

ARTIST AGREEMENT
Montpelier Public Art Commission

PROJECT NAME: Shaw's Mural
ARTIST: Mauricio Ramirez

Please initial by your name after you have signed the contract, then scan and return to Ward Joyce, Chairperson, Montpelier Public Arts Commission, at wardjoyce1@hotmail.com.

[] Mauricio Ramirez, Artist

[wj] Ward Joyce, Chairperson, Montpelier Public Art Commission

THIS AGREEMENT is made and entered into this date by the Montpelier Public Art Commission, through its City of Montpelier, hereinafter referred to as the "Commission", and the mural artist Mauricio Ramirez hereinafter referred to as the "Artist", for the consideration hereinafter named, agree as follows:

1. SCOPE OF WORK

The Artist agrees to perform artistic services to paint the entire surface of the designated outdoor wall of the Shaw's Supermarket building as per the approved design.

2. CONFORMANCE TO SPECIFICATIONS

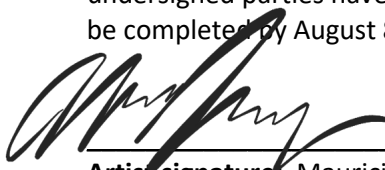
The Artist shall execute the artwork (hereinafter referred to as the "Work") in accordance with the attached Specifications of Work. Any significant change in the scope, design, or materials of the proposed Work shall require review and approval of the Commission.

3. COST SUMMARY

The Commission agrees to pay the Artist as compensation for such services a firm fixed price of \$19,000 as per the original RFQ.

4. SIGNATURES AND EXECUTION

This Agreement is executed and dated below as a matter of convenience. Other specifications and requirements are set forth on pages two [2] through nine [9], attached hereto. In witness whereof, the undersigned parties have caused this Agreement to be executed this 16th day of May, 2022. Project is to be completed by August 8, 2022 as per the original RFQ.



357886171

August 2, 2022

Artist signature: Mauricio Ramirez

SS#

Date

2526 gunderson ave
Berwyn, IL 60402

7086061245

Mailing Address

Telephone



5/15/22

Montpelier Public Art Commission: Ward Joyce, Chairperson

Date

5. WARRANTY OF ORIGINALITY

The Artist warrants that the Work is the original product of his own creative efforts. The Artist also warrants that unless otherwise stipulated, the Work is original; that it is an edition of one [1]; and that the Artist shall not sell or reproduce the Work without the prior written consent of the Commission.

6. WARRANTY OF SERVICE

The Artist shall guarantee the Work from faults of material and workmanship for a period of one [1] year after completion of installation and acceptance by the Commission. The Artist will use color-safe, UV resistant paint, and adhere to accepted safety practices throughout the project.

7. PAYMENTS FOR SERVICES

- A.** The Commission agrees to pay the Artist as compensation for such services a firm fixed price of \$19,000. This amount includes Artist's fees, the complete cost of executing the Work and the supervision of installing the Work as specified below.
- B.** It is understood that the Commission has no obligations regarding sales commissions, or any agreements with galleries or agents with whom the Artist may have contracted.
- C.** Payment to the artist shall be \$5,000 paid upon arrival for materials and expenses and the balance at the completion of the agreed upon mural.
- D.** The Commission and the Artist shall have the sole responsibility for determining mutually when the Work is complete.
- E.** The Artist shall be entirely responsible for cost control. No extra payments will be allowed as a result of cost overruns. However, unforeseen costs that are the fault of the Commission shall not be assigned to the Artist.

8. TIME FOR PERFORMANCE OF THE WORK

The Artist agrees that time is an essential and important element of this contract and further agrees to complete the Work no later than August 8, 2022.

9. EXTENSION OF TIME FOR COMPLETION OF WORK

If the Commission delays the Artist in the performance of the Work, an appropriate time extension for completion shall be granted. If the performance of the Work is delayed by circumstances beyond the Artist's control a reasonable extension of time may be granted.

10. INDEPENDENT CONTRACTOR STATUS OF THE ARTIST

The Artist acknowledges that he is an independent contractor and not an agent or employee of the Commission or of the City of Montpelier.

11. ASSIGNMENT OF CREATIVE WORK PROHIBITED

The Artist agrees that an essential element of this Agreement is the skill and creativity of the Artist. The Artist therefore shall not assign to other parties any creative or artistic portion of the Work or its production without the consent of the Commission.

12. INSPECTION OF THE WORK

All Work performed by the Artist shall be subject to inspection and approval by the Commission for the purpose of confirming that the Work has been performed in conformance with the Specifications of Work or approved changes. The Artist shall provide the Commission all information concerning the Work and provide free access at all reasonable times where the Work is being performed. Inspection does not constitute a waiver of responsibilities of the Artist.

13. RISK OF LOSS

The Artist shall take reasonable measures as necessary to protect the Work from loss or damage until final acceptance.

14. INSURANCE

The Artist (and/or his subcontractors) will indemnify and hold harmless the Commission, the City of Montpelier, Albertsons Companies (Shaw's), and Pomerleau Real Estate (Building Owner). The Commission requires the following Certificate(s) of Insurance as a condition of this Agreement with the following minimum coverages. No warranty is made that the coverages and limits listed herein are adequate to cover and protect the interests of the Artist for the Artist's operations. These are solely minimums that have been established to protect the interests of the Commission, the City of Montpelier, Albertsons Companies (Shaw's), and Pomerleau Real Estate (Building Owner).

Workers Compensation: With respect to all operations performed, the Artist shall carry workers' compensation insurance in accordance with the laws of the State of Vermont. If the Artist has no employees as defined by Vermont Statutes and Regulations, the Commission will waive this requirement.

General Liability and Property Damage: With respect to all operations performed under this contract, the Artist shall carry general liability insurance having all major divisions of coverage including, but not limited to:

- Premises - Operations
- Products and Completed Operations
- Personal Injury Liability
- Contractual Liability

The policy shall be on an occurrence form and limits shall not be less than:

- \$1,000,000 Per Occurrence
- \$1,000,000 General Aggregate
- \$1,000,000 Products/Completed Operations Aggregate
- \$ 50,000 Fire/ Legal/Liability

Automotive Liability: The Artist shall carry automotive liability insurance covering all motor vehicles, including hired and non-owned coverage, used in connection with the Agreement. Limits of coverage shall not be less than: \$1,000,000 combined single limit.

The artist shall name the City of Montpelier, the Commission and its officers, Albertsons Companies (Shaw's), and Pomerleau Real Estate (Building Owner) harmless as additional insureds for liability arising out of this Agreement.

15. LIABILITY FOR NEGLIGENCE

Prior to Final Acceptance, the Artist shall adequately protect the project, adjacent property, and the public, and shall be responsible for any damage or injury thereto due to the Artist's act or neglect, and shall save the Commission, the City of Montpelier, Albertsons Companies (Shaw's), and Pomerleau Real Estate (Building Owner) harmless in respect thereto.

The Artist will act in an independent capacity and not as an officer or employee of the Commission or City.

The Artist shall defend the Commission, City, Albertsons Companies (Shaw's), and Pomerleau Real Estate (Building Owner) and its officers and employees against all claims or suits arising in whole or in part from any act or omission of the Artist or of any agent of the Artist. The Commission shall notify the Artist in the event of any such claim or suit, and the Artist shall immediately retain counsel and otherwise provide a complete defense against the entire claim or suit.

After a final judgment or settlement the Commission may request recoupment of specific defense costs and may file suit in Washington Superior Court requesting recoupment. The Artist shall be entitled to recoup costs only upon a showing that such costs were entirely unrelated to the defense of any claim arising from an act or omission of the Artist.

The Artist shall indemnify the Commission and its officers and employees, the City of Montpelier, Albertsons Companies (Shaw's), and Pomerleau Real Estate (Building Owner) in the event that these parties or their officers or employees become legally obligated to pay any damages or losses arising from any act or omission of the Artist.

16. BONDS

Performance or Payment (labor and material) Bonds are not required of the Artist for goods or services provided herein.

17. LICENSES AND PERMITS

The Artist is responsible for obtaining all licenses and applicable certificates and permits in connection with the performance of this contract with the cooperation of the Commission. No work shall commence before all necessary permits are secured.

18. COMPLIANCE WITH LAWS AND REGULATIONS

The Artist agrees to comply with all applicable laws regarding performance of the Work and to pay for all required permits and fees, and upon written notice to comply with the regulations of any insurance company that issues a policy on any part of the Work or Site. The Artist agrees to comply with Title 21 V.S.A., Chapter 5, Subchapter 6 relating to fair employment practices and to include a similar provision in all subcontracts. The Artist will become acquainted with the limits of the Site or right-of-way of the State and shall not trespass on other property.

19. ADVERTISING PRIVILEGES

The Artist may advertise at the Site a sketch of the proposed Work along with the names of the Artists at a site mutually agreed upon by the Artist and the Commission.

20. DELIVERY OF WORK AND INSTALLATION

- A. The Artist shall deliver the Work to the Site. The Artist is solely responsible for any storage fees.
- B. Installation shall be in accordance with the Specifications of Work noted below.
- C. Installation shall occur over the dates listed below or as mutually determined by the Artist and the Commission.
- D. The Commission shall ensure that the Artist is supplied with adequate power to the site and make sure that the Site is free and clear of traffic and materials so the Artist can work without disruption and interference.

21. NONDISRUPTION OF SERVICES

The Artist will perform the Work in a manner and time so as not to cause unreasonable interference with any of the operations, construction, or maintenance of the State. If the Work will interfere with the operations of the State, the Artist shall give reasonable notice thereof and coordinate the Work with the Commission. The Commission will notify the Artist of their operation, construction, and maintenance schedules in and around the area where the Work is to be performed. The Artist will make every reasonable effort to coordinate work with and cooperate with site contractors and state and local officials.

22. CLEAN UP

The Artist shall, when working on State property, clean up after each day's work to the degree necessary to provide for entrance and exit, public safety, fire lanes, and operation of necessary business. At the close out of the Work, the Artist shall clean up and remove their equipment, excess materials, wastes, etc.

23. FINAL ACCEPTANCE AND RELEASE OF CLAIMS

- A. The Artist agrees to deliver the Work to the Commission free and clear of any liens and claims, arising from any source whatsoever. The Commission may withhold final acceptance until the Artist furnishes the Commission with a signed and sworn statement stating that all bills, wages, claims, etc. have been paid.
- B. Upon installation and final acceptance, the Commission shall provide the Artist with written notice of acceptance, stating that the Work has become the property of the Commission, and relieving the Artist of all liability for damage to the Work.

24. PHOTOGRAPHS & MAINTENANCE INSTRUCTIONS

Within 30 days the Artist shall supply the Commission with a written set of instructions for the permanent maintenance and care of the Work, including the brand names of all materials used.

25. TERMINATION

- A. The services to be performed under this Agreement may be terminated by either party, subject to written notice submitted thirty [30] days before termination, provided that attempts to reconcile the reason for termination have been undertaken but failed. The notice shall specify whether the termination is for convenience or cause.
- B. *Termination For Convenience of the Commission:* If the termination is for convenience of the Commission, the Artist shall be paid on the basis of an amount which bears the same ratio to the total compensation as the services actually performed bear to the total services of the Artist as covered by this Agreement (without an allowance for anticipated profit on unperformed services). In that event, the Commission shall have the right at its discretion to possession and transfer of title to the sketches, designs and models already prepared and submitted or prepared for submission to the Commission by the Artist under this Agreement prior to the date of termination, provided that no right to fabricate or execute the Work shall pass to the Commission.
- C. *Termination For Cause:* If either party to this Agreement shall willfully or negligently fail to fulfill in a timely, professional, 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 thirty [30] days after receipt of the notice to cure the default. If it is not cured, then the Agreement shall terminate.
- D. In the event of default by the Commission, the Commission shall promptly compensate the Artist for all services performed by the Artist prior to termination and reimbursement for costs incurred as a consequence of the Commission's default.
- E. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall, at the Commission's discretion, become the property of the Commission, provided that no right to fabricate the Work shall pass to the Commission, and the Commission shall compensate the Artist pursuant to this Agreement for all services performed prior to termination. Notwithstanding the previous sentence, the Artist shall not be relieved of liability to the Commission for damages sustained by the Commission by virtue of any breach of this Agreement by the Artist, and payment to the Artist may be reasonably withheld until such time as the exact amount of such damages due the Commission from the Artist are determined.

26. OWNERSHIP

The Commission shall be the sole owner of the Work of art being commissioned. Title shall vest in the Commission upon completion of installation and final acceptance of the Work of art by the Commission. Upon final acceptance all studies, drawings, designs, and models prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist.

27. REPRODUCTION RIGHTS

The Artist shall retain all rights under federal copyright law and this section limits all other rights in and to the Work except ownership and possession. In view of the intention that the Work in its final dimension shall be unique, the Artist shall not make any exact duplicate, three-dimensional

reproductions of the Work, nor shall the Artist grant permission to others to do so except with the written permission of the Commission. The Artist grants to the Commission an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes provided they identify the Artist. Responsibility for registration with the United States Register of Copyrights shall rest with the Artist.

28. ALTERATION OF WORK OR OF THE SITE

- A.** The Commission agrees that it will not intentionally damage, alter, modify or change the Work without the prior written approval of the Artist, with the exception of applying an anti-graffiti coating upon completion of the Work.
- B.** The Commission shall notify the Artist of any proposed alteration of the Site that would affect the intended character and appearance of the Work. The State shall make a reasonable effort to consult with the Artist in the planning and execution of any such alteration and shall protect the integrity of the Work.
- C.** Nothing in this section shall preclude the right of the Commission or Building Owner to destroy or remove the Work from public display following appropriate deaccessioning considerations.

29. CONTRACT ADMINISTRATOR

The Contract Administrator for this Agreement shall be the Chairperson of the Montpelier Public Arts Commission or his/her designee(s). Whenever this Agreement requires any notice to be given to the Commission, or any action or determination to be made by the Commission, the Chairperson or his/her designee shall represent and act for the Commission.

30. AMENDMENTS AND CHANGE ORDERS

Only a Change Order can accomplish any increases or decreases in the scope and fixed price of the project, extensions of completion dates, substantial alterations of the proposal and/or the finished Work, with or without a change in price, and amendments or modifications to other items of this Agreement or to the Work. The Commission will initiate the Change Order, supported by written requests from any party of the Agreement and it will be signed by all these parties to be executed and made a part of this Agreement.

31. TAXES DUE TO THE STATE

- A.** Artist understands and acknowledges responsibility, if applicable, for compliance with State tax laws, including income tax withholding for employees performing services within the State, payment of use tax on property used within the State, corporate and/or personal income tax on income earned within the State.
- B.** Artist certifies under the pains and penalties of perjury that, as of the date the contract is signed, the Artist are in good standing with respect to, or in full compliance with, a plan to pay any and all taxes due the State of Vermont.
- C.** Artist understands that final payment under this contract may be withheld if the Commissioner of Taxes determines that the Artist is not in good standing with respect to or in full compliance with a plan to pay any and all taxes due to the State of Vermont.

- D. Artist also understands the State may set off taxes (and related penalties, interest and fees) due to the State of Vermont, but only if the Artist has failed to make an appeal within the time allowed by law, or an appeal has been taken and finally determined and the Artist has no further legal recourse to contest the amount due.

32. CHILD SUPPORT (Applicable if the Artist is a natural person, not a corporation or partnership.)
The Artist states that, as of the date the contract is signed, he:

- A. is not under any obligation to pay child support; or
- B. is under such an obligation and is in good standing with respect to that obligation; or
- C. he has agreed to a payment plan with the Vermont Office of Child Support Services and are in full compliance with that plan.

The Artist makes this statement with regard to support owed to any and all children residing in Vermont. In addition, if the Artist is a resident of Vermont, Artist makes this statement with regard to support owed to any and all children residing in any other state or territory of the United States.

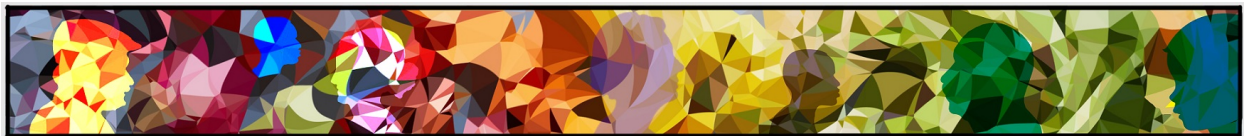
34. ENTIRE AGREEMENT

This writing and the attached Specifications of Work embody the entire agreement and understanding between the parties hereto, and there are no other agreements and understandings, oral or written, with reference to subject matter hereof that are not merged herein and superseded hereby.

SPECIFICATIONS OF WORK

1. DESIGN

The Artist shall install the Work on the Shaw’s wall identified by the Commission as per the approved final design indicated below.



The installation shall include, in consultation with the Commission, the community outreach specifically stated by the Artist as follows: “Montpelier has individuals, especially those who are Black, Indigenous, and People of Color (BIPOC)... who I am interested in creating an opportunity to showcase... through silhouettes.”

2. LOCATION AND FINAL PLACEMENT OF WORK

The location of the work shall be the wall of the Shaw’s building as designated by the Commission.

3. DIMENSIONS, SIZES AND COLORS

The dimensions of the finished Work shall be the entire wall surface approximately 145’ wide by 16’ tall. The exact dimensions will be determined in agreement between the Artist and the Commission. Colors should match the final design of the Artist above as approved by the Commission.

4. MATERIALS AND FINISHES

The Artist will use materials that are UV resistant, outdoor grade, and guaranteed to last a reasonable number of years with a guarantee of at least one (1) year.

5. PRESERVATION FEATURES

An anti-graffiti coating will be provided under the direction of the Commission as soon as possible following the completion of the work. The artist may agree to apply this coating at an additional cost for materials and labor. The Artist will supply a maintenance plan and list of brand name products used.

6. SCHEDULE FOR COMPLETION OF WORK

The Artist should consult with the Commission to determine exact dates for work to begin on site. Work is expected to begin no earlier than June 8 and completed no later than August 8.