**THIS AGREEMENT MADE [DATE].**

**BETWEEN:**

**[NAME OF BIA]**(hereinafter called “**XXBIA**”)

**OF THE FIRST PART**

-and-

**[NAME OF MURAL RECIPIENT]**

(hereinafter the “**XXX**”)

**OF THE SECOND PART**

and-

**[NAME OF ARTIST]**

(hereinafter the “**XXX**”)

**OF THE THIRD PART**

**WHEREAS BIA** has held a juried competition in order to select artwork for **[DESCRIPTION OF ARTWORK];**

**AND WHEREAS** the Artists’ proposal was recommended by the selection committee and approved by **BIA** and **MURAL RECIPIENT**

**NOW THEREFORE THE PARTIES** in consideration of the mutual covenants herein contained agree as follows:

**1. DEFINITIONS**

1. Artwork - The “**Artwork**” means the final piece of art designed and fabricated by the Artists for display more particularly described in the attached Schedule “A”.
2. The Work - The “**Work**” means designing, producing, fabricating and any engineering required of the Artwork as well as delivering and complete installation at the Site.
3. Site - The “**Site**” means **LOCATION**

**2. TOTAL PRICE OF ARTWORK**

a. The all-inclusive price to be paid by **BIA** for the Artwork, completed and installed as contemplated herein, shall be of $XXX (hereinafter the “**Fee**”). Please note that the **BIA** is HST exempt. The fee shall be deemed to include, without limitation, artist fees including travel and accommodation if applicable, studio overhead, materials, artwork fabrication, delivery, travel, transportation, installation, contingency and artist’s general liability insurance.

Any other costs, including permit fees, sky-jack costs, cleaning of the wall where the art work will be placed, fabrication and placement of a plaque, and respective taxes shall be the sole responsibility of Lifetime (hereinafter the “**Additional Costs**”).

b. **BIA** shall pay to the Artist the Fee in installment as follows:

1. **$XXX** (**XXX%** of the total cost) upon the execution of this Agreement by all parties and submission of an invoice from the Artist;
2. **$XXX** (**XXX%** of the total cost) upon completion of **XXX%** of the Work. In determining at which point this milestone has been reached, the Artist shall propose an estimated date following detailed discussions with **BIA**, which shall be certified and approved by **BIA,** and upon submission of an invoice;
3. **$XXX** (**XXX%** of the total cost) is payable upon satisfaction of the following: (a) completion of the Work (including but without limitation, the installation of the completed Artwork at the Site); (b) submission of an invoice from the Artists and; (c) final approval of installation of the Artwork as required by the City of Toronto, if applicable; and (d) delivery of the completed Maintenance Manual as certified and approved by **BIA**.
4. **$XXX** (**XXX%** HOLDBACK) on the date on which Completion is certified and approved in writing by **BIA** (hereinafter the “**Approval Date**”)

**3. ARTIST’S COVENANTS**The Artist covenants and agrees:

1. to provide all Work and materials necessary to create the Artwork and to fulfill all of its obligations as set out in this Agreement. The initial concept shall be presented by the Artist to **BIA** for approval. No changes to the Artwork shall be made unless first approved in writing by both **BIA** and Artist;
2. to utilize the materials, methods and processes to produce the Artwork as outlined in Schedule “A” attached hereto and forming part of this agreement;
3. to keep **BIA** advised of the status of the Work. The Artist shall allow representatives of **BIA** to view the Artwork throughout its various stages of production;
4. to install the Artwork to the satisfaction of **BIA** no later than **DATE** (“the **Delivery Date**”) or such later date as may be agreed upon by the Artist and **BIA** in writing;
5. to deliver the Artwork to the Site, free from all defects;
6. to ensure that payments will be made to all suppliers and subcontractors that may be engaged by the Artists in regard to the design, fabrication, storage, delivery of the Artwork. At **BIA**’s request, the Artist shall provide evidence of such payment. The Artist further covenants to indemnify **BIA** and **MURAL RECIPIENT** from and against all liens, builders liens, claims, actions, costs and damages which may arise during the Work, including without limitation, installation of the Artwork at the Site;
7. By executing this Agreement, the Artist warrants that the Artwork will be free from failure and deterioration and further warrants that it is free of defects in workmanship and material, excluding normal weathering, wear and tear, and abuse, for a period of one (1) year from the Approval Date. **BIA** shall provide notice to the Artist of any breach and the Artist shall, at the request of **BIA**, and at no cost to **BIA**, cure the breach as soon as is reasonably practicable thereafter. In the event that the Artist is reasonably unavailable to remedy any breach, **BIA** or **MURAL RECIPIENT** may proceed to undertake the necessary repairs and shall use best efforts to respect and observe the artistic integrity of the Artwork;
8. to provide **BIA** a **Maintenance Manual** upon completion of the installation of the Artwork. The manual shall include the description of materials and fabrication methods used in the Artwork as well as recommended maintenance instructions and means of future conservation or restoration that may be required, including methods and materials to be used in cleaning the Artwork;

**4. BIA’s COVENANTS**

**BIA** covenants and agrees:

1. to pay the Artist all funds as set in section 2 herein when due;
2. to provide, at **MURAL RECIPIENT**’s expense, a plaque at the Site, identifying the name of the Artist, and the title and date of the Artwork; The location of the plaque will be determined in consultation with the Artist.
3. upon Completion of Artwork, to assume responsibility for all costs, work and administration associated with the Artwork’s insurance, liability, care and maintenance;
4. to maintain the Artwork in accordance with the maintenance instructions as provided in the Maintenance Manual; **BIA** retains the sole right to determine what, if any, repair and restoration work it will perform on the Artwork. **BIA** may consult with the Artist or a professional conservator in making its determination;
5. to keep the Artwork in a clean condition and, to the extent possible, free of debris and obstruction from banners or signage which would deface the Artwork, all to the level considered appropriate and in accordance with the maintenance manual;
6. to endeavor to exhibit the Artwork in its original and complete format subject to **BIA**’s right to decommission or remove the Artwork or a particular piece thereof for reasons which may include, but are not limited to, expiry of the expected lifespan of the Artwork, extensive or irreparable damage or vandalism or by reason of the necessity to accommodate the effective operation or redevelopment of the Site.

**5. RIGHTS OF OWNERSHIP**

Upon completion and payment to the Artists of the final fee, ownership of and all property rights to the Artwork shall be thereby transferred to **BIA** and **MURAL RECIPIENT**.

**6. INDEMNIFICATION**

The Artist shall indemnify and hold harmless and forever discharge each of **BIA** and **MURAL RECIPIENT** and their respective elected and appointed officials, officers, employees and agents from all actions, causes of action, suits, proceedings, losses, damages, expenses, demands, claims, costs (including actual costs of professional advisors and costs associated with remediation of contamination) and harm of any kind, howsoever caused, whether related to death, bodily injury, property loss, property damage or consequential loss or damage, arising out of or in any way connected with:

1. the Artists’ use of and presence on the Site;
2. the Work of the Artwork;
3. failure by the Artist to pay for labour and materials;
4. contamination of the Site resulting from the Artist’s use of and presence on the Site or the construction of the Artwork;
5. breach or default by the Artist under this Agreement;
6. any wrongful act, omission or negligence of the Artist, its directors, officers, employees, agents, contractors, subcontractors, licensees, volunteers, invitees, customers and others for whom it is responsible.

**7. COPYRIGHT**

1. The Artist warrants that the Artwork is original to the Artist and does not violate any copyright of any other person. The Artist shall indemnify and hold harmless each of **BIA** and **MURAL RECIPIENT** and their respective partners, officers, officials, employees, agents, servants and contractors for any and all losses, claims, demands, suits, actions, judgments or costs that may arise from the allegation that the Artwork is not original to the Artist.
2. Copyright in the Artwork and the maquette, including any and all drawings, designs, images, specifications, photographs and documents incidental thereto, is and shall remain the property of the Artist.
3. **BIA** and **MURAL RECIPIENT** shall have the right to reproduce an image or images of the Artwork or maquette for non-profit use, public relations and documentation purposes only. **BIA** and **MURAL RECIPIENT** shall use their best efforts to have the Artists’ names associated with the Artwork in photographs, drawings or other reproductions of the Artwork except where the Artwork is not the primary subject of the said reproduction.
4. The Artist shall not replicate the Artwork or maquette for any other client or purchaser.
5. The Artist agrees to use best efforts to at all times credit **BIA** and **MURAL RECIPIENT** as the owners and facilitators of the Artwork.

**8. MORAL RIGHTS**

1. The Artist acknowledges and agrees that the Artwork, by nature of its composition and location, may be subject to the ravages of nature, pollution, vandalism and time. While **BIA** intends to attempt to maintain the Artwork according to the Artists’ original intent, **BIA** retains the right to alter or remove the Artwork if the Site is required for purposes deemed necessary or desirable by **BIA**, for any reason. At any time such alteration, removal or relocation is in the opinion of **BIA** deemed necessary or desirable, the Artist may decide the Artwork is no longer the Artwork as originally intended and the Artist may request that **BIA** remove all signs and acknowledgments linking the Artwork to the Artist. The Artist agrees that such alteration, removal or relocation shall not violate the Artist’s moral rights in the Artwork. **BIA** will, by notice to the Artist, make reasonable efforts to consult with the Artists on the Artwork's alteration, removal, or maintenance.
2. If the Artist is unable to complete the Artwork for any reason other than death or incapacity within six (6) months of the delivery date, **BIA** may notify the Artist in writing they are to cease and discontinue the work and that **BIA** elects to complete the Artwork or cause the Artwork to be completed by another person or entity. The Artist agrees that such completion does not violate or infringe the Artist’s moral rights in the Artwork and **BIA** is only obligated to pay Artist for work completed up to the notice date including supporting documents. In the event that the Artist is unable to complete the artwork or its installation due to death or incapacity, the Artist or their legal representative shall notify **BIA** in writing of the effective date of non-completion (hereinafter the “**Non-Completion Notice Date**”) and the Artist will be paid for only the completed work done to the Non-Completion Notice Date. **BIA** shall then be entitled to have any third-party artist complete the Artwork.
3. Accordingly, the Artist hereby acknowledges and agrees that **BIA** may, subject to the foregoing:
4. alter the Site;
5. replace, substitute or remove any vegetation on the Site, including any vegetation forming part of the Artwork;
6. repair and maintain the Artwork;
7. remove or destroy the Artwork;
8. complete the Artwork or cause another person or entity to complete the Work or the Artwork, without violating or infringing the Artists’ moral rights in the Artwork.

**9. PRE APPROVAL OF PUBLICLY RELATED WRITTEN MATERIALS**

1. nil

**10. GENERAL TERMS AND CONDITIONS**

1. The Artist is an independent contractor and is not the employee or agent of **BIA**. The Artist will not represent to anyone that the Artist has any authority to bind **BIA** in any way or that the Artist is an employee or agent of **BIA**. Since the Artist is not an employee of **BIA**, the Artist is not entitled to any employment benefits of any kind, including but not limited to Canadian Pension Plan premiums, Unemployment Insurance premiums, Medical Services Plan premiums, Extended Health Care Plan, Dental Services Plan, life insurance, retirement pension benefits, long term disability coverage, sick leave, vacation pay, Employee Savings Plan benefits or gratuity day benefits.
2. Upon receipt of the Artwork, should **BIA** find any deficiencies in the Artwork, it will advise the Artist in writing and the Artist must rectify such deficiency at no cost to **BIA** within thirty (30) days of receipt of such notice. Should it not be possible to rectify the deficiencies within thirty (30) days, the Artist shall provide a schedule to **BIA** that is acceptable to **BIA** indicating when completion will occur.
3. **Artist Default** - If the Artist violates or fails to comply with any provision of this Agreement, **BIA** may give the Artists notice of default and if the default is not cured within the time specified in **BIA**’s notice, **BIA** may, by giving one week’s notice, terminate all the Artist’s rights under this Agreement.
4. **BIA** retains the right to terminate this Agreement and pay the Artist for the portion completed up to the date of termination. **BIA** will have the right, upon termination of the Agreement, to all the Artwork in Progress which the Artist has produced and for which payment has been made, and that **BIA** will have the rights to have the Artwork completed by another person or persons.
5. **Termination by the Artist -** If the Artist is unable, for any reason beyond the Artist’s control (such as serious illness, disability or death), to complete the Work pursuant to this Agreement, the Artist or Artist’s heirs will give written notice and evidence of such reason to **BIA** to terminate the Agreement effective immediately. **BIA** shall only be obligated to pay the Artist based on only the completed work up to the termination notice date. The Artist agrees that **BIA** may, at its sole discretion, complete the Artwork or cause the Artwork to be completed, or choose to keep, store or install and display or destroy the unfinished Artwork.
6. **Delays**  - If either party is unable to meet any of the timelines imposed by this Agreement, that party shall notify the other Party immediately upon becoming aware of the inability. Neither party shall be responsible for any failure to comply with or for any delay in performance of the terms of this Agreement including but not limited to delays in delivery, where such failure or delay is directly or indirectly caused by or results from events of force majeure beyond the control of the party sought to be charged. These events shall include, but shall not be limited to fire, earthquake, accident, civil disturbances, war, rationing, allocation of embargoes, strikes or labour problems or delays in transportation, inability to secure necessary materials, parts or components, delay or failure of performance of any supplier or subcontractor, act of Nature or act of Government.
7. No assignment of this Agreement may be made by either party without the express written consent of the other, which consent may not be arbitrarily withheld.
8. The parties agree that the laws of the Province of Ontario and the laws of Canada shall govern this Agreement.
9. This Agreement constitutes the entire Agreement between the parties and supersedes all prior communications, representations, understandings and agreements whether verbal or written between the parties with respect to the subject matter hereof.
10. Any notice or payment required or desired to be sent pursuant to this Agreement shall be sufficiently given if personally delivered or sent by mail as follows:

To **BIA** at:

**BIA ADDRESS**

To **MURAL RECIPIENT**:

**MURAL RECIPIENT ADDRESS**

To **ARTIST** at:

**ARTIST ADDRESS**

IN WITNESS THEREOF the parties have duly executed this Agreement as at the date and year first above written.

|  |
| --- |
| **[BIA NAME]** |
| Per: |
| Name: |
| Title: Chair, BIA |
| *I have authority to bind the Corporation.* |
| Per: |
| Name: |
| Title: Committee Chair |
| *I have authority to bind the Corporation.* |

|  |
| --- |
| **[MURAL RECIPIENT NAME]** |
| Per: |
| Name: |
| Title: Authorized Signing Officer |
| *I have authority to bind the Corporation.* |

|  |  |  |  |
| --- | --- | --- | --- |
|  | | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | |
| **ARTIST SIGNATURE:** | | **ARTIST NAME** | |
|  |  | |
|  |  | |

