

ARTIST'S CONTRACT

BHH Public Art Vision and, History and Heritage Wayfinding Trail

THIS AGREEMENT is made on 2021

BETWEEN:

- (1) [The Artist] (Company Number XXXXX), whose registered office is at XXXXX ("the Lead Artist"); and
- (2) Eastleigh Borough Council, Eastleigh House, Upper Market Street, Eastleigh, Hants SO50 9YN ("the Council")

BACKGROUND

- (A) The Council is the local planning authority and borough council for the area in which the Sites are situated
- (B) The Sites are owned by Eastleigh Borough Council and Hedge End Town Council ("the Developer")
- (C) This Agreement is conditional upon the Site Owner granting consent for the purposes of carrying out the Project and thereafter for the retention of the Art Work on the Site
- (D) This Agreement governs the Project and the Council has entered into this Agreement with the Lead Artist to carry out the Project.

1 DEFINITIONS AND INTERPRETATIONS

1.1 The following definitions shall apply in this Agreement:-

- Art Work : all art works and materials produced by the Lead Artist or its Sub-Contractors in carrying out the Project,
- Fee : a fee payable under Schedule Two and in accordance with the provisions of this Agreement including (but only where a valid VAT invoice has been provided) VAT
- Steering Group : includes the following representatives of the Council and any such other individuals as the Council and the Developer nominates from time to time to monitor the Lead Artist's obligations under this Agreement:-
- (i) Ross McClean (BHH Local Area Manager, of Eastleigh Borough Council);
 - (ii) Becky Wiseman (Assistant Local Area Manager, of Eastleigh Borough Council);
 - (iii) Mark Ellison (Principal Urban and Landscape Design Officer, of Eastleigh Borough Council);

- (iv) Aliis Kodis (Senior Urban Design Officer of Eastleigh Borough Council);
- (v) Cali Sparks (Sustainable Transport Planner of Eastleigh Borough Council);
- (vi) Cllr Tonia Craig (of Eastleigh Borough Council);
- (vii) Cllr David Airey (of Eastleigh Borough Council);
- (viii) Cllr Malcolm Cross (of Eastleigh Borough Council)

Completion Date	:	Public Art Vision: 18 February 2022, History and Heritage Wayfinding Trail: 29 April 2022, or such earlier date as the Council notifies the Lead Artist in writing that the Project has been carried out to the Council's satisfaction in accordance with its obligations under this Agreement
Consent	:	the consent of the Site Owner to allow access to the Site for all purposes in connection with the Project
Intellectual Property Rights	:	includes all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for, and renewals or extensions of, such rights, and all similar or equivalent rights or forms of protection in any part of the world
Payment Milestone	:	a stage of the Project as set out in and in accordance with Schedule Two
Project	:	the provision and installation of the Art Works on the land more particularly described in Schedule One (Project Description) and in accordance with Schedule Three (Delivery Schedule)
Site	:	The rail stations of Bursledon, Hamble and Netley, walking and cycling links from the rail stations to their respective local centres and any other key destinations within the Bursledon, Hamble and Hound (BHH) Local Area as agreed with the Steering Group
Project Manager	:	the Project Manager for the works as employed by the Council or such other officer or officers as may from time to time be primarily responsible for the

Council's powers, duties and functions of the Project Manager.

Sub-Contractors : any person or organisation appointed by the Lead Artist to undertake work in relation to the Project subject to proper consultation and prior approval by the Council

VAT : value added tax chargeable under English law for the time being and any similar additional tax

1.2 The schedules and background form part of this Agreement and shall have effect as if set out in full in the body of this Agreement.

1.3 Words in the singular shall include the plural and vice versa, and references to masculine and feminine shall be interchangeable.

2 OBLIGATIONS OF THE LEAD ARTIST

2.1 The Lead Artist shall prior to the commencement of the Project:

2.1.1 obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:

- a) the Project;
- b) the installation of the Artworks; and
- c) the use of all documents, information and materials relating to the Project, including the Artwork, computer programs, data, reports and specifications

2.1.2 provide to the Council, for its approval, any risk assessments the Council requests relating to any part or aspect of the Project

2.1.3 confirm in writing that he will take on the role of Principal Designer, as described under the Construction (Design and Management) Regulations 2015 and provide to the Council for its written approval:

- a) a Pre-Construction Phase Plan
- b) a Construction Phase Plan
- c) a method statement setting out the method to which the installation of the Artwork will be undertaken and evidence that such installation complies with the Construction (Design and Management) Regulations 2015

2.2 Subject to compliance with the provisions contained in clause 2.1 the Lead Artist shall be permitted to carry out the Project in accordance with Schedule One and the obligations under this Agreement and also in accordance with the Council's Terms and Conditions for Consultancy Services. The Lead Artist shall also deliver the Project in accordance with the timescales set out in Schedule Three by the Completion Date.

2.3 The Lead Artist shall observe, and ensure that its agents, subcontractors, consultants or employees relating to the Project observe all health and safety

rules and regulations and any other security requirements that apply in respect of the Project.

- 2.4 The Lead Artist shall provide the Council with regular updates summarising the progress made of delivering the Project by the Completion Date and shall provide a written monthly update to the Council with photographs if required.
- 2.5 The Lead Artist shall co-operate with the Council in carrying out the Project and shall comply with the requests and recommendations of the Council and/or the Steering Group.
- 2.6 The Lead Artist shall exercise all reasonable and proper skill, care and diligence whilst carrying out the Project.
- 2.7 The Lead Artist shall at its own cost provide to the Council, copies of any materials produced in carrying out the Project.
- 2.8 The Lead Artist is required to provide the Council with a comprehensive maintenance schedule for the Artworks prior to the Completion Date and the Council may (acting reasonably) require the Lead Artist to provide further or supporting information to ensure that the Developer is able to follow the maintenance schedule for the upkeep of the Artwork
- 2.9 On the Completion Date, the Lead Artist shall provide all documents, files and information relating to the Project to the Council.
- 2.10 The Lead Artist shall be entitled to permit Sub-Contractors to assist the Lead Artist in carrying out the Project but subject to first ensuring that such Sub-Contractors are checked and approved by the Council's Project Manager. A two-week period is required for the Council to review any proposed Sub-Contractor and advise on whether they are acceptable.
- 2.11 The Lead Artist shall ensure that all necessary consents and permissions are obtained to maintain photographic records of the Project.

3 OBLIGATIONS OF THE COUNCIL

- 3.1 Subject to the Lead Artist complying with the terms of this Agreement, the Council shall pay each Fee which is properly due in accordance with Schedules Two A and Two B, within 28 days of the Lead Artist carrying out and completing the respective Payment Milestone;
- 3.2 For avoidance of doubt, the Council shall not be liable for any Fee or proportion of any Fee in respect of any Payment Milestone:
 - 3.2.1 that has not been completed and carried-out in accordance with Schedule Two A or Two B; or
 - 3.2.2 if this Agreement is terminated (in accordance with Clause 8) before the Project Milestone concerned has been completed and carried out in accordance with Schedule Two A or Two B.
- 3.3 The Council shall use reasonable endeavours to provide the Lead Artist with such information to enable him to carry out the Project.

- 3.4 The Council shall take on the role of Client, as described under the Construction (Design and Management) Regulations 2015 and supply to the Artist all sufficient resources to enable the Artist to complete the commission.

4 OBLIGATIONS OF THE STEERING GROUP

- 4.1 The Steering Group shall monitor and regulate the implementation of the Project by the Lead Artist, to include the following matters:-
- 4.1.1 approving the Lead Artist's Concept proposals for the BHH Public Art Vision and, the Stage 1 History and Heritage Wayfinding Trail Artworks;
 - 4.1.2 approving the Lead Artist's detailed working drawings and Project plan for delivering the History and Heritage Wayfinding Trail Artworks prior to their fabrication;
 - 4.1.3 providing advice in relation to project planning and installation of the Artworks;
 - 4.1.4 approving the completion of the Project
- 4.2 The Project Manager or their delegates shall organise meetings for the Steering Group and advise them on the appropriateness of the work of the Lead Artist.
- 4.3 The Steering Group will work together to ensure that the Project is completed by the Completion Date.

5 INDEMNITY

The Lead Artist shall indemnify the Council on a full indemnity basis against any costs (including legal costs on a solicitor and client basis), claims, damages, proceedings or other infringement action of Intellectual Property Rights or other third party rights enforced or pursued against the Council or that the Council may suffer or incur as a result of or in connection with any damage to property or any injury (whether fatal or otherwise) to any person which may result directly or indirectly from the Project or any negligence or breach of this Agreement by the Lead Artist.

6 INSURANCE

- 6.1 The Lead Artist warrants that it has in place with a reputable insurance company a policy or policies of insurance covering all the indemnities under this Agreement and during the term of this Agreement, the Lead Artist shall maintain in force with a reputable insurance company based in the United Kingdom, the following insurance cover:-
- 6.1.1 Employers liability insurance of not less than five million pounds (£5,000,000) (if an employer)
 - 6.1.2 Public liability insurance of not less than ten million pounds (£10,000,000)
- 6.2 The Lead Artist shall provide the Council with a copy of the insurance certificate(s) with details of the cover required pursuant to this Clause 6 and the receipt for the current year's premium.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 The Lead Artist warrants that none of the documentation and materials used or created as part of the Art Work for the Project shall infringe any patent, trade mark, registered design, copyright or other rights in industrial property of any third party
- 7.2 The parties agree that the Artwork produced in connection with the Project will be the property of the Council.
- 7.3 Copyright in the Artworks will remain at all times with the Lead Artist. The Lead Artist asserts its right to be identified as the artistic creator of the Artworks in accordance with Section 78 of the Copyright Designs and Patents Act 1988 on all occasions when the designs or any permitted reproduction is exhibited, published or issued to the public.
- 7.4 The Council and the Site Owner will on the date of this Agreement be granted by the Lead Artist, an exclusive, royalty free licence to make or authorise to be made any photograph of the Artworks and to include or authorise the inclusion of the Artworks in any record, publication, film, video or television broadcast intended to promote the Art Work, excluding the sale of the Artworks or other commercial exploitation.

8 TERMINATION

- 8.1 The Lead Artist shall notify the Council in writing immediately upon the occurrence of any of the following events:
- 8.1.1. (where the Lead Artist is an individual) if a petition is presented for the Lead Artist's bankruptcy or a criminal bankruptcy order is made against the Lead Artist, or the Lead Artist makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage his affairs;
- 8.1.2. (where the Lead Artist is a firm; or a number of persons acting together in any capacity) if any event in 8.1.1 to 8.1.3 of this Condition occurs in respect of any partner in the firm or any of those persons or a petition is presented for the Lead Artist to be wound up as an unregistered company; or
- 8.1.3. where the Lead Artist is a company, if the company passes a resolution for winding-up or the court makes an administration order or a winding-up order, or the company makes a composition or arrangement with its creditors, or an administrative receiver, receiver or manager is appointed by a creditor or by the court, or possession is taken of any of its property under the terms of a floating charge.
- 8.2. The Council shall be entitled to terminate this Agreement by notice to the Lead Artist with immediate effect if:
- 8.2.1. any of the events described in Condition 8.1 occurs;
- 8.2.2. the Lead Artist has committed a material breach of any of its obligations under this Agreement that is capable of remedy and fails to remedy such a breach within 10 working days following written notification by the Council, whereupon this Agreement shall cease

and determine immediately without prejudice to any other rights and remedies of the Council.

- 8.2.3. the Lead Artist has committed a material breach of any of its obligations under this Agreement that is not capable of remedy.
- 8.2.4. (where the Lead Artist is an individual), if he shall die or be adjudged Incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983.
- 8.2.5. the Council shall be entitled to terminate this contract at any time by giving the Lead Artist not less than 30 days' notice to that effect.
- 8.3. Without prejudice to any other rights or remedies which the Council may have, the Council may also terminate this Agreement at any time from the date of this Agreement without liability to the Lead Artist on giving the Lead Artist not less than two weeks written notice
- 8.4. In the event of termination under this clause 8, the Council may pay to the Lead Artist such part of any Fee as the Council determines at its absolute discretion on a pro-rata basis for all work completed in accordance with Schedule One up to the date of this Agreement terminating.

9 FORCE MAJEURE

- 9.1 No party shall be treated as being in default under this Agreement for any failure to perform its obligations caused directly or indirectly from any act of god, act or consequence of war, enemy action, fire, terrorism, riots, civil commissions, strikes, lock-out, local disturbances, requisitions by or under the order of government or public or council or any other cause beyond the control of the parties.
- 9.2 Notwithstanding the foregoing, if any party wishes to rely on the provisions in clause 9.1 of this Agreement to excuse its non-performance or delay of its obligations ("the Defaulting Party") it shall forthwith (and in any event within seven (7) days of the occurrence of the relevant event):
 - 9.1.2 notify the other party of the occurrence of the event and the likely impact of same in relation to the Defaulting Party's ability to perform its obligations hereunder; and
 - 9.1.3 use all reasonable endeavours to overcome any difficulties arising from the relevant event and to minimise the length of any delay in its performance of its obligations arising from same.

10 DISPUTES

- 10.1 Either the Lead Artist or the Council may refer any dispute arising under or in connection with this Agreement to an independent mediator nominated by the Arts Council England South East being part of the Regional Arts Council for settlement. Each party shall bear its own costs in connection with such referral.
- 10.2 Should the Lead Artist die or become incapacitated before completion of the Project, the Lead Artist's successor in title will be entitled to receive and retain payment for all work done by the Lead Artist pursuant to this Agreement. The Council will own all Artworks done up to the death or

incapacity of the Lead Artist and will have the right to finish the Artworks to the original design via the Lead Artist's nominee.

11 NOTICES

- 11.1 Any notice or other communication given under or pursuant to this Agreement must be given in writing and must be delivered in person, by email, or sent by post. Communications must be sent to the address for communications given in the Agreement (which may be altered at any time by the altering Party giving the other Party 7 days notice of a changed address).
- 11.2 A notice or communication shall be deemed to have been received 2 working days after posting in the case of first class delivery and 4 working days after posting in the case of second class delivery unless the receiving party proves otherwise.

12 BRIBERY AND CORRUPTION

- 12.1 The Council may terminate this Agreement and recover from the Lead Artist the amount of any loss resulting from such cancellation:
- 12.1.2 If the Lead Artist shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for so doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the contract or any other contract, with the Councillor for showing or forbearing to show favour or disfavour to any person in relation to the contract or any other contract with the Council or
- 12.1.3 If the like acts shall have been done by any person in the employ or on behalf of the Lead Artist (whether with or without the Lead Artist's knowledge, or
- 12.1.4 If in relation to any contract with the Council the Lead Artist or any person in the employ of or acting on the Lead Artist's behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under Section 117 of the Local Government Act 1972.

13 GOVERNING LAW

Unless this Agreement specifies otherwise, this Agreement shall be governed by and construed in accordance with the law of England and Wales and shall be subject to the exclusive jurisdiction of the courts of England and Wales.

14 RIGHTS OF THIRD PARTIES

This Agreement shall not create any rights which are enforceable by anyone there than the Parties.

SCHEDULE ONE

Project Description

The project aims to deliver a Public Art Vision and the History and Heritage Wayfinding Trail, as specified in Section 4 of the Artist's Brief that forms part of the Contract Documents.

1 Responsibilities of The Lead Artist

BHH Public Art Vision (PAV)

- 1.1 To research, develop and deliver an overarching Public Art Vision for the BHH Local Area in accordance with the Project Brief that also sets out a framework for the delivery and implementation of Stages 1 and 2
- 1.2 To ensure the PAV can be used as a "road map" to commission Stage 2 projects, which will expand and supplement the Stage 1 approach and include networks not directly related to the rail stations

Specifically:

- An implementable and responsive Artistic Vision for the BHH Local Area
- The appointed practitioner will be expected to attend at least one interim discussion meeting with the project Steering Group for the discussion of initial findings and initial ideas, to be developed following public and stakeholder engagement and, a meeting to present the final version of the document prior to approval.
- The PAV should set out the themes, content and broad concepts and parameters for future public art projects to be commissioned under Stage 2. This should include proposing locations for the works and features and the materials, functions or concepts that unify them.
- The PAV should identify a hierarchy of walking and cycling routes and confirm a related hierarchy of levels of public art interventions
- The PAV should ensure that within this framework the specifics of the design and form remain open. This is to allow the opportunity for creative and innovative responses to the future commissions that will follow on in Stage 2.
- The PAV should be supplied to Eastleigh Borough Council by the appointed practitioner as a high-resolution print quality PDF, formatted to print as a document at A4 or A3.
- The PAV must adhere to the overall ethos and approach set out in Eastleigh Borough Council's Public Art Strategy. Proposals must be affordable, achievable, accord with Health and Safety requirements and accord with the requirement for robust, vandal-resistant and low maintenance final implement works.

Stage 1: History and Heritage Wayfinding Trail (H&HWT)

- 1.3 To design, develop, fabricate, deliver and install a suitable public art scheme

that will:

- Enhance the rail stations of Bursledon, Hamble and Netley
- Enhance the walking and cycling connections to the rail stations from their respective local centres and any other locations agreed with the Steering Group in accordance with the Project Brief.

1.4 To manage, where necessary, the creation and installation of the Artworks by subcontractors.

1.5 To manage, where necessary, any works to the highway as part of the Project and obtain any necessary consents, licenses etc. as required by the Local Highway Authority.

Specifically:

- The appointed practitioner will be expected to attend at least one interim discussion meeting with the project Steering Group for the discussion of initial findings and initial ideas and concepts to be developed following public and stakeholder engagement and agree the themes, content and broad concepts and parameters for the Stage 1 artworks.
- The H&HWT must adhere to the overall ethos and approach set out in Eastleigh Borough Council's Public Art Strategy. Proposals must be affordable, achievable, accord with Health and Safety requirements and accord with the requirement for robust, vandal-resistant and low maintenance final implement works.

Project Documentation

1.6 To provide the following documentation for the Public Art Vision:

- 1.6.1 Regular updates for the Steering Group, or as requested by the Project Manager
- 1.6.2 Photographic record of activities
- 1.6.3 Draft documents to timescales as set out in this Agreement or otherwise agreed with the Steering Group
- 1.6.4 The Final version of the Public Art Vision, presented in an agreed format and incorporating feedback from the Steering Group

1.7 To provide the following documentation for the History and Heritage Wayfinding Trail:

- 1.7.1 Regular updates for the Steering Group, or as requested by the Project Manager
- 1.7.2 Photographic record of activities
- 1.7.3 Exhibition of the Artwork's creation for public launch
- 1.7.4 All appropriate health & safety documentation for the Artwork and installation of the Artwork
- 1.7.5 Maintenance schedule and instructions for repair in the event of damage; and also decommissioning

SCHEDULE TWO A – BHH PUBLIC ART VISION

Payment Schedule

The Lead Artist's Commission of **£15,000.00** excluding VAT shall be paid as follows:

Stage 1 Payment Milestone – Commencement: (10%)

The Council shall pay the sum of £1,500.00 to the Lead Artist within 28 days of the date of this Agreement;

Stage 2 Payment Milestone – Concepts: (25%)

The Council shall pay the sum of £3,750.00 to the Lead Artist strictly subject to the completion of research, analysis and identification of defined concepts, themes and route hierarchies, to be informed by public and stakeholder engagement and, the Council and/or the Steering Group providing their written approval;

Stage 3 Payment Milestone – First Draft: (25%)

The Council shall pay the sum of £3,750.00 to the Lead Artist strictly subject to the submission of the First Draft of the Public Art Vision in an agreed format for review by the Steering Group and, the Council and/or the Steering Group providing their written approval;

Stage 4 Payment Milestone – Completion: (40%)

The Council shall pay the sum of £6,000.00 to the Lead Artist following project completion, that is, delivery to the Council of the Final BHH Public Art Vision in agreed format and in accordance with any feedback from the Steering Group arising from Stage 3 and, the Council and/or the Steering Group providing their written approval

SCHEDULE TWO B – BHH HISTORY & HERITAGE WAYFINDING TRAIL

Payment Schedule

The Lead Artist's Commission of **59,500.00** excluding VAT shall be paid as follows:

Stage 1 Payment Milestone – Commencement: (10%)

The Council shall pay the sum of £5,950.00 to the Lead Artist within 28 days of the date of this Agreement;

Stage 2 Payment Milestone – Concept Design: (25%)

The Council shall pay the sum of £14,875.00 to the Lead Artist strictly subject to the completion of research, analysis and identification of a defined concept, to be informed by public and stakeholder engagement and, the Council and/or the Steering Group providing their written approval;

Stage 3 Payment Milestone – Technical Design: (25%)

The Council shall pay the sum of £14,875.00 to the Lead Artist strictly subject to the completion of detailed working drawings for the public art prior to fabrication and the Council and/or the Steering Group providing their written approval;

Stage 4 Payment Milestone – Fabrication: (15%)

The Council shall pay the sum of £8,925.00 to the Lead Artist strictly subject to the approved and inspected fabrication of the Art Works and the Council and/or the Steering Group providing their written approval;

Stage 5 Payment Milestone – Installation: (15%)

The Council shall pay the sum of £8,925.00 to the Lead Artist following project completion, that is, installation to the Site and snagging, strictly subject to the Council and/or the Steering Group providing written approval;

Stage 6 Payment Milestone – Defects Liability: (10%)

The Council shall pay the sum of £5,950.00 to the Lead Artist strictly subject to the Council and/or the Steering Group providing written approval following a 1 year defects liability period. This fee will be released subject to making good any defects as required.

SCHEDULE THREE A – BHH PUBLIC ART VISION

Delivery Schedule

- 1 The Lead Artist shall ensure that the detailed concept development for the BHH Public Art Vision, including community engagement as proposed in the Project Brief, have been completed and submitted to the Council for approval on or before 3 December 2021
- 2 The Lead Artist shall ensure that the First Draft of the BHH Public Art Vision is completed and submitted to the Council for approval and comment on or before 21 January 2022
- 3 The Lead Artist shall ensure that the delivery of the Final BHH Public Art Vision is completed and available for approval on or before 18 February 2022
- 4 The Lead Artist shall co-operate with the Council to ensure that the Project is completed on or before 18 February 2022

SCHEDULE THREE B – BHH HISTORY AND HERITAGE WAYFINDING TRAIL

Delivery Schedule

- 1 The Lead Artist shall ensure that detailed concept development and design for the Artworks, including community engagement as proposed in the Project Brief, have been completed and submitted to the Council for approval on or before 3 December 2021
- 2 The Lead Artist shall ensure that detailed working drawings of the Artworks are completed and submitted to the Council for approval prior to fabrication on or before 21 January 2022
- 3 The Lead Artist shall ensure that the fabrication of the Artworks is completed and available for approval on or before 1 April 2022
- 4 The Lead Artist shall ensure that the Artworks are installed on Site on or before 29 April 2022
- 5 The Lead Artist shall ensure that the exhibition detailing the creation of the Artworks is available for public view on or before 29 April 2022
- 6 The Lead Artist shall co-operate with the Council to ensure that the Project is completed on or before 29 April 2022

SIGNATURES

Signed by:)
 [Print Name]

On behalf of)
Eastleigh Borough Council)

.....
[Signature]

Signed by:)
 [Print Name]

On behalf of)
[The Artist])

.....
[Signature]

