

Artist Mural Agreement

This Agreement shall be effective as of the date of the last signature and is by and between the CHARTER TOWNSHIP OF HIGHLAND DOWNTOWN DEVELOPMENT AUTHORITY ("DDA"), whose address is 205 W. Livingston Road, Highland, MI 48357 and the mural ARTIST Zachary Curtis, DBA: Zachary Curtis Artwork, whose address is 8730 Cooley Beach, White Lake, MI 48038. "ARTIST".

Services. For and in consideration of payment by the DDA as provided in this Agreement, ARTIST will provide DDA a painted mural on viaduct designated by the DDA ("Mural"), which DDA has entered into an agreement with the owner and received approval for this purpose. The mural shall be painted on both sides of the viaduct, which is located above M-59 in Highland Township, Michigan 48357. The viaduct is owned by CSX Transportation, Inc., a Virginia corporation with a mailing address of 500 Water Street, Jacksonville, Florida 32202 ("CSX")

The ARTIST shall be responsible for providing all art supplies, materials and equipment ("Supplies") necessary to complete the Mural, including transportation. Prior to starting the Mural, ARTIST shall provide DDA a complete color rendering of his design for the for approval by the DDA. Once the Mural design is approved by the DDA, the DDA shall provide the design to CSX, for their review.

If CSX requests changes to the Mural design or requests additional design information, ARTIST shall provide a revised design and the additional information and documentation requested by CSX. If CSX does not provide approval of the design or adds additional requirements that render the Mural project unfeasible, as determined by the DDA, this Agreement shall automatically terminate without any further obligation or responsibility of either Party.

If CSX approves the MURAL specifications, ARTIST and DDA will set a schedule for the Mural painting and the Mural shall be completed by 7/14/2024. ARTIST may not make any alteration, modification or expansion of the Mural without the express approval of DDA and CSX. If ARTIST makes any changes to the design or Mural without the required approvals, ARTIST shall not be entitled to any payment, and shall immediately return any partial payment already received, to the DDA.

ARTIST shall ensure that the Mural preparation and painting do not interfere with the continuous and uninterrupted use of CSX tracks or operations and shall not cause any interference or damage to CSX signals, communication services, poles, wires facilities of CSX or its tenants. ARTIST shall comply with the instructions, methods of construction and safety requirements provided by an authorized CSX representative. At no time may ARTIST or assistants of ARTIST go beyond the bridge abutments or on top of the bridge unless accompanied by CSX personnel. ARTIST shall leave the CSX property in its original condition, as determined to the satisfaction to CSX. ARTIST shall not leave the Supplies unattended. ARTIST shall remove all Supplies after the end of each day of painting.

ARTIST shall have the first right to repair the Mural should it suffer any damage or vandalism and require repairs or covering of graffiti. However, repairs shall be performed according to the direction of CSX or the DDA, if CSX does not provide repair instructions. The ARTIST shall have no cause of action against DDA or CSX in the event of damage, destruction or loss of the viaduct in which the Mural is located, including if the viaduct is torn down.

ARTIST does authorize the DDA to use my photo images of ARTIST in DDA publications and/or promotions for the Mural.

DDA Responsibilities. The DDA will instruct ARTIST as to the purpose, goals and requirements for the Mural. The Mural may not contain any obscene, inappropriate or political content. The DDA has the sole discretion to approve the Mural design.

Payment. Upon approval of the Mural design by CSX, DDA shall pay ARTIST a total of twenty-six thousand five hundred four dollars and fifty cents (\$26,504.50), which constitutes 50% of the cost of supplies and labor(\$18,772.50) and the cost of insurance coverage obtained by ARTIST as required under this Agreement (\$7,732.00). Within one month of acceptance by DDA and completion of mural by ARTIST, the DDA shall pay ARTIST eighteen thousand seven hundred seventy-two dollars and fifty cents (\$18,772.50), which is the remaining 50% balance of the cost of supplies and labor.

Independent Contractor. ARTIST is and shall perform under this Agreement as an Independent Contractor with complete control over its employees, agents, and operations. No employee, agent or representative of ARTIST shall represent, act, or be considered as an agent, representative or employee of the DDA and the DDA shall have no liability to ARTIST for employment benefits of any kind.

Assignment. ARTIST shall not assign the services under this Agreement or any part thereof without the written consent of the DDA.

Insurance. ARTIST shall have no right to or expectation of coverage under any insurance policies of the DDA, Highland Township or Owners. ARTIST shall procure the insurance required by CSX and described in Exhibit I of this Agreement. If ARTIST is a sole proprietor and does not have Workers Compensation Insurance, ARTIST accepts full responsibility for any accidents or injuries to himself/herself related to the painting of the mural. These insurance requirements shall be confirmed by Certificates of Insurance provided to the DDA, which DDA shall provide to CSX for their review.

Hold Harmless and Indemnification. To the extent not covered by ARTIST's insurance, ARTIST shall indemnify and hold the DDA, Highland Township, and their officials, employees, volunteers, and agents, and the Owners harmless from and against all claims and related costs for any damages for personal injury, including bodily injury and death, and/or property damage, including loss of use, which arises out of or is in any way connected or associated with the painting of the Mural and this Agreement.

Damage to ARTIST Supplies. ARTIST shall be solely responsible for insuring against and any damage to ARTIST's Supplies that occurs during or as a result of the painting of the Mural and waives and shall hold the DDA and its officials, employees, volunteers, and agents harmless from any claims for such damages.

Copyright. ARTIST shall create an original painting for DDA and shall not reproduce work belonging to another party. ARTIST hereby assigns all rights, title and interest in the Mural to DDA, including the right to copyright the Mural. DDA shall have the exclusive right to reproduce the Mural in a photograph and/or image for its website, Social Media accounts and for the promotion of the DDA and Highland Township. ARTIST shall defend, indemnify, and hold the DDA and its officials, employees, volunteers, and agents and the Owners harmless from and against all claims of copyright or other proprietary right infringement or violation by ARTIST that are asserted against the DDA together with the DDA's costs and expenses incurred in responding to such claims.

Compliance with and Governing Law. This Agreement and the Performance by ARTIST shall be subject to all applicable state, federal and local laws, rules or regulations and shall be governed by the laws of the State of Michigan.

Termination, Cancellations and Rescheduling.

- (1) Without liability for any payment except as provided in subsection two below, The DDA reserves the right terminate the Agreement for any reason including:
 - a. The failure of CSX to approve the Mural design;
 - b. CSX termination of the Mural project for any reason;
 - c. CSX requirements that make the Mural project no longer feasible, as determined by the DDA;
 - d. Binding governmental Order;
 - e. Other reason beyond the DDA's control that prohibits or prevents the painting of the Mural in a safe manner.
- (2) In the event of termination of the Agreement by DDA, Arist shall be paid seven hundred and fifty dollars (\$750.00) by DDA for the cost of the mural design.
- (3) DDA may reschedule any day for Mural painting due to inclement weather.
- (4) If the Mural cannot be completed by the agreed upon time frame, DDA and ARTIST agree to attempt to reschedule it to the Mural painting to a mutually agreeable completion date.

Termination for Default. ARTIST's compliance with its obligations under this Agreement shall be determined by the DDA. If it is determined that ARTIST has not complied, the DDA reserves the right

to terminate this Agreement or withhold payment without further liability to ARTIST, who shall not be entitled to any damages for such a termination for cause by the DDA.

In the event of termination of the Agreement, ARTIST shall return to the DDA the refund received from ARTIST's insurance policy for the remainder of the insurance coverage period, the amount of any supplies that can be returned, and the prorated amount of payment for labor that did not go into work on the mural project.

Term This Agreement shall begin on the date it is signed by both parties and shall end on 7/17/24 unless terminated or cancelled as provided above.

This Agreement was signed by the parties on the dates indicated below their signatures.

ARTIST

**Charter Township of Highland
Downtown Development Authority**

By: _____

By: _____

Date: 08-16-23

Date: 8-21-23

EXHIBIT I Insurance Policies

Unless otherwise agreed to by CSX and DDA, ARTIST shall procure and maintain the following insurance policies:

1. Commercial General Liability coverage at their sole cost and expense with limits of not less than \$5,000,000 in combined single limits for bodily injury and/or property damage per occurrence, and such policies shall name CSX Transportation Inc, and the Highland Township DDA, its officials, employees, volunteers and agents Township as additional named insureds. The policy shall include endorsement ISO CG 24 17 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsement is not included, railroad protective liability insurance must be provided as described in item 4 below.
2. Statutory Worker's Compensation and Employers Liability Insurance with limits of not less than \$1,000,000, which insurance must contain a waiver of subrogation against CSX and its affiliates (if permitted by state law).
3. Commercial automobile liability insurance with limits of not less than \$1,000,000 combined single limit for bodily injury and/or property damage per occurrence, and such policies shall name CSX as an additional named insured. The policy shall include endorsement ISO CA 20 70 evidencing that coverage is provided for work within 50 feet of a railroad. If such endorsement is not included, railroad protective liability insurance must be provided as described in item 4 below.
4. Railroad protective liability insurance with limits of not less than \$5,000,000 combined single limit for bodily injury and/or property damage per occurrence and an aggregate annual limit of \$10,000,000, which insurance shall satisfy the following additional requirements:
 - a. The Railroad Protective Insurance Policy must be on the ISO/RIMA Form of Railroad Protective Insurance - Insurance Services Office (ISO) Form CG 00 35.
 - b. CSX Transportation must be the named insured on the Railroad Protective Insurance Policy.
 - c. Name and Address of ARTIST and DDA must appear on the Declarations page.
 - d. Description of operations must appear on the Declarations page and must match the Project description.
 - e. Authorized endorsements must include the Pollution Exclusion Amendment - CG 28 31, unless using form CG 00 35 version 96 and later.
 - f. Authorized endorsements may include:
 - (i). Broad Form Nuclear Exclusion - IL 00 21
 - (ii) 30-day Advance Notice of Non-renewal or cancellation
 - (iii) Required State Cancellation Endorsement

(iv) Quick Reference or Index - CL/IL 240

g. Authorized endorsements may not include:

- (i) A Pollution Exclusion Endorsement except CG 28 31
- (ii) A Punitive or Exemplary Damages Exclusion
- (iii) A "Common Policy Conditions" Endorsement
- (iv) Any endorsement that is not named in Section 4 (e) or (f) above.
- (v) Policies that contain any type of deductible

5. All insurance companies must be A. M. Best rated A- and Class VII or better.

6. The CSX OP number or CSX contract number, as applicable, must appear on each Declarations page and/or certificates of insurance.

7. Such additional or different insurance as CSX may require.

8. Additional Terms

1. DDA shall submit the original Railroad Protective Liability policy, Certificates of Insurance and all notices and correspondence regarding the insurance policies to:

Insurance Department
CSX Transportation, Inc.
500 Water Street, C-907
Jacksonville, FL 32202

OR

insurancedocuments@csx.com

2. ARTIST may not begin work on the Project until DDA has received CSX's written approval of the required insurance.