

**ARTIST'S COMMISSION
FOR TRAFFIC SIGNAL CABINET ART**

THIS AGREEMENT between the City of Columbia, Missouri, a constitutional charter city ("City") and Lisa Franko ("Artist") is entered into on the date of the last signatory noted below (the "Effective Date"). City and Artist are each individually referred to herein as a "Party" and collectively as the "Parties".

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

1. COMMISSION

Artist is commissioned to render in paint or other City approved medium of the Artist, art on a traffic signal cabinet at Fifth and Broadway Streets, Columbia Missouri substantially as described in approved design concept (attached as Exhibit A).

2. SITE COMPATIBILITY

- a. Artist will meet with the city designated project manager as necessary on all matters connected with carrying out Artist's services.
- b. Artist acknowledges, and accepts, that the traffic signal cabinet is functional equipment with a limited lifetime and may be repaired or removed from service at any time for any reason. City may use the traffic cabinet for any purpose, no purpose or dispose of the traffic cabinet as necessary. Artist waives any and all Moral rights to the art work.
- c. The Artist will use, according to instructions, primer and sealer as provided by the City.
- d. Any disagreements between the city designated project manager and Artist will be referred to the City Manager for a decision. The City Manager's decision shall be final.

3. TIME

Artist will begin work as soon as practical after the execution of this agreement and shall have completed and installed the work by October 31, 2021.

4. WARRANTIES

- a. Artist represents and warrants that the work is solely the result of the artistic effort of Artist and is original and unique to the Artist, does not infringe upon any copyright, has not been sold elsewhere in its traffic box layout design and is free from any liens.
- b. Artist represents and warrants that the work will be durable, executed and fabricated in a workmanlike manner and will be free from defects in material and workmanship including defects known as "inherent vice" or qualities which cause or accelerate deterioration of the work.
- c. If within one year of the date of final acceptance, the work exhibits any structural or cosmetic defect or flaw, Artist will repair the work or replace

any defective component of the work at no cost to City. All repairs or cures to defects shall be consistent with professional conservation standards.

5. **FINAL ACCEPTANCE AND TITLE**

- a. Upon the work being installed and completed to Artist's satisfaction, City shall inspect the work and present the Artist with a detailed listing of any observed flaws. When City is satisfied with the work, City shall notify Artist of its final acceptance of the work.
- b. Upon final acceptance, title to the work shall pass to City. Thereafter, City shall retain all written documentation regarding the work and shall have the right to a copy of all drawings, sketches and designs of the work for maintenance and historical documentation purposes only.

6. **PAYMENT**

- a. City agrees to pay Artist a commission in the sum of one thousand five hundred dollars (\$1500.00) for the execution of the work and all rights granted herein. The Artist may request an allowance for materials of up to five hundred dollars (\$500.00). The total budget for each traffic signal cabinet shall not exceed two thousand dollars (\$2000.00). The commission shall be full compensation for the work, all rights granted, services rendered, travel and all supplies, materials and equipment used by Artist to design, execute, fabricate and install the work. The commission and any claimed allowance for materials shall be paid to Artist within thirty (30) days following the final acceptance of the work on site.

7. **COPYRIGHT**

- a. Artist agrees that City owns the original work of art substantially as described in the design concept. Artist agrees that this work shall be a unique example of Artist's work and Artist shall not anywhere else produce such work in a traffic box layout format, without the express written consent of City. Artist can make copies, including those for sale, of the specific traffic box artwork provided City is credited with commissioning the original work.
- b. Artist grants City an irrevocable license to make two-dimensional reproductions of the work for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media, publicity and catalogues.

8. **INSURANCE AND INDEMNIFICATION**

- a. Artist shall take out and maintain during the life of this Agreement such comprehensive general liability insurance as shall protect Artist and City, its employees and any officers, agents, and subcontractors performing work covered by this Agreement, from claims for damages for personal injury including accidental death, as well as from claims for property damages, which may arise from operations or work under this Agreement, whether such operations or work be by Artist, City, its employees, officers or agents, or by any subcontractor or by anyone directly or indirectly employed by

them. The amounts of insurance shall be not less than \$500,000 combined single limit for any one occurrence covering both body injury and property damage, including accidental death.

- b. The Artist shall furnish City with certificates of insurance which name City as additional insured in an amount as required above and requiring a thirty (30) day mandatory cancellation notice. In addition, such insurance shall be on an occurrence basis and shall remain in effect until such time as City has made final acceptance of the work.
- c. Artist shall at all times hereafter defend, indemnify and hold harmless City, its officers, agents, employees, against any and all claims, costs, losses and liabilities of any kind, caused by acts or omissions of Artist, its employees or agents, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. Any sums due Artist under this Agreement may be retained by City until any claim made against City subject to this section has been settled or otherwise resolved; and any amount withheld shall not be subject to payment of interest by City.
- d. The parties agree that obligations under sections 4, 5, and 8 shall survive the completion or termination of this Agreement.

9. NO ASSIGNMENT

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

10. GOVERNING LAW AND VENUE

This agreement shall be governed by and construed in accordance with the laws of the State of Missouri. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

11. TERMINATION

With ten (10) days notice, either Party may terminate this Agreement.

12. NOTICES

Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to City:
City of Columbia
Office of Cultural Affairs

P.O. Box 6015
Columbia, MO 65205-6015
ATTN: Manager

If to Artist:
Lisa Franko
213 Dorothy Dean Drive
Columbia, MO 65203

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

13. NO WAIVER OF IMMUNITIES

In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

14. AMENDMENT

No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

15. GENERAL LAWS

Artist shall comply with all federal, state, and local laws, rules, regulations, and ordinances.

16. ELECTRONIC SIGNATURES

This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

17. CONTRACT DOCUMENTS

This Agreement includes the following exhibits, which are incorporated herein by reference:

Exhibit	Description
A	Approved Design Concept

In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of this Agreement controls.

18. **ENTIRE AGREEMENT**

This Agreement represents the entire and integrated Agreement between Artist and City relative to the Commission herein. All previous or contemporaneous agreements, representations, promises and conditions relating to Artist's services described herein are superseded.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement on the day and the year of the last signatory noted below.

CITY OF COLUMBIA, MISSOURI

By: _____
John Glascock, City Manager *JG*

Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor/rw

CERTIFICATION: I hereby certify that the above expenditure is within the purpose of the appropriation to which it is charged, Account No. 11004630-504990, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefore.

Matthew Lue, Finance Director

ARTIST
By: _____
Lisa Franko

Date: 4/22/2021

Exhibit A
Approved Design Concept



Top (optional)
24" x 17"

Back 50" x 24" - Faces east
(utility pole)

Side 50" x 17"

Front 50" x 24" - Faces west

Side 50" x 17"