



To: Members of Dublin City Council
From: Dana L. McDaniel, City Manager
Date: May 3, 2022
Initiated By: Matt Earman, Director of Parks & Recreation
Re: Resolution 21-22 – Authorizing the City Manager to Enter into a Contract with Artist Ilan Averbuch for the Design, Construction, and Installation of The “Boat in the Field” Located at M.L. “Red” Trabue Nature Preserve

Background

At the January 24, 2022 City Council meeting, Dr. David Guion, Executive Director of the Dublin Arts Council (DAC) presented the selection of artist Ilan Averbuch to complete the upcoming art installation project to be located at M.L. “Red” Trabue Nature Preserve. Per the Art in Public Places Master Plan, the attached Contract (Exhibit A) is required to be approved by Council by way of Resolution.

Averbuch’s site-specific proposal for *The Boat in the Field*, a permanent artwork in Dublin’s M.L. “Red” Trabue Nature Reserve, consists of two intertwined images. One image is of a stone skeletal structure of a boat raised 11 to 15 feet in the air as if frozen in mid-flight. The other image is of a skeletal tower made of vertical steel beams covered with a sloping round roof. The massive petrified stone boat looks as if it floats weightlessly in mid-air, seeming to defy gravity and the laws of physics. Below, steel beams, some straight and some bent, appear in motion, possibly having walked out of the nearby Karrer Pond.

The sculpture will be 25 feet tall, 18 feet wide, and 15 feet deep, created from recycled and Ohio industrial materials, such as stone and Cor-ten weathering steel. The sculpture will be long-lasting and will require very little maintenance.

The sculpture site is proposed in proximity to, but out of sight of, the pond at the prominent juncture of two paths, one paved and one natural. The floating boat seems to prompt further questions about the surrounding natural environment of the preserve. A rendering of the art piece and location map are attached for reference (Exhibit B.)

Recommendation

At the March 21, 2022 meeting, Council approved an appropriation of \$150,000 from the Hotel Motel Fund for this project. Staff recommends approval of Resolution 21-22 – Authorizing the City Manager to Enter into a Contract with Artist Ilan Averbuch for the Design, Construction, and Installation of the “Boat in the Field” Located in M.L. “Red” Trabue Nature Preserve.

Exhibit A

ARTIST CONTRACT

Dublin, Ohio

The Boat in the Field

Ilan Averbuch



THIS AGREEMENT, is entered into this 10th day of May, 2022 between City of Dublin, Ohio (hereinafter the "Agency"), a municipal corporation duly organized and validly existing under the Constitution and laws of the State of Ohio and its Charter, with offices at 5555 Perimeter Drive, Dublin, Ohio 43017, and Ilan Averbuch (hereinafter the "Artist") with a studio at 10-15 48th Avenue Long Island City, NY 11101.

WHEREAS, the Agency has the Art in Public Places program for the establishment and display of artwork in public places; and

WHEREAS, authority lies with the Agency to make payments for the acquisition, design execution, fabrication, transportation, and installation of artworks, including payments for the support of an artist selection process, design, execution and placement of Art; and

WHEREAS, the Artist is a recognized artist whose work and reputation make the Artist uniquely qualified to create Artwork; and

WHEREAS, the Artist was selected by the Agency to design, execute, fabricate and install the Artwork, as described in Exhibit 1 in a public space located at M.L. 'Red' Trabue Park at 6566 Post Rd, Dublin, Ohio (hereinafter the "Site"); and

WHEREAS, the Artist and Agency wish to undertake the obligations expressed herein;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

Section 1 Scope of Services

1.1 Artist's Obligations

- a. The Artist shall perform all services and furnish all supplies, material and/or equipment as necessary for the design, fabrication, and installation of the Artwork at the Site in accordance with the specified schedule. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in the Agreement.
- b. The Artist shall determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the Agency as set forth in this Agreement. To ensure that the Artwork as installed shall not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site, the Artist's proposal shall be reviewed and approved by the Agency including applicable city departments to ensure compliance with these objectives.
- c. The Artist shall prepare the design concept and the corresponding budget described in Section 1.3 of this Agreement. The design concept shall include a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved.
- d. The Artist shall work with Dublin staff and community stakeholders to incorporate their suggestions into the refinement of the Artwork. The Artist shall take into consideration all public comments made related to the design of the Artwork. The Artist, however, shall not be obligated to make substantial changes to the design, but rather to incorporate any

minor revision(s) that are possible consistent with the proposed design theme accepted as part of the selection process.

- e. The Artist shall participate in design and construction coordination meetings with the Agency and other parties, as appropriate, to communicate about the Artwork and to ensure appropriate integration and/or installation of the Artwork.
- f. The Artist shall complete the fabrication of the Artwork by the scheduled installation date as provided in Exhibit 3 of this Agreement.
- g. The Artist shall secure any and all required licenses, permits and similar legal authorizations at the Artist's expense as may be necessary for the installation and maintenance of the Artwork at the Site.
- h. The Artist shall arrange the transportation and installation of the Artwork in consultation with the Agency.
- i. The Artist shall be present for the installation.
- j. The Artist shall provide required insurance in amounts and limits specified in Section 6 and Exhibit 4.
- k. The Artist shall provide a list of all subcontractors along with a copy of the agreement between the Artist and each subcontractor; the Artist will also secure the waiver in Exhibit 3.
- l. The Artist shall provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep involved.
- m. The Artist shall provide photographic documentation of the Artwork.
- n. The Artist shall participate in, with reasonable advance notice, meetings, ceremonies and the like, as deemed necessary by the Agency.

1.2 Agency's Obligations

- a. The Agency shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- b. The Agency shall be responsible for providing the Artist, at no expense to the Artist, copies of the Agency's existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by the Artist in order to perform.
- c. The Agency shall be responsible for explaining any applicable laws and regulations to the Artist.
- d. The Agency shall provide and install a plaque on or near the Artwork containing a credit to the Artist and a copyright notice substantially in the following form: Copyright © [Artist's name, date of publication].

- e. The Agency shall not permit any use of the Artist's name or misuse of the Artwork which would reflect discredit on the Artist's reputation as an artist or which would violate the spirit of the Artwork, should such use or misuse be within the Agency's control.
- f. The Agency shall be responsible for explaining the required review process. The Agency shall be responsible for organizing and scheduling meetings with review entities and for providing the Artist written instructions for the materials required at such meetings.
- g. The Agency shall prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement. The Agency shall be responsible for all expenses, labor and equipment to prepare the Site for installation of the Artwork. The Agency shall complete the Site preparations by the scheduled installation date as provided in Exhibit 3 of this Agreement or shall contact the Artist in writing informing of any delays.
- h. The Agency shall provide a point of contact for the Artist during the term of this Agreement for all issues related to the implementation of the Agreement. Unless otherwise notified by the Agency in writing, Artist's point of contact shall be City of Dublin Landscape Architect.

1.3 Design

a. Concept/Schematic

i. The Artist submitted a design concept/schematic (the "Design") with an accompanying budget to design and fabricate an Artwork suitable for the current project, which Design was selected and approved by the Agency. The Design and Budget shall be attached to this Agreement as Exhibit 2 and Exhibit 2 respectively.

b. Revised Design/Construction Documents

i. The Artist shall submit sketches, photos, maquette and other evidence to fully communicate the final design to the Agency (hereinafter the "Revised Design").

ii. The Artist shall present the Revised Design to a qualified engineer, licensed by the State of Ohio and paid by the Artist, for certification that the Artwork will be of adequate structural integrity. The Artist shall provide the Agency with the resulting engineered construction documents.

iii. If requested by the City, the Artist shall present the Revised Design to a qualified conservator, who will make recommendations on the maintenance of the Artwork, and the Artist shall provide a written copy of the conservator's recommendations to the Agency. The costs of the conservator shall be paid by the City.

c. Approval

i. Within 10 days after the submission of the Revised Design and accompanying construction documents stamped by a qualified engineer, the Agency shall notify the Artist if it requires any revisions to the Revised Design in order to comply with any applicable laws, ordinances and/or regulations or for other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. The Agency shall not unreasonably withhold approval of the Revised Design.

1.4 Budget, Payment Schedule, Construction Schedule and Progress Reports

a. Budget

- i. The Artist shall prepare a budget, which shall include all goods, services, expenses and materials, with such costs itemized. The budget shall be attached to this Agreement as Exhibit 2.
- ii. Calculation of the budget will take into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.
- iii. The Artist shall keep a log of the Artist's project hours and shall retain all original receipts pertaining directly to the project.
- iv. If the Artist incurs costs in excess of the amount listed in the budget, the Artist shall pay such excess from the Artist's own funds. The Agency shall waive any City of Dublin permit fees and review fees.

b. Schedule

- i. The Artist shall notify the Agency of the schedule for the fabrication and installation of the Artwork, including a schedule for the submission of progress reports and inspections, if any. The Schedule may be amended by written agreement.
- ii. A schedule for the payment of budget installments is attached to this Agreement as Exhibit 3.
- iii. The Agency acknowledges that the Production Schedule and Installation Date are contingent upon timely disbursement of payments to the Artist and approval of the Revised Design.

c. Fixed Fee

- i. The Agency shall pay the Artist a fee of \$150,000 which shall constitute full compensation for all services performed and materials furnished, including but not limited to, design costs, travel and related expenses, site work, permit and review fees for entities other than the City of Dublin. The Agency shall not be responsible to the Artist for any funds in excess of the \$150,000 fee.

1.5 Fabrication Stage

- a. The Artist shall fabricate and install the Artwork in substantial conformity with the approved Revised Design. The Artist may not deviate from the Revised Design without written approval of the Agency, which approval shall not be unreasonably withheld.
- b. The Artist shall take reasonable measures to protect or preserve the integrity of the Artwork, such as the application of protective or anti-graffiti coatings, if applicable, unless the Agency disapproves. If the Artwork is being constructed on-site, the Artist shall avoid creating nuisance conditions arising out of the Artist's operations. Prior to requesting authorization to

transport and install the Artwork, the Artist shall be required to provide the Agency with a list of all work to be performed on-site. All additional workers or subcontractors must provide proof of insurance before entering the site.

- c. The Agency shall have the right to review the Artwork at reasonable times during the fabrication thereof, upon reasonable notice.
- d. If the Agency, upon review of the Artwork, determines that the Artwork does not conform to the Design or Revised Design, the Agency reserves the right to notify the Artist in writing of deficiencies and that the Agency intends to withhold the next budget installment payment.
- e. The Artist will promptly cure the Agency's objections and will notify the Agency in writing of completion of the cure. The Agency shall promptly review the Artwork, and upon approval shall release the next budget installment. If the Artist disputes the Agency's determination that the Artwork does not conform, the Artist shall promptly submit reasons in writing to the Agency within 30 days of the Agency's prior notification to the contrary. The Agency shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether the Artist has complied with the terms of this agreement shall remain with the Agency.
- f. The Artist shall notify the Agency in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site and/or is completed at the foundry.
- g. The Agency may inspect the Artwork within 30 days after receiving notification pursuant to paragraph (f), prior to installation, to determine that the Artwork conforms with the Revised Design and to give the final approval of the Artwork. In the event that the Agency does withhold final approval, the Agency shall submit the reasons for such disapproval in writing within 5 days of examining the fabricated Artwork. The Artist shall then have 30 days from the date of the Agency's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The Artist shall be held responsible for any expenses incurred in making the necessary adjustments.
- h. The Artist shall promptly notify the Agency of any delays impacting installation of the Artwork. Any additional storage fees or other fees of any kind incurred as a result of such delays are the responsibility of the Artist.
- i. The Artist shall review the Site to ensure that it is properly prepared prior to the transportation and installation of the Artwork and shall notify the Agency of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction. The Agency shall be responsible for all expenses in making Site corrections.

1.6 Changes to Revised Design

- a. Prior to the execution of any change to the Revised Design, the Artist shall present proposed changes in writing to the Agency for further review and approval. The Artist must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved Revised Design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget. A significant change is any change which materially affects installation, scheduling, site preparation or maintenance of

the Artwork or the concept of the Artwork as represented in the Revised Design.

- b. If the Agency approves the changes, the Agency shall promptly notify the Artist in writing. The Agency will also make the required presentations to the approved bodies.
- c. If the Agency disapproves of the changes, the Agency shall promptly notify the Artist in writing and the Artist shall continue to fabricate the Artwork in substantial conformity with the approved Revised Design.

1.7 Installation

- a. The Agency acknowledges the Artist's intent to hire a third party for providing transportation of the Artwork to and from the Artist's studio to the foundry, to the installation site, and other locations as deemed necessary. The Agency also acknowledges the Artist may utilize a third party for the installation work.
- b. Upon the Agency's final approval of the fabricated Artwork, as being in conformity with the Revised Design, the Artist shall deliver and install the completed Artwork to the Site in accordance with the schedule provided for in Section 1.4(b). Transportation fees shall be paid by the Artist.
- c. The Artist will coordinate closely with the Agency to ascertain that the Site is prepared to receive the Artwork. The Artist must notify the Agency of any adverse conditions at the Site that would affect or impede the installation of the Artwork and then propose how to remediate such conditions, with the permission of the Agency. The Artist shall be present to supervise the installation of the Artwork.
- d. Upon written acceptance of the installation, the Artwork shall be deemed to be in the custody of the Agency for purposes of Section 4 and Section 6 of this Agreement.
- e. Within 15 days after installation of the Artwork, the Artist shall furnish the Agency with the following photographs of the Artwork as installed:
 - i.) A set of ten digital, 300 dpi, JPG or TIFF files of the Artwork, provided to the Agency on a CD Rom. Photographs must be labeled with the name of the Artwork, the date upon which the photograph was taken, and the viewpoint from which the photograph was taken. The Artist shall also furnish the Agency with a full written narrative description of the Artwork.
- f. Upon installation of the Artwork, the Artist shall provide the Agency with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used.

1.8 Approval and Acceptance

- a. The Artist shall notify the Agency in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the Design.
- b. The Agency shall promptly notify the Artist of its final acceptance of the Artwork within 30

days after the Artist submitted written notice pursuant to the paragraph (a) above. The effective date of final acceptance shall be the date the Agency submits written notice to the Artist of its final acceptance of the Artwork. The final acceptance shall be understood to mean that the Agency acknowledges completion of the Artwork in substantial conformity with the Design, and that the Agency confirms that all services as required of both Parties by this Agreement prior to paragraph (c) of this section have been completed. Title to the Artwork passes upon final acceptance and final payment.

- c. If the Agency disputes that all the services have been performed, the Agency shall notify the Artist in writing of those services the Artist has failed to perform within 30 days after the Artist submitted written notice pursuant to paragraph (a) above. The Artist shall promptly perform those services indicated by the Agency.
- d. If the Artist disputes the Agency's determination that not all services have been performed, the Artist shall submit reasons in writing to the Agency within 15 days of the Agency's prior notification to the contrary. The Agency shall make reasonable efforts to resolve the dispute with the Artist in good faith. However, final determination as to whether all services have been performed shall remain with the Agency.
- e. Upon the resolution of any disputes that arise under paragraphs (c) and (d) of this section, the Agency shall notify the Artist of its final acceptance of the Artwork pursuant to paragraph (b).
- f. After final acceptance of the Artwork, the Artist shall be available at such time(s) as may be mutually agreed upon by the Agency and the Artist to participate in any meetings relating to the dedication of the Artwork.
 - i.) During any public presentations by the Artist, the Artist shall acknowledge the Agency's role in funding the Artwork.
 - ii.) The Agency shall be solely responsible for coordinating public information, materials, and activities related to public presentations.

Section 2 Taxes

Any state or federal sales, use or excise taxes, or similar charges relating to the services and materials under this Agreement shall be paid by the Artist in a timely fashion. The Agency shall report payments made to the Artist annually to the Internal Revenue Department in a 1099 statement.

Section 3 Term of Agreement

a. Duration

This Agreement shall be effective on the date that this Agreement has been signed by both parties, and unless terminated earlier pursuant to such provisions in the Agreement, shall extend until final acceptance by the Agency under Section 1.8(b), or submission of final payment to the Artist by the Agency under Exhibit 3, whichever is later. Extension of time of performance hereunder may be granted upon the request of one Party and the consent of the other thereto, which consent shall not be unreasonably withheld. Such extension shall

be in writing, signed by both parties, and attached to the schedule under Section 1.4(b)(ii), which is attached as Exhibit 3.

d. Force Majeure

The Agency shall grant to the Artist a reasonable extension of time in the event that conditions beyond the Artist's control render timely performance of the Artist's services impossible or unduly burdensome, excluding any site conditions. All such performance obligations shall be suspended for the duration of the condition. Both parties shall take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

Section 4 Risk of Loss

The Artist shall bear the risk of loss or damage to the Artwork until the Agency's final acceptance of the Artwork under Section 1.8(b). The Artist shall take such measures as are reasonably necessary to protect the Artwork from loss or damage. The Agency shall bear the risk of loss or damage to the Artwork prior to final acceptance only if, during such time the partially or wholly completed Artwork is in the custody, control or supervision of the Agency or its agent(s) for the purposes of transporting, storing, installing or performing other services to the Artwork.

Section 5 Artist's Representations and Warranties

5.1 Warranties of Title

The Artist represents and warrants that:

- a. The Artwork is solely the result of the artistic effort of the Artist;
- b. Except as otherwise disclosed in writing to the Agency, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c. The Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d. The Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to the agreement;
- e. The Artwork is free and clear of any liens from any source whatsoever;
- f. All Artwork created or performed by the Artist under this Agreement do not violate the rights of any third party;
- g. The Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;

- h. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence;
- i. These representations and warranties shall survive the termination or other extinction of this Agreement.

5.2 Warranties of Quality and Condition

- a. The Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for 1 year after the date of final acceptance by the Agency under Section 1.8(b).
- b. The Artist represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the Artist pursuant to Section 1.7(f).
- d. If within 1 year the Agency observes any breach of warranty described in this Section 5.2 that is curable by the Artist, the Artist shall, at the request of the Agency, cure the breach promptly, satisfactorily, and consistently with professional conservation standards, at no expense to the Agency. The Agency shall give notice to the Artist of such breach with reasonable promptness.
- e. If the Agency observes the breach of warranty described in this Section 5.2 that is curable by the Artist, the Agency shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the Agency may seek the services of a qualified restorative conservator and maintenance expert.
- f. If within 1 year the Agency observes a breach of warranty described in this Section 5.2 that is not curable by the Artist, the Artist is responsible for reimbursing the Agency for damages, expenses and loss incurred by the Agency as a result of the breach. However, if the Artist disclosed the risk of this breach in the Proposal and the Agency accepted that it may occur, it shall not be deemed a breach for purposes of this Section 5.2 of this agreement.
- g. Acceptable Standard of Display. Artist represents and warrants that:
 - i. General routine cleaning and repair of the Artwork and any associated working parts and/or equipment will maintain the Artwork within an acceptable standard of public display.
 - ii. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below and acceptable standard of public display.

iii. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling.

iv. To the extent the Artwork incorporates products covered by a manufacturer's warranty, such warranty shall apply to the Artwork. Artist shall provide copies of any warranties to the Agency.

The foregoing warranties are conditional and shall be voided by the failure of the Agency to maintain the Artwork in accordance with the Artist's specifications and the applicable conservation standards. If the Agency fails to maintain the Artwork in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the Artist's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired. The Agency may alter the Artwork to the extent necessary to rectify a condition that is dangerous to the public or to the extent necessary to avoid vandalism and theft.

Section 6 Insurance

6.1 General

- a. The Artist acknowledges that until final acceptance of the Artwork by the Agency under Section 1.8(b), any injury to property or persons caused by the Artist's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artist's Artwork are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the Artist's Artwork, regardless of where such loss occurs. Should the Artist employ a third party to transport the Artwork, any injury to property or persons caused by the Artwork during transportationshall be the responsibility of that third party. Additionally, the third party responsible for transporting the Artwork shall provide the Agency with necessary proof of insurance in advance of transporting the Artwork.
- b. Terms for the procurement and duration of insurance are provided in Exhibit 4.
- c. Required insurance policies are described in Exhibit 4.

6.2 Indemnity

- a. The Artist shall indemnify the Agency, its respective officers, agents, and employees, from any claims directly or proximately resulting from the Artist, its subcontractors, agents, or employees' breach of this Agreement, or from any claims directly or proximately resulting from the Artist, its subcontractors, agents or employees' negligence.
- b. Each Party shall immediately notify the other of any written claim regarding any matter resulting from or relating to the Party's obligations under this Agreement. Each Party shall cooperate, assist, and consult with the other in the defense or investigation of any such claim arisingout of or relating to the performance of this Agreement.
- c. The indemnification shall include reasonable attorneys' fees and costs.

- d. This indemnification shall survive the termination or expiration of this Agreement.
- e. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a Party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

Section 7 Ownership and Intellectual Property Rights

7.1 Title

Title to the Artwork shall pass to the Agency upon the Agency's written final acceptance and payment for the Artwork pursuant to Section 1.8 and Exhibit 5. Artist shall provide Agency with a Transfer of Title in substantially the form attached hereto as Exhibit 5.

7.2 Copyright Ownership

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright.

7.3 Reproduction Rights

The Artist shall grant irrevocable reproduction rights for non-commercial uses as identified in Exhibit 6, attached hereto.

Section 8 Reserved

Section 9 Permanent Record

The Agency shall maintain on permanent file a record of this Agreement and of the location and disposition of the Artwork.

Section 10 Artist as an Independent Contractor

The Artist agrees to perform all Artwork under this Agreement as an independent contractor and not as an agent or employee of the Agency. The Artist acknowledges and agrees that the Artist shall not hold himself or herself out as an authorized agent of the Agency with the power to bind in any manner.

The Artist shall provide the Agency with the Artist's Tax Identification Number and any proof of such number as requested by the Agency.

Section 11 Nondiscrimination

The Artist shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, in connection with or related to the performance of this Agreement.

Section 12 Assignment of Artwork

The Artwork and services required of the Artist are personal and shall not be assigned, sublet or transferred, unless agreed to by the Agency in writing. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the Agency. The Agency shall have the right to assign or transfer any and all of the Agency's rights and obligations under this Agreement, subject to the Artist's consent, if ownership of the Site is transferred; if the Artist refuses to give consent, this Agreement shall terminate.

Section 13 Termination

- a. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impractical for reasons beyond such Party's reasonable control such as, but not limited to, acts of nature, war or warlike operations, superior governmental regulation or control, public emergency or strike, or other labor disturbance. Notice of termination of this Agreement shall be given to the non-terminating Party in writing not less than 15 days prior to effective date of termination.
- b. The Agency may terminate this Agreement without cause upon 15 days written notice to the Artist. The Agency shall pay the Artist for services performed and commitments made prior to the date of termination, consistent with the schedule of payments set forth in Exhibit 3 of this Agreement. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date under Exhibit 3 unless the parties come to a settlement otherwise.
- c. If either Party to this Agreement shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other Party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting Party of its intent to terminate specifying the grounds for termination. The defaulting Party shall have 30 days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement shall terminate.
- d. If the Artist defaults, for cause other than death or incapacitation, the Artist shall return to the Agency all funds provided by the Agency in excess of expenses already incurred. The Artist shall provide an accounting. All finished and unfinished drawings, sketches, photographs and other Artwork products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist. The Agency shall retain the right to have the Artwork completed, fabricated, executed, delivered and installed. However, the Artist shall retain the copyright in the Artwork and all rights under Section 7 and Section 8.
- e. If the Agency defaults, the Agency shall promptly compensate the Artist for all services performed by the Artist prior to termination. The Agency shall pay the Artist for services performed and commitments made prior to the date of termination, consistent with the

schedule of payments set forth in Exhibit 3. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date. The Artist shall retain title to the studies, drawings, designs, maquettes and models prepared for submission to the Agency by the Artist under this Agreement prior to the date of termination.

- f. Upon notice of termination, the Artist and the Artist's subcontractors shall cease all services affected.

Section 14 Death or Incapacity

- a. If the Artist becomes unable to complete this Agreement due to death or incapacitation, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for the purpose of Section 13. However, nothing in this Section shall obligate the Agency to accept the Artwork.
- b. In the event of incapacity, the Artist may assign the Artist's obligations and services under this contract to another artist, provided that the Agency, in its sole discretion, approves of the new artist. Alternatively, the Agency may elect to terminate this Agreement. The Artist shall retain all rights under Section 7. The Artwork and any reproductions thereof shall contain a credit to the Artist and a copyright notice in substantially the following form: Copyright © [Artist's name, date of publication].
- c. In the event of death, this Agreement shall terminate effective the date of death. The Artist's heirs shall retain all rights under Section 7. [The Artist's executor shall deliver to the Agency the Artwork in whatever form or degree of completion it may be at the time. Title to the Artwork shall then transfer to the Agency. However, the Artwork shall not be represented to be the complete Artwork of the Artist unless the Agency is otherwise directed by the Artist's estate.]

Section 15 Notices and Documents

Notices required under this Agreement shall be delivered personally or through registered or certified mail, return receipt requested, postage prepaid, to the addresses stated below, or to any other addresses as may be noticed by a Party:

For the Agency: City Manager
 City of Dublin
 5555 Perimeter Drive
 Dublin, OH 43017

For the Artist: Ilan Averbuch
 10-15 48th Avenue Long Island City, NY 11101

Notice shall be deemed effective on the date personally delivered or, if mailed, three (3) days after the postmarked date.

Section 16 Waiver

The Parties agree that a waiver of any breach of violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

Section 17 Audit

The Agency shall maintain records of all documents, notices, checks, and other records required or produced under this Agreement or related thereto. The Artist agrees to the maintenance of such records for archival purposes. Such records shall be made available for inspection or audit, at any time during business hours, upon written request by the City Attorney, City Finance Director, City Manager, or a designated representative of any of these officers. Copies of such documents shall be provided to the Agency for inspection when it is practical to do so. Access to such records and documents shall also be granted to any Party authorized by the Artist, the Artist's representatives, or the Artist's successors-in-interest. The Agency will comply with any open records law applicable to these records.

Section 18 Conflict of Interest

The Artist and the Agency shall avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

Section 19 Amendments

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

Section 20 Conflicts of Law

If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction to be in conflict with the laws, rules, and/or regulations of the United States or the State of Ohio, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

Section 21 Choice of Law

This Agreement shall be governed by the laws of the State of Ohio both as to interpretation and performance.

Section 22 Entire Agreement

This Agreement, including the exhibits, comprises all of the covenants, promises, agreements, and conditions between parties. No verbal agreements or conversations between the Parties prior to the execution of this Agreement shall affect or modify any of the terms or obligations.

LIST OF EXHIBITS

- 1. Description of the Artwork
- 2. Artwork Budget
- 3. Payment & Completion Schedule & Waiver of Claims
- 4. Insurance
- 5. Transfer of Title
- 6. Reproduction Rights

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in their respective names by their duly authorized representatives, all as of the date first written above.

AGENCY

CITY OF DUBLIN, OHIO

By:

 Dana L. Daniel
 City Manager

 Matthew C. Earman
 Director of Parks and Recreation

Approved as to Form:

By: _____
 Jennifer Readler, Law Director

ARTIST

Ilan Averbuch

By: _____

CERTIFICATION OF FUNDS

I hereby certify that the funds required to meet the City's obligation, payment, or expenditure under this Agreement have been lawfully appropriated or authorized for such purpose and are free from any obligation now outstanding.

 Director of Finance

 Date

Exhibit 1

Description of Artwork

Overview of Public Art Concept

M.L. "Red" Trabue Nature Reserve

The Boat in the Field

A proposal for a public art project.

I would like to propose The Boat in the Field, a landmark sculpture for the Red Trabue Nature Reserve. This sculpture measures 25' tall, 18' wide, by 15 feet deep. It will stand in a clearing between the forking multi-use paths of paved park road and a grass foot trail leading to the back of the pond. The Boat in the Field consists of two intertwined images. One image is of a stone skeletal structure of a boat raised 11 to 15 feet up in the air as if frozen in mid flight. The other image is of a skeletal tower made of vertical steel beams covered with a sloping round roof. The mast of the boat, a long fin shaped piece of Corten steel tube rises from the boat, piercing through the roof spire and continues another 8 feet skyward. The massive, petrified stone boat looks as if it floats weightlessly in mid-air, seeming to defy gravity and the laws of physics. Below, the steel beams, some straight, some bent, appear in motion, possibly having walked out of the pond. The sculpture emerges out of a foundation covered with a circular carpet of stones.



3D Illustrative Rendering



Conceptual Drawing

These symbolic intertwined images produce several questions and conceptual considerations. Which

of the two images arrived first, the boat or the tower? Were these images at one time separate entities, or is each just a part of a singular greater organism? The roofed tower usually represents such common human aspirations as stability, shelter, and rootedness. Symbolically, the boat contradicts these representations. It illustrates a desire for transience, a journey to the unknown which lies beyond the horizon. In juxtaposition these images represent stasis and kinesis, to create an artwork, depicting two forces vital to the human condition. - Ilan Averbuch

The Boat in the Field

When one considers the sculpture's proximity to the pond, which remains out of view, the floating boat seems to prompt further questions about the surrounding natural environment. Is the boat's suspension away from the water in the middle of a field next to crossing paths, perceivable as a suggestive symbol or result of possible future climate impact? Does the work remind us of Noah's Arc and the story of calamity and hope in the bible? However the work is interpreted, it's striking appearance should stay very much alive in the mind of the viewer. It's identity will be subject to unique interpretations, questions, and narrativizations from park viewers hopefully for generations to come.

This sculpture should provide a space in one's mind to connect or perhaps better articulate personal interpretations of this artwork based on their individual experiences with larger issues of culture, community, nature and the state of our planet earth. If they wish, each viewer will be invited to share their responses and thoughts in a mailbox-like container where one finds a book or a QR code linked to the M.L. "Red" Trabue Park/ Dublin Arts Council website. The QR code will also link to the description of the artwork, its materials and images of its making. The book and the website with viewers' responses will be visible and accessible to all park visitors. Such a collection of responses allows the "Boat in the Field" to become a vessel for community



Small Scale Model



Exhibit 2 Artwork Budget

Artist Design Fee	\$25,000.00
Fabrication Fee	\$25,000.00
Cor-Ten Steel	\$15,000.00
Stone	\$7,000.00
Foundation	\$10,000.00
Hardware	\$2,000.00
Assistant	\$25,000.00
Administrative	\$1500.00
Studio	\$1500.00
Engineer	\$5000.00
Transportation	\$5000.00
Install Equipment	\$5000.00
Install Travel	\$5000.00
Insurance	\$2000.00
Plaque Box	\$1,000.00
Contingency	\$15,000.00
 Total	
\$150,000.00	

Exhibit 3
Payment and Completion Schedules and Waiver of Claims
M.L. "Red" Trabue Nature Reserve

Payment Schedule

The Agency shall pay the Artist a fixed fee of \$150,000 which shall constitute full and complete compensation for all the services performed and materials furnished by the Artist under this Agreement. Payment shall be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

- a. \$15,000 upon the execution of this Agreement, recognizing that the Artist will invest time and expense in preparing the Design as set forth under Section 1.3(a);
- b. \$30,000 upon submission of the Revised Design and construction documents as set forth under Section 1.3(c);
- c. \$60,000 upon completion of the fabrication of the full-size sculpture elements;
- d. \$15,000 within 15 days after the delivery and installation at the Site as set forth under Section 1.7;
- e. \$15,000 within 15 days after the Artist provides the Agency with photographic documentation and written instructions for the maintenance and preservation of the Artwork as set forth under Section I .7(e) and (f);
- f. \$15,000 within 15 days after final acceptance of the Artwork by the Agency as set forth under Section I .8(e).

Completion Schedule

The Artist shall complete the design fabrication and installation of the Artwork by the following schedule:

PUBLIC ART PROJECT TIMELINE

Weekly Fabrication Schedule
(27 Week Production Schedule)

*Project schedule contingent upon payment schedule and timely disbursements of funds.

Week 1 (May 2-8)(After receipt of 1st payment)

- Purchase insurance for Artwork (while in artist's studio)
- Meet with Structural Engineer to finalize design plans

Week 2 - (May 9-15) Submit final construction documents including sealed structural drawings plans for The Boat in the Field to City of Dublin for permit submittal (EPlan)

Week 3 - (May 16-22) - Order materials for The Boat in the Field,
-Site/Building permit in review

Week 4 (May 18-24)(After receipt of 2nd payment)

- Finalize sites for artwork placement
- Site/Building Permit in review

Week 5 - (May 30-June 5) - Site/Building Permit Approval
- Work on original sculpture for The Boat in the Field

Week 6 - (June 6-12) Work on original sculpture for The Boat in the Field

Week 7 - (June 13-19) Work on original sculpture for The Boat in the Field

Week 8 - (June 20-26) Work on original sculpture for The Boat in the Field

Week 9 - (June 27-July 3) Work on original sculpture for The Boat in the Field

Week 10 (July 4-July 10) (Receipt of 3rd payment) - Work on original sculpture for The Boat in the Field

Week 11 - (July 11 - July 17) Work on original sculpture for The Boat in the Field

-

Week 12 - (July 18-July 24) Work on original sculpture for The Boat in the Field

-

Week 13 - (July 25-July 31) Work on original sculpture for The Boat in the Field

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Week 14 - (Aug 1-Aug 7) - Work on original sculpture for The Boat in the Field

Week 15 - (Aug 8-Aug 14) - Work on original sculpture for The Boat in the Field

Week 16 - (Aug 15-Aug 21) - Work on original sculpture for The Boat in the Field

Week 17 - (Aug 22-Aug 28) - Work on original sculpture for The Boat in the Field

-

Week 18 - (Aug 29-Sept 4) - Work on original sculpture for The Boat in the Field

-

Week 19 - (Sept 5-Sept 11) - Work on original sculpture for The Boat in the Field

-

Week 20 - (Sept 12-Sept 18) - Work on original sculpture for The Boat in the Field

-

Week 21 - (Sept 19-Sept 25) - Work on original sculpture for The Boat in the Field

-

Week 22 - (Sept 26-Oct 2) - Work on original sculpture for The Boat in the Field

-

Week 23 - (Oct 3-Oct 9) - Work on original sculpture for The Boat in the Field

-

Week 24 - (Oct 10-Oct 16) - Work on original sculpture for The Boat in the Field

-

Week 25 - (Oct 17-Oct 23) - Work on original sculpture for The Boat in the Field

-

Week 26 - (Oct 24-Oct 30) - Work on original sculpture for The Boat in the Field

- Transport artwork to Dublin

Week 27 - (Oct 31-Nov 6)

- Install Boat in the Field

- Install signage/plaques

- Install electrical boxes and lighting fixtures

Week 28 (Nov 7-Nov 13)

- Documentation of work

*Suggested date for Dedication of Artwork to the Public: November 18, 202

Unconditional Waiver/Release of Claims & Receipt of Final Payment

To all whom it may concern:

Ilan Averbuch ("Contractor"), in consideration of payment by Ilan Averbuch acknowledges it has been paid in full for all labor, materials, services or work provided in connection with the construction and installation of the Artwork for the Dublin Art in Public Places Project located at M.L. 'Red' Trabue Nature Preserve ("the Project"), and does expressly waive, release and relinquish any and all rights and all claims of any kind or nature, that the Contractor had, now has or may hereafter acquire against the Project, Ilan Averbuch and the City of Dublin, by reason of furnishing or providing work, labor and/or materials on the Project. Contractor also represents and warrants that Contractor has not filed, or has not caused to be filed, any mechanics' liens against the Project at any time.

Contractor further acknowledges that it has been paid in full for any and all work, labor and/or materials that was performed or provided by Contractor on the Project.

THE INDIVIDUAL SIGNING THIS FINAL UNCONDITIONAL WAIVER/RELEASE OF CLAIMS AND RECEIPT OF FINAL PAYMENT WARRANTS THAT HE/SHE HAS FULL AUTHORITY TO EXECUTE THIS DOCUMENT ON BEHALF OF THE CONTRACTOR.

By: _____
Print Name: _____

STATE OF _____
COUNTY OF _____

On this day ____ of _____, 2022, there appeared before me, a Notary Public in _____ and for said _____ County, ("Contractor"), by and through its _____ and acknowledges the signing of the foregoing document to be his/her free and voluntary act and deed and that of said Contractor.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my seal on the day and year set forth.

Notary Public _____
MY COMMISSION EXPIRES: _____

**Exhibit 4
Insurance**

Insurance -- General

A. The Artist shall secure and maintain, at his/her own expense, General Liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.

B. The above referenced insurance shall be maintained in full force and effect during the life of this Contract. A certificate showing that the Artist is carrying the above referenced insurance in at least the above specified minimum amount shall be furnished to, and approved by, Dublin prior to the start of work on the project and before Dublin is obligated to make any payments to the Artist for the work performed under the provision of this contract. This Certificate shall clearly reflect that the City of Dublin is an "Additional Insured"

(Artist's signature)

(Print Artist's name)

Exhibit 5

Transfer of Title

1. **Transfer of Title.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, Ilan Averbuch (the "Artist"), does hereby transfer and convey to the City of Dublin, Ohio and its successors and assigns (the "City"), all right, title, and interest in and to the ownership of the work "Boat in the Field" (the "Artwork").

2. **Warranties.** The Artist represents and warrants that: (a) the Artwork is solely the result of the artistic effort of the Artist; (b) except as otherwise disclosed in writing by the Artist to the City, the Artwork is unique and original and does not infringe upon any intellectual property rights of any person or entity; (c) the Artwork, or duplicate thereof, has not been sold or accepted for sale elsewhere; (d) the Artist has not granted any license, permission, or assignment of rights related to the Artwork to any other person or entity; and (e) the Artwork is free and clear of any liens from any source whatever.

The Artist covenants to indemnify and hold harmless the City against any charges, damages, costs, attorney's fees, judgments, or losses of any nature which arise as a result of the Artist's breach of the warranties set forth in this Section.

ARTIST

Ilan Averbuch

Date:

STATE OF _____

COUNTY OF _____

On this ____ day of _____, 2022, before me, a Notary Public in and for said county and state, personally appeared Ilan Averbuch ("Artist"), who executed the foregoing assignment and who acknowledged that such signing is the free act and deed of Artist.

IN WITNESS HEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires:

Exhibit 6

Reproduction Rights

- License.** For good and valuable consideration, the receipt and sufficiency of which is acknowledged, Ilan Averbuch (the "Artist"), hereby grants to the City of Dublin, Ohio and its successors and assigns (the "City"), and other parties duly authorized by the City, a royalty-free, non-exclusive, worldwide, perpetual, irrevocable license to engage in the following activities related to the works entitled "Boat in the Field" (collectively, the "Work"): (a) to publicly display the Work; and (b) to use the Work for all standard community educational, public relations, tourism, and arts promotional purposes including, but not limited to, lending the Work, reproducing or preparing photographs, videos, or other two-dimensional reproductions of the Work, and displaying, distributing, and transmitting such reproductions to the general public. Such reproductions and transmissions may include, but are not limited to, magazines, books, newspapers, journals, brochures, pamphlets, exhibition catalogs, films, video, slides, negatives, prints and electronic media, DVD, CD, computerized retrieval systems, and by all means or methods now known or hereafter invented. Images of the Work used by the City shall be accompanied by text that states the title of the Work, "Boat in the Field" and the Artist's name, "Ilan Averbuch".
- Artist's Rights.** Unless otherwise provided, the Artist shall retain ownership of the rights granted under Section 106 of the Copyright Act of 1976, 17 U.S.C. § 106. In view of the intention that the Work is to be unique, the Artist shall not make any additional two or three-dimensional reproductions of the Work, nor shall the Artist grant permission to others to do so, except as provided herein or with the prior written permission of the City. Notwithstanding the exclusivity of the license granted in Paragraph 1 hereof, the Artist shall be permitted to create two-dimensional copies of the Work and to use such copies in a non-commercial manner for the exclusive purpose of promoting the Artist's role as the creator of the Work as part of the Artist's portfolio. In the context of such use, the Artist shall include a credit that reads substantially as follows: "Boat in the Field ", an original work created by Ilan Averbuch commissioned for the City of Dublin, Ohio." In no event shall the Artist engage in any activity that tends to disparage the City or that negatively impacts the value of the Work.
- VARA Waiver.** The Artist acknowledges the rights of attribution and integrity conferred by Section 106A(a), paragraphs (2) and (3) of Title 17 of the U.S. Code, and any other rights of the same nature granted by U.S. federal, state or foreign laws, and of his/her own free act hereby waives such rights with respect to the Work in connection with the installation, exhibition, conservation, maintenance, relocation, removal, disposal, or destruction of the Work by the City (or anyone duly authorized by the City). The Artist recognizes and agrees that nothing shall preclude any right of the City: (a) to relocate the Work; (b) to repair or modify the Work to conform to an acceptable standard of public display and/or to address potential health or safety concerns; (c) to remove the Work from public display; or (d) to destroy the Work. The Artist's VARA rights and analogous rights arising under federal, state, or foreign laws shall cease with the Artist's death and do not extend to the Artist's heirs, successors, or assigns.

4. **Copyright Registration and Enforcement.** The Artist will retain all rights and obligations related to the enforcement of the copyright in the Work. The Artist must receive prior written approval from the City before making any claim or demand related to copyright in the Work, and must promptly notify the City in writing of any claim or demand asserted against the Work. The Artist will consult with the City on a cooperative basis in any enforcement or defensive action involving copyright in the Work, however, all costs related to the enforcement or defense of claims involving copyright in the Work shall be borne exclusively by the Artist unless otherwise agreed in writing.

5. **Warranties.** The Artist represents and warrants that: (a) the Work is solely the result of the artistic effort of the Artist; (b) except as otherwise disclosed in writing by the Artist to the City, the Work is unique and original and does not infringe upon any intellectual property rights of any person or entity; (c) the Work, or duplicate thereof, has not been sold or accepted for sale elsewhere; (d) the Artist has not granted any license, permission, or assignment of rights related to the Work to any other person or entity; and (e) the Work is free and clear of any liens from any source whatever.

The Artist covenants to indemnify and hold harmless the City against any charges, damages, costs, attorney’s fees, judgments, or losses of any nature which arise as a result of the Artist’s breach of the warranties set forth in this Section.

6. **Future Transfer.** The Artist has separately transferred to the City title in and to the Work. The Artist recognizes and agrees: (a) that the City may further donate, transfer, or otherwise convey the Work and title thereto; (b) that the Artist’s licenses, obligations, waivers, and warranties with respect to the Work shall be ongoing regardless of any future conveyance of the Work; and (c) that any subsequent owner of the Work will hold and enjoy the same rights in and to the Work as granted herein to the City.

ARTIST

Ilan Averbuch

STATE OF

Date:

COUNTY OF

On this ____ day of _____ 2022, before me, a Notary Public in and for said county and state, personally appeared Ilan Averbuch (“Artist”), who executed the foregoing assignment and who acknowledged that such signing is the free act and deed of Artist.

IN WITNESS HEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires

Exhibit B

