

This Agreement made in duplicate, dated this _____ day of October, 2024.

BETWEEN:

THE CITY OF FREDERICTON, a local government by virtue of the *Local Governance Act*, SNB 2017, c.18, having its head office at 397 Queen Street, Fredericton, New Brunswick (hereinafter called “City”)

-and-

THE BEAVERBROOK ART GALLERY a company incorporated under the *Companies Act*, RSNB 1971, c. C-13, having its head office at 703 Queen Street, Fredericton, New Brunswick (hereinafter called “Gallery”)

(each a “Party”, collectively the “Parties”).

WHEREAS the City owns a sculpture of two beavers as described in Schedule “A” attached hereto the (“Sculpture”).

AND WHEREAS the City wants to preserve the Sculpture and approached the Gallery to determine whether it would be possible to display the Sculpture in the Gallery;

AND WHEREAS the Gallery has agreed to display the Sculpture as outlined herein;

NOW THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement and subject to the terms and conditions set out below, the Parties agree as follows:

1. DEFINITIONS

1.1 In this Agreement the following terms shall have the meaning set out herein:

“Installation” means any permanent or temporary installation and its components used in support of the Sculpture.

“Sculpture” means a limestone carving of two beavers created by Claude Roussel and owned by the City of Fredericton.

“Site” means the Beaverbrook Art Gallery located at 703 Queen Street, Fredericton, New Brunswick where the Sculpture will be on display for the public.

“Substantial Damage” means pronounced disrepair or deterioration including, but not limited to, chipping, cracking, splitting or hazardous conditions to the public.

2. TERM

2.1 Notwithstanding the date signed, this Agreement shall be for a term of five (5) years commencing on October 1, 2024, and expiring on September 30, 2029, (the “Term”), unless terminated earlier or extended in accordance with this Agreement.

2.2 The Parties may renew this Agreement for three (3) additional five (5) year terms (the “Renewal Term”). The first Renewal Term would commence on October 1, 2029 and would expire on September 30, 2034; the second Renewal Term would commence on October 1, 2034 and would

expire on September 30, 2039; and the third Renewal Term would commence on October 1, 2039 and would expire on September 30, 2044.

- 2.3 Each Party shall provide notice of any intention to renew this Agreement to the other not less than thirty (30) days prior to the end of the Term for the Renewal Term and not less than thirty (30) days prior to the end of any and all subsequent Renewal Terms. The terms and conditions of this Agreement in effect at the end of the initial Term shall continue for all Renewal Terms, in each case, subject to any amendment in accordance with this Agreement.
- 2.4 Further to Section 2.2, the Parties shall enter into a written agreement to acknowledge and confirm any Renewal Term duly signed by the authorized representatives of each Party.
- 2.5 The Parties may, at their sole discretion, at no cost, terminate this Agreement without cause at any time prior to the expiration of the Term or Renewal Term, upon giving three (3) months prior written notice of termination to the other Party. The City shall be responsible for all costs associated with moving or transporting the Sculpture. The Parties acknowledge and agree that the City shall not be held liable for any financial losses or other damages incurred by the Gallery resulting from termination of this Agreement.

3. CITY OBLIGATIONS AND ACKNOWLEDGEMENTS

- 3.1 The City, its agent or a third party acting on behalf of the City, shall transport and deliver the Sculpture to the Site. At its discretion, the City may choose to do the work or engage and retain the services of a third party. The City shall be solely responsible for all costs, fees and expenses associated with the transport, delivery and installation of the Sculpture at the Site.
- 3.2 The City shall deliver and install the Sculpture no later than October 21, 2024. The Installation Date may be amended by written agreement between the Parties.
- 3.3 The City shall inspect the Sculpture and Installation on an annual basis to identify any potential deterioration. If the City determines that there is an issue with the Sculpture, plaque or signage requiring repair the City shall advise the Gallery.
- 3.4 The City acknowledges the shared interest in the cultural and heritage significance of the Sculpture to New Brunswick and shall consult with relevant experts including the Gallery in the best interest of the Sculpture, however the City shall retain final decision-making authority of the Sculpture.
- 3.5 The City shall, at its own cost and expense, repair the any wear and tear, deterioration, graffiti, or other form of vandalism of the Sculpture during the Term and any Renewal Terms. In advance of any repair of the Sculpture the City shall consult and seek guidance from the Gallery's collections department, however the City retains final decision-making authority with respect to the repair and maintenance of the Sculpture.
- 3.6 The City shall, at its own cost and expense, maintain liability insurance coverage for the Sculpture while it is being delivered, installed and displayed pursuant to this Agreement. This policy shall be procured from an insurance company licensed to do business in the Province of New Brunswick and shall name the Beaverbrook Art Gallery as an additional insured and contain a provision stating that each policy will not be cancelled, materially changed or permitted to lapse unless the insurer notifies the Gallery in writing at least thirty (30) days prior to the date of cancellation, material change or lapse. The City shall provide a Certificate of Insurance to the Gallery prior to the signing of this Agreement and upon request from the Gallery while the Sculpture remains on Site.

- 3.7 The City shall indemnify and save harmless the Gallery and their respective directors, employees, servants and agents from and against all damages, costs, loss, expenses (including legal fees), claims, actions, suits or other proceedings of any kind or nature, which they, or any of them, may have at any time incur or sustain as a result of or arising out of (i) a breach or failure by the City to comply with any of the terms and conditions of this Agreement; (ii) any statement, representation or warranty made by the City that is untrue or incorrect; or (iii) any act, omission or negligence by the City or any of its employees, servants, agents or subcontractors, in the performance of this Agreement, including without limitation, any injury or death to persons or loss of or damage to property.

Notwithstanding, the City shall not be liable for any damages or injury (including death) to any person or to any property as a result of or arising out of this Agreement unless such damages are direct damages and are caused solely and directly by or as a result of the negligence of the City.

- 3.8 The City acknowledges that photography by members of the public, Gallery staff or City staff is allowed. Individual photographers are responsible for obtaining any necessary third-party/copyright permissions for filming or photography of the Sculpture, for use by the media or the public. Members of the public may take photographs for non-commercial, personal use. Members of the press may photograph/film the Sculpture for non-commercial, press use, so long as the press member is accompanied by Gallery's staff to ensure the safety of the Sculpture and respect any conditions of this Agreement.

4. GALLERY OBLIGATIONS & ACKNOWLEDGEMENT

- 4.1 The Gallery acknowledges and agrees that the Sculpture, owned by the City, shall be placed on exhibition and displayed in the front vestibule of the Gallery. The Gallery further acknowledges and agrees that if it wishes to relocate the Sculpture to another location on Site, it shall seek and obtain written consent from the City.
- 4.2 The Gallery acknowledges and agrees that the Sculpture will never be relocated outside and that it cannot be stored, even temporarily, without written permission from the City.
- 4.3 The Gallery acknowledges and agrees that the Sculpture shall always remain accessible to the public on Site for viewing without charge or admission fees.
- 4.4 The Gallery shall provide and permit access to their premises for the City in order that the Sculpture may be installed and for the City to undertake any necessary inspections, approvals or repairs of the Sculpture in accordance with its rules, regulations and policies and provided such access does not materially interfere with its operations.
- 4.5 The Gallery shall have a representative present at the time the Sculpture is installed on Site to coordinate the installation with the City, and to ensure adherence with its rules, regulations and policies as well as that there is no material interference with its operations.
- 4.6 The Gallery grants to the City, for itself, its successors, assigns, employees, agents, servants, contractors and sub-contractors, a non-exclusive license for the Term:
- (a) to access the Site (with the understanding that if after-hours access is required, arrangements must be made with the Gallery's security staff); and
 - (b) to have the right of reasonable ingress and egress over the Gallery real property for the purpose of accessing the Site.

The Parties acknowledge and agree that the license set forth in this Section 4.4 is non-exclusive and is a license in common with others who may use the Site.

- 4.7 The Gallery will exercise the same care with respect to the Sculpture as it does in the safekeeping of comparable property of its own. The Gallery acknowledges and agrees that the Sculpture shall remain in and be maintained in the condition it is received and further acknowledges that it shall not be removed from its base for any purpose whatsoever, unless in the case of an emergency or unforeseen circumstance where an immediate threat to public safety or the Sculpture exists. In such cases, the Gallery shall notify the City as soon as possible, or at a minimum, by the next business day.
- 4.8 The Gallery acknowledges and agrees that it will not clean, repair, retouch or alter the Sculpture in any way except with the express written permission of the City.
- 4.9 The Gallery shall produce and install a bilingual plaque (or similar fixture) which indicates the name of the Artist, the Sculpture title, date of creation and medium, the ownership of the Sculpture, and a short descriptive text on the work.
- 4.10 The Gallery shall at all times acknowledge and identify Claude Roussel as the creator of the Sculpture, including (i) at the Site; (ii) on all occasions on which the Sculpture are exhibited in public; (iii) when a visual image of the Sculpture is broadcast or (iv) when a graphic work or photograph of the Sculpture is issued to the public.
- 4.11 The Gallery may reproduce the Sculpture in gallery/exhibition promotion including use on the Gallery's website, social media platforms, educational initiatives, wayfinding, and printed and electronic museum publications without additional fees. The Gallery shall obtain special permission in writing from the City, and copyright owner (if applicable) for any other reproduction uses including, but not limited to: print ads and offsite advertising initiatives (such as wild postings, digital ads, transit ads, etc.). The production of any commercial product must be approved by the artist (or his estate) and may be subject to a separate agreement.
- 4.12 The Gallery shall immediately report any claim or other proceeding brought against the Gallery relating to the Sculpture or the Installation.
- 4.13 The Gallery shall not destroy, cover, damage, alter or directly obstruct the visibility of the Sculpture.
- 4.14 Notwithstanding Section 4.13, the Gallery will cover the Sculpture for the time period leading up to the official unveiling scheduled on November 2, 2024. Additionally, the Parties acknowledge and agree that the Gallery may cover and protect the Sculpture in circumstances where the Gallery is undergoing repair.
- 4.15 The Gallery acknowledges that in the event there is Substantial Damage to the Sculpture, the City shall consult with the Gallery to determine whether the Sculpture shall remain in place for the duration of the Term or the Renewal Term. The City shall retain final decision-making authority of the Sculpture.
- 4.16 The Gallery acknowledges in the event there is Substantial Damage to the Sculpture or Installation, the City may remove the Sculpture and Installation for repair, at its sole cost and expense.
- 4.17 The Gallery shall monitor the condition of the Sculpture during the Term and any Renewal Term and inform the City immediately upon discovery (or if during a weekend, within 48 hours of

discovery) and in detail, of any loss, damage, Substantial Damage or deterioration to the Sculpture. The Gallery may also provide a written report including photographs to the City of the damage or deterioration.

- 4.18 The Gallery shall maintain constant and adequate protection against hazards of fire, insects, dirt, theft, and mishandling by unauthorized or inexperienced persons or by the public. The Gallery shall also keep the Sculpture display area secure at all times from theft and damage, and upon request, shall provide the City with a copy of their security plans and protocols for information and review.
- 4.19 The Gallery shall at its own cost and expense, acquire and maintain a commercial general liability policy with respect to their business and the business carried on under this Agreement for the Term and any Renewal Term, including bodily injury, death and damage to property in the amount of at least Five Million Dollars (\$5,000,000.00). This policy shall be procured from an insurance company licensed to do business in the Province of New Brunswick.
- 4.20 The Gallery shall ensure that all general liability policies of insurance shall name the "City of Fredericton" as additional insured, and contain a provision stating that each policy will not be cancelled, materially changed or permitted to lapse unless the insurer notifies the City in writing at least thirty (30) days prior to the date of cancellation, material change or lapse. The Gallery shall provide a Certificate of Insurance to the City prior to the signing of this Agreement and upon request from the City while the Sculpture remains on Site.
- 4.21 The Gallery shall indemnify and save harmless the City and its respective councillors, employees, servants and agents from and against all damages, costs, loss, expenses (including legal fees), claims, actions, suits or other proceedings of any kind or nature, which they, or any of them, may have at any time incur or sustain as a result of or arising out of (i) a breach or failure by the Gallery to comply with any of the terms and conditions of this Agreement; (ii) any statement, representation or warranty made by the Gallery that is untrue or incorrect; or (iii) any act, omission or negligence by the Gallery or any of its directors, employees, servants, agents or subcontractors, in the performance of this Agreement, including without limitation, any injury or death to persons or loss of or damage to property.

Notwithstanding, the Gallery shall not be liable for any damages or injury (including death) to any person or to any property as a result of or arising out of this Agreement unless such damages are direct damages and are caused solely and directly by or as a result of the negligence of the Gallery.

- 4.22 The Gallery covenants that it has the full power and authority to enter into and has taken all necessary measures to authorize the execution of this Agreement.

5. GENERAL TERMS & CONDITIONS

- 5.1 Sections and Headings: The division of this Agreement into articles and sections and the insertion of headings are for convenience of reference only and shall not affect the interpretation of this Agreement.
- 5.2 Entire Agreement: This Agreement constitutes the entire understanding and agreement of the Parties with respect to the subject matter contained herein and supersedes all previous agreements, contracts or understandings between the Parties with respect to the subject matter herein, whether written, oral, expressed or implied.

- 5.3 Amendments: If at any time during the continuance of this Agreement the Parties hereto shall deem it necessary or expedient to make any alterations or additions to this Agreement, they may do so by means of an executed written Agreement between them which shall be supplemental to and form part of this Agreement.
- 5.4 Governing Law: The Parties acknowledge and agree this Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the Province of New Brunswick and any federal laws of Canada applicable therein. The Parties submit to the jurisdiction of the courts of the Province of New Brunswick, that is, a court of competent jurisdiction shall have the exclusive jurisdiction to adjudicate any matter which may arise in connection with this Agreement.
- 5.5 Right to Information: The Gallery acknowledges that the City is subject to the *Right to Information and Protection of Privacy Act*, SNB 2009, c. R-10.6 (“RTIPPA”), as amended, with respect to personal information, as defined thereunder, in its custody and control. The Gallery agrees that the City may disclose this Agreement or portions thereof as may be required pursuant to the RTIPPA or a City Council approval process, if required, and that no such disclosure constitutes a breach of this Agreement.
- 5.6 Severability: If any term or provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, it shall be deemed to be severed from this Agreement, and the remaining terms and conditions shall nevertheless remain in full force and effect.
- 5.7 Notice: Any notice to be given under this Agreement by the Parties shall be in writing and delivered by hand, email transmission or registered mail, to the other Party at the address and to the attention of the contact indicated below:

The Beaverbrook Art Gallery
 703 Queen Street
 Fredericton, NB E3B 1C4
Attention: Manager of Collections & Exhibitions
 e-mail: jleroux@beaverbrookartgallery.org

The City of Fredericton
 397 Queen Street
 Fredericton, NB E3B 1B5
Attention: City Clerk
 e-mail: cityclerk@fredericton.ca

A notice shall be deemed to be duly given and received upon delivery, if delivered by hand; upon receipt of the email transmission, if the transmission is received by the intended recipient prior to the recipient’s close of business (and otherwise on the next business day of the recipient); or three (3) business days after posting, if sent by registered mail with a return receipt. Either Party may change its address or contact for receipt of notices, provided that such Party gives notice thereof in accordance with this Section 5.7 and confirms the effective date of the change in such notice.

- 5.8 Contra Proferentum Rule Not Applicable: Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting of construing same shall not apply a presumption that the terms thereof shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it is agreed that both Parties, directly or through their agents, have participated in the preparation hereof.
- 5.9 Dispute Resolution: If the Parties hereto should have a dispute with respect to this Agreement, they shall first attempt to resolve such dispute amongst themselves. If the Parties are unable to resolve the dispute in this manner within a reasonable time, then any dispute between the

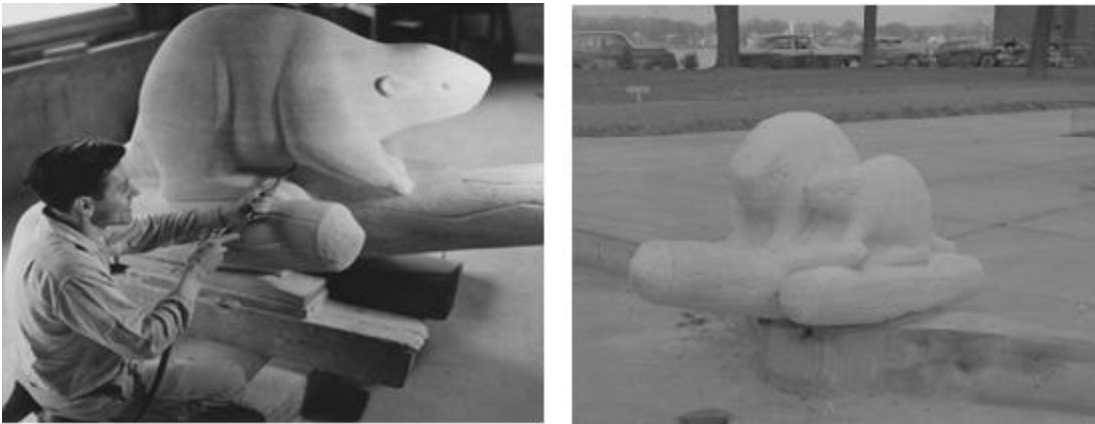
Parties hereto as to any matter arising under this Agreement may be referred by the Parties to a single arbitrator to be jointly appointed by the Parties hereto or to be selected by a Judge of the Court of King's Bench of New Brunswick on application of the Parties. Such arbitration will be conducted pursuant to the *Arbitration Act* (New Brunswick), as amended. It is further agreed by the Parties that they will pay their own costs of any arbitration or litigation.

- 5.10 Force Majeure Event: The Parties shall not be liable for any delay or failure to perform their obligations hereunder due to causes beyond their reasonable control, including but not limited to natural disaster, flood, fire, pandemic, epidemic, casualty, act of God, public enemy, war, riot, terrorism, or governmental act, strike, labour dispute, stop-work order or injunction; provided, however, that such Party will not have contributed in any way to such event, and has notified the other Party without undue delay.
- 5.11 Waiver: No breach of any provision of this Agreement shall be waived except with the express written consent of the Party not in breach.
- 5.12 Survival: Notwithstanding the expiration or termination of this Agreement, it is expressly provided that provisions of this Agreement that, by their nature, should extend beyond the life of this Agreement shall remain in force in accordance with its terms.
- 5.13 Successors and Assignment: This Agreement shall enure to the benefit of and be binding upon the Parties, and on the successors, and permitted assigns. No assignment of this Agreement will be made by the Gallery without the written consent of the City.
- 5.14 Time: Time shall be of the essence in this Agreement.
- 5.15 Costs: It is acknowledged that each Party shall pay their own costs, charges and expenses of and incidental to the preparation of this Agreement.
- 5.16 Counterparts: This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument; however, this Agreement will be of no force or effect until executed by all Parties. Executed signature pages delivered by facsimile or electronic mail will be deemed for all purposes to be original counterparts of this Agreement.
- 5.17 Other: The Parties acknowledge and agree that they have had the opportunity to seek independent legal advice or to have this Agreement reviewed by their respective legal counsel.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
PARTIES TO SIGN ON THE FOLLOWING PAGE**

SCHEDULE A

The Beavers/Les castors sculpture by Claude Roussel



Completed and installed at Officers' Square in May of 1959. It was commissioned as the province's official gift to Lord Beaverbrook for his 80th birthday.

The sculpture is made from grey St. Marc limestone weighing approximately 1.5 tons (3,000 pounds). Size: 70" L 37" H, 29" W.

The Beavers are a part of Fredericton and New Brunswick's cultural history that includes ties to Lord Beaverbrook, the Beaverbrook Art Gallery, an important Acadian sculpture artist, and the development of modern Acadian art in New Brunswick. The Provincial Architect asked Claude Roussel to create a sculpture that would be "symbolic of Lord Beaverbrook or his activities, complimentary to the statue (of Lord Beaverbrook), and be mechanically suited to spray water," into the existing pool Officers' Square.

The Beavers were installed and presented in May 1959 during Lord Beaverbrook's visit to New Brunswick. Lord Beaverbrook appointed Claude Roussel of Edmundston assistant curator (1959 – 1961) for the new Beaverbrook Art Gallery stating, "I think young Roussel will give the gallery a major liaison with the Acadian culture of this area and at the same time impart to our French-Canadian artists a real sense of belonging."

Ownership of the Beavers was transferred with Officers' Square from the Province to the City of Fredericton, and they were moved to storage during the Officers' Square revitalization project. After over 60 years of exposure to the elements, the limestone sculpture showed signs of deterioration, and it was determined that a professional assessment was needed to determine next steps. A condition assessment was carried out by a professional conservator in July 2023 which recommended restoration work and relocation to an indoor site. Fredericton City Council approved a recommendation to restore the sculpture and relocate it to the Beaverbrook Art Gallery. Conservation work was carried out in the summer of 2024.

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Jennifer Lawson, of the City of Fredericton, in the County of York and Province of New Brunswick, **MAKE OATH AND SAY AS FOLLOWS:**

1. THAT I am the City Clerk of the City of Fredericton, one of the parties named in the foregoing instrument and as such I have personal knowledge of the matters herein deposed to.
2. THAT the seal affixed to the foregoing instrument purporting to be the seal of the City of Fredericton is the Corporate Seal of the City of Fredericton and was so affixed by order of the City Council.
3. THAT the signature "Kate Rogers" subscribed to the foregoing instrument is the signature of Kate Rogers, the Mayor of the City of Fredericton, and the signature "Jennifer Lawson" subscribed thereto is my signature.
4. THAT the Mayor and City Clerk are the officers of the City of Fredericton duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
 City of Fredericton, in the County)
 of York and Province of New)
 Brunswick, this ___ day of)
 October, 2024.)

_____)
 A Commissioner of Oaths)
 Being a Solicitor)

_____)
 Jennifer Lawson

PROVINCE OF NEW BRUNSWICK

COUNTY OF YORK

AFFIDAVIT OF CORPORATE EXECUTION

I, Ray Cronin, of the City of Fredericton, in the County of York and Province of New Brunswick,
MAKE OATH AND SAY AS FOLLOWS:

1. THAT I hold the office of Interim Director and CEO of the Beaverbrook Art Gallery (hereinafter called the "Corporation") and I am authorized to make this affidavit and I have personal knowledge of the matters sworn to herein.
2. THAT the seal affixed to the foregoing instrument is the seal of the Corporation and was affixed to the instrument by order of the board of directors of the Corporation.
3. THAT the signature "Ray Cronin" subscribed to the foregoing instrument is my signature.
4. THAT the Interim Director and CEO is the officer of the Corporation duly authorized to execute the foregoing instrument.

SWORN TO BEFORE ME at the)
City of Fredericton, in the County)
of York and Province of New)
Brunswick, this ____ day of)
October, 2024.)
)
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)
)
_____)
)
A Commissioner of Oaths)
Being a Solicitor)

Ray Cronin