 2016. The Purchaser shall be solely responsible for complying with the terms of said grant. The Artist shall timely provide to Purchaser such information regarding the Artist and/or the work as may be reasonably required to ensure compliance with the terms of said grant.

16. This agreement is the entire understanding of the parties hereto and may not be changed except in writing signed by all parties to the agreement.

17. Time is of the essence with respect to performance under this agreement. The deadline date for installation of the art piece can only be extended by a written amendment to this agreement executed by both parties hereto, or based on any other provisions in this paragraph permitting an extension.

18. In addition to any other damages the Purchaser may assert for breach of this agreement, the Purchaser may charge liquidated damages of \$50 per day for completing installation of the sculpture beyond October 30, 2016, provided that this deadline shall be extended in event of delays that may be caused by Purchaser.

19. This agreement shall be construed according to the laws of the State of Michigan, Eaton County.

20. If either party alleges a breach of this agreement, said dispute first shall be submitted to a mediator mutually agreed to by the parties, which agreement shall not be unreasonably withheld, for resolution of said dispute, prior to the institution of any suit in the matter. The parties shall each be responsible for half (1/2) the costs of the mediator.

CITY OF CHARLOTTE

ARTIST

By \_\_\_\_\_  
Gregg Guetschow, City Manager

By \_\_\_\_\_  
Franklin Balluff

Approved as to Form:

\_\_\_\_\_  
Tom Hitch  
City Attorney