

## ARTIST AGREEMENT

**THIS AGREEMENT** made in quadruplicate this \_\_\_\_ day of July, 2021.

BETWEEN:

**PERCY SACOBIE**, of 30 Barlow Court, Fredericton, New Brunswick, E3A 5V9 (hereinafter called the “Artist”)  
AND

**THE CITY OF FREDERICTON**, a corporation by virtue of the *Local Governance Act*, SNB 2017, c.18, having its head office at 397 Queen Street, Fredericton, New Brunswick, E3B 1B5 (hereinafter called “City”)

AND

**FREDERICTON INTERNATIONAL AIRPORT AUTHORITY INC.**, a not-for-profit corporation established under the *Canada Not-for-Profit Act*, having its head office at 2570 Route 102 Hwy, Unit 22, Lincoln, New Brunswick, E3B 9G1 (hereinafter called “Airport”)

AND

**THE BEAVERBROOK ART GALLERY**, a corporation established under the *Beaverbrook Art Gallery Act* (C.119 SNB 2011), having its head office at 703 Queen Street, Fredericton, New Brunswick, E3B 1C4 (hereinafter called “Gallery”)

(hereinafter each a “Party”, collectively referred to as the “Parties”)

**WHEREAS** the City is seeking to commission an original work of art that will be installed at the Fredericton International Airport, a major gateway in and out of the City;

**AND WHEREAS** the artwork will represent local culture and will portray the Wabanaki peoples’ figure of Glooscap in the regional landscape;

**AND WHEREAS** the Artist is a professional painter whose work and qualifications make the Artist uniquely qualified to create the artwork of this theme as an original work of art;

**AND WHEREAS** the City has selected the Artist based upon the Artist's work and qualifications;

**AND WHEREAS** the Artist and the City wish to enter into an Agreement for the creation, execution, delivery and installation of a piece of art;

**AND WHEREAS** the Airport leases from the Crown in right of Canada the lands and premises at the Fredericton International Airport including the building where the artwork will be installed, the Airport joins in this Agreement for the purpose outlined herein;

**AND WHEREAS** the Gallery will have involvement with preparation of the masonite panels, delivery and installation of the Artwork, the Gallery also joins in this Agreement for the purpose outlined herein;

**NOW THEREFORE IN CONSIDERATION** of the mutual covenants and agreements set out in this Agreement and subject to the terms and conditions set out below, the Parties hereby covenant and agree as follows:

## **1.0 DEFINITIONS**

1.1 In this Agreement:

- (a) "Agreement" includes the attached schedules being Schedule "A" - Scope of Work & Deliverables; Schedule "B" - Notice of Completion; Schedule "C" - Notice of Installation; Schedule "D" - Notice of Acceptance; and Schedule "E" – Transfer of Title;
- (b) "Artwork" means the final physical piece of art designed and created by the Artist, in conformity with City approval, for display as more particularly described in the attached Schedule "A";
- (c) "City Confidential Information" means:
  - (i) personal information (as defined in the *Right to Information and Protection of Privacy Act* (SNB 2009, c. R-10.6, as amended), confidential, secret or proprietary information, including data, technical information, financial information, business information (including business plans, strategies and practices) of the City which is disclosed to or obtained by the Artist in connection with the Agreement; and
  - (ii) all information related to the operations of the City which comes to the attention of the Artist in the course of performing the services herein, but excludes such information which is or becomes publicly available, is already rightfully in the possession of the Artist and not subject to any pre-existing obligation of confidentiality, is independently developed by the Artist outside the scope of this Agreement, or is rightfully obtained by the Artist from third parties.

- (d) “Notice of Acceptance” means a written notice that the Artwork has been accepted as set out in Section 5 and Schedule “D”;
- (e) “Notice of Completion” means a written notice that the Artwork has been completed as set out in Section 4 and Schedule “B”;
- (f) “Notice of Installation” means a written notice that the Artwork has been completed as set out in Section 4 and Schedule “C”;
- (e) “Site” means the location where the Artwork will be installed being the departure lounge of the Airport; and
- (g) “Transfer of Title” means a written instrument that conveys ownership, title and interest in the Artwork from the Artist to the City as set out in Schedule “D”.

## **2.0 THE ARTWORK - SCOPE OF WORK**

- 2.1 The City hereby commissions and engages the independent contracting services of the Artist that will be provided on a non-exclusive but first priority basis as follows:
- (a) to create and execute an original Artwork tentatively entitled “Making Legends – Glooscap and Beaver Series” in accordance with the artistic and technical elements described in Schedule “A” (Scope of Work & Deliverables), attached hereto and forming a part hereof;
  - (b) to furnish all supplies, material and equipment as necessary, at the Artist’s sole cost and expense, for the creation and execution of the Artwork;
  - (c) to prepare and submit all drawings, reports and documents required under this Agreement; and
  - (d) to provide all other services as are customarily rendered by creators of works of art in relation to such works and their locations.
- 2.2 The Artist shall begin work after the execution of this Agreement by the Parties.
- 2.3 The Artist acknowledges and agrees that any major changes to the Artwork shall not be made unless first approved in writing by the City, by the Cultural Development Officer, taking into account the design process.
- 2.4 The Artist acknowledges and agrees that if the Artist and the City cannot come to an agreement upon any matters set out in Section 2.3, the matter shall be decided by the City in its sole discretion, taking into consideration the Artist’s views.

### **3.0 TERM**

- 3.1 Notwithstanding the date signed, this Agreement shall take effect as of the date first above written. The Artist shall complete all the work and services contemplated by this Agreement on or before November 1, 2022 (the "Term"), being one (1) year from the date of the approval of the final design concept by the City unless extended or terminated in accordance with the provisions of this Agreement.
- 3.2 This Agreement may be terminated by the City:
- (a) at any time for any reason upon fourteen (14) days written notice to the Artist (with a copy to the Airport and the Gallery). The Artist shall be reimbursed by the City in direct proportion to the percentage of the Artwork completed at the time that the notification was received in writing; and/or
  - (b) in the event that the Artist breaches any of the obligations under this Agreement, provided the City has provided written notification to the Artist (with a copy to the Airport and the Gallery) of the breach and given an opportunity to remedy the breach on such terms and within the time period as reasonably specified by the City and the breach was not remedied.

### **4.0 ARTIST'S OBLIGATIONS**

- 4.1 The Artist shall perform the services required under this Agreement in a satisfactory and competent manner.
- 4.2 The Artist shall determine the artistic expression, scope, design, colour, size, material, and texture of the Artwork in this Agreement and described in detail in the attached Schedule "A".
- 4.3 The Artist shall be solely responsible for the designing and executing the Artwork.
- 4.4 The Artist shall protect the City Confidential Information at all times and in the same manner as the Artist protects the confidentiality of its own proprietary and confidential information, but in no event with less than a reasonable standard of care. The Artist shall not, without the prior written consent of the City, disclose City Confidential Information to any person nor use City Confidential Information for any purpose other than for the benefit of the City in connection with the performance of the services hereunder.
- 4.5 The Artist shall attend meetings and be available for discussions as requested by the City in order to complete the Artwork as specified in this Agreement.
- 4.6 In the event that the City provides a notice of deficiency pursuant to Section 5.13(b), the Artist shall clear the deficiencies within a period of time mutually agreed upon with the City, which shall be not more than thirty (30) days, and the Artist shall then provide the City with another Notice of Completion.

- 4.7 The Artist shall present to the City in writing for further review and approval, in a timely manner, any changes the Artist would like to make to the Artwork, concerning scope, design, colour, size, material or texture.
- (a) The changes described in this Section 4.6 shall not be the basis for delaying completion of the Artwork; and
  - (b) The City shall have the sole right to approve or disapprove the changes described in this Section 4.6 provided such changes do not materially increase the obligations or expenses of the Airport and the Gallery.
- 4.8 The Artist shall not replicate the Artwork for any other client or purchaser.
- 4.9 The Artist shall inform the City when the Artwork is ready for installation at the Site by providing a completed Notice of Completion (Schedule B) to the Cultural Development Officer. (The Cultural Development Officer will notify the Airport and the Gallery after receiving the Notice of Completion from the Artist.) The Artist acknowledges that the Artwork shall be completed and installed at the Site one (1) year from the date of the approval of the final design concept by the City.
- 4.10 The Artist shall be present during the installation of the Artwork at the Site.
- 4.11 During the installation of the Artwork, the Artist shall use all reasonable efforts not to interfere with the business being conducted by the Airport and the occupiers of the building and shall comply with all rules, policies and regulations of the Airport.
- 4.12 The Artist shall inspect the Artwork at the Site and confirm that it is in a condition suitable for installation by the Gallery.
- 4.13 Once the installation of the Artwork is complete, the Artist shall provide a Notice of Installation (Schedule C) to the Cultural Development Officer of the City by e-mail. (The Cultural Development Officer will notify the Airport and the Gallery after receiving the Notice of Installation from the Artist.) The signed notice from the Artist delivered by e-mail to the City will be deemed to be an original.
- 4.14 The Artist shall rectify any loss or damage to the Artwork prior to the transfer of title to the City by repairing, restoring, replacing or by other appropriate means, in a diligent manner, irrespective of the time of settlement of any potential insurance claim at no additional expense to the City. The Artist and the City acknowledge that if such circumstances arise they may reconsider the deadline for the completion and delivery of the Artwork.
- 4.15 The Artist shall indemnify and save harmless the City, the Airport and the Gallery and their respective directors, 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 Artist to comply with any of the terms and conditions of this

Agreement; (ii) any statement, representation or warranty made by the Artist that is untrue or incorrect; (iii) an allegation that the intellectual property rights of a third party have been violated; or (iv) any act, omission or negligence by the Artist 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 Artist 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 Artist.

- 4.16 The Artist hereby consents and authorizes the City to use and disclose such information, including the Artist's name, in the City's publicity, promotion and related activities, as the City deems necessary.
- 4.17 Upon completion of the installation of the Artwork, the Artist shall provide to the City a maintenance report and schedule that includes the description of materials and fabrication methods used in the creation of the Artwork, recommended maintenance instructions, means of future conservation or restoration that may be required, including methods and materials to be used in cleaning the Artwork.
- 4.18 The Artist shall not assign or subcontract this Agreement.
- 4.19 Once the City has provided the Notice of Acceptance (Schedule D) to the Artist, the Artist shall provide the Transfer of Title (Schedule E) to the Cultural Development Officer of the City by e-mail. The signed notice from the Artist delivered by e-mail to the City will be deemed to be an original.

## **5.0 CITY OBLIGATIONS**

- 5.1 The City shall make every effort to coordinate meetings with the schedule of the Artist.
- 5.2 The City shall pay the Artist a total sum of Seventy Thousand Dollars (\$70,000.00), in Canadian funds, including HST, for the Artwork, inclusive of all required materials, to be created, designed, executed, delivered and installed at the Site in accordance with the following payment schedule:
  - (a) an initial payment of Thirty Thousand Dollars (\$30,000.00) will be paid to the Artist within thirty (30) days of signing this Agreement;
  - (b) a payment of Five Thousand Dollars (\$5,000.00) will be paid to the Artist within thirty (30) days of the approval of the detailed layout and composition design;
  - (c) a final payment of Thirty-Five Thousand Dollars (\$35,000.00) will be paid to the Artist within thirty (30) days of the Artist providing the City with the Notice of

Installation (Schedule C) and the City providing the Artist with a Notice of Acceptance (Schedule D).

- 5.3 The City shall, at its own cost and expense, add the Artwork to its insurance policy as part of its art collection as it has an insurable interest in the Artwork. The City shall maintain insurance coverage for the Artwork while it is being created, 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 Fredericton International Airport Authority Inc. 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 Airport 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 Airport prior to the signing of this Agreement and upon request from the Airport while the Artwork remains on Site.
- 5.4 The City shall indemnify and save harmless the Artist, the Airport and 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.
- 5.5 The City shall, at its own expense, install an interpretive panel at the Site. The information may include the name of the Artist, the name and date of the Artwork, a description of the Artwork and the ownership of the Artwork, which will form part of the collection owned by the City. The City will consult with the Artist, the Gallery and the Airport with the respect to the design and placement of the interpretive panel.
- 5.6 The City shall maintain the Artwork and will respect the maintenance instructions outlined in the maintenance report from the Artist. The City shall also be responsible for future maintenance of the Artwork.
- 5.7 The City shall provide the Artist first, and the Gallery second, an opportunity to repair the Artwork and/or provide consultation or supervision of any repair, restoration or replacement of the Artwork if it is damaged. If the Artist or Gallery are unavailable, the City shall seek out the services of a professional art restorer to undertake the

necessary repairs to the Artwork and shall use its best efforts to respect and observe the artistic integrity of the Artwork.

- 5.8 The City, in its sole discretion, has the right to relocate the Artwork from the Site and display it in an alternate location other than the Airport without payment of any fee, (exhibition or otherwise), to the Artist. As a courtesy, the City shall use its best efforts to contact the Artist and advise of the relocation of the Artwork.
- 5.9 The City shall provide credit to the Artist for all photographs and cinematographic works and any copies thereof embodying the Artwork that are made or authorized by the City. The City shall have sole discretion to determine the placement, form, type and size of such credit. The Artist acknowledges that casual or inadvertent failure by the City or any third party to comply with this provision shall not constitute a breach of this Agreement.
- 5.10 The City shall expeditiously provide written decisions, notifications, instructions, acceptances, plans and any other information required to enable the Artist to promptly create and repair any deficiency, if required, of the Artwork.
- 5.11 The City reserves the right to suspend work being completed on the Artwork in the event of an emergency, as determined in its sole discretion.
- 5.12 The City, via the Cultural Development Officer, shall coordinate the installation of the Artwork with representatives of the Airport. Once a date has been determined, the City shall advise the Artist and the Gallery.
- 5.13 Upon receipt of the Notice of Installation from the Artist, the City shall inspect the Artwork and shall:
- (a) within five (5) days, provide the Artist with a Notice of Acceptance (Schedule D) by e-mail that the Artwork has been accepted. The signed notice delivered by e-mail will be deemed to be an original; or
  - (b) within ten (10) days, provide a notice of deficiency by e-mail, with original to follow by regular mail, that the Artwork has not been accepted with detailed reasons for the non-acceptance.
- 5.14 If the City provides a notice of deficiency as set out in subsection 5.13(b), the Artist shall correct the deficiency to the City's reasonable satisfaction.
- 5.15 The City, via the Cultural Development Officer, shall inform the Gallery via the Manager of Collections and Exhibitions and the Airport when title of the Artwork has transferred from the Artist to the City.

## **6.0 AIRPORT ACKNOWLEDGMENT AND AGREEMENT**

- 6.1 The Airport acknowledges and agrees that the Artwork commissioned and owned by the City shall be displayed in the departure lounge of the Airport.

- 6.2 The Airport shall provide and permit access to their premises for the Artist, the City and the Gallery in order that the Artwork may be installed and for the Artist and City to undertake any necessary inspections, approvals or repairs of the Artwork in accordance with its rules, regulations and policies and provided such access does not materially interfere with its operations.
- 6.3 The Airport shall have a representative present at the time the Artwork is installed on Site to coordinate the installation with the Gallery and the Artist, and to ensure adherence with its rules, regulations and policies as well as that there is no material interference with its operations.
- 6.4 The Airport shall not destroy, cover, damage, alter or directly obstruct the visibility of the Artwork.
- 6.5 The Airport, City and Artist acknowledge and agree that the Artist shall have no right to a claim or loss of damage in the event that the wall upon which the Artwork is located is altered or torn down by the Airport.
- 6.6 The Airport, City and Artist acknowledge and agree that the Airport shall display the Artwork for an indefinite period of time and may at any time for any reason provide ninety (90) days written notice to the City, via the Cultural Development Officer, to remove the Artwork from their premises.
- 6.7 The Airport shall at its own cost and expense, acquire and maintain a commercial general liability insurance policy with respect to their business and the business carried on under this Agreement, including bodily injury, death and damage to property in the amount of at least Two Million Dollars (\$2,000,000.00). This policy shall be procured from an insurance company licensed to do business in the Province of New Brunswick.
- All general liability policies of insurance shall name the "City of Fredericton", as an additional insured, and any other party required by the City 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 City in writing at least thirty (30) days prior to the date of cancellation, material change or lapse. The Airport shall provide a Certificate of Insurance to the City prior to the signing of this Agreement and upon request from the City while the Artwork remains on Site.
- 6.8 The Airport 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 Airport to comply with any of the terms and conditions of this Agreement; (ii) any statement, representation or warranty made by the Airport that is untrue or incorrect; or (iii)

any act, omission or negligence by the Airport 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 Airport 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 Airport.

## **7.0 GALLERY ACKNOWLEDGMENT AND AGREEMENT**

- 7.1 The Gallery acknowledges and agrees that their technical staff will prepare the Masonite Panels ("Panels") for the Artist.
- 7.2 The Gallery shall transport and deliver the Panels to the Artist in order that the Artwork may be created.
- 7.3 Once the City has advised the Gallery of an installation date, the Gallery shall pick up, transport, deliver and install the Panels/Artwork at the Site after it has been completed by the Artist.
- 7.4 The Gallery shall at its own cost and expense, at the time of and during installation of the Artwork, keep the Site safe, clean and protected from any danger or hazards to the public.
- 7.5 The Gallery shall use all reasonable efforts not to interfere with the business being conducted by the Airport and the occupiers of the building during the installation of the Artwork and shall comply with all rules, policies and regulations of the Airport.
- 7.6 The Gallery shall, as soon as practicable, upon completion of the installation of the Artwork, at their own expense, remove all waste and excess materials, tools, equipment or temporary structures from the Site.
- 7.7 The Gallery shall at their own cost and expense, acquire and maintain a commercial general liability and auto liability insurance policy with respect to the business carried on under this Agreement, including bodily injury, death and damage to property in the amount of at least Two Million Dollars (\$2,000,000.00). The Gallery shall also maintain during transportation and installation insurance coverage for the Artwork while it is in their care, custody and control. This policy shall be procured from an insurance company licensed to do business in the Province of New Brunswick.

All general liability policies of insurance shall name the "City of Fredericton" and the "Fredericton International Airport Authority Inc." as additional insureds, and any other party required by the City 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 City and the Airport 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 and the Airport prior to the signing of this Agreement and upon request from the City or the Airport until such time as the Artwork is installed at the Site.

- 7.8 The Gallery shall indemnify and save harmless the City and the Airport and their respective directors, 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.

## **8.0 OWNERSHIP**

- 8.1 The Artist shall retain ownership of the Artwork until the Notice of Installation (Schedule "C") and Transfer of Title (Schedule "E") are executed and delivered to the City by e-mail, via the Cultural Development Officer, the Artist receives the final payment, and the City provides a Notice of Acceptance (Schedule "D"). The signed notices and transfer of title document delivered by e-mail will be deemed to be originals. Upon delivery of the final document, being the Transfer of Title (Schedule "E") from the Artist to the City, the ownership of the Artwork shall transfer to the City.

## **9.0 INTELLECTUAL PROPERTY, WARRANTY AND ACKNOWLEDGEMENTS**

- 9.1 The Artist represents, warrants and agrees that the Artwork, including any alterations which may be agreed to by Artist and the City, does not breach or infringe any existing copyright of any third party.
- 9.2 Subject to the rights given to the City pursuant to this Agreement, the Artist will retain the copyright and other intellectual property rights relating to the Artwork, including any and all drawings, designs, images, specifications, photographs and documents incidental thereto which is and shall remain the property of the Artist.
- 9.3 The Artist hereby grants to the City, a perpetual, world-wide, exclusive, irrevocable, transferable, royalty-free, fully paid-up right and licence: (a) to use, reproduce and distribute, in any form, the Artwork or any part thereof for public display, community promotion, and non-commercial or educational purposes including paper reproductions for promotional or gift purposes such as but not limited to postcards,

prints and note cards; and (b) to authorize other persons, including representatives, agents, contractors or sub-contractors, to do any of the former on behalf of the City. However, said licence does not give the City the right to create replicas models of the Artwork.

- 9.4 The Artist acknowledges that the Artwork was created specifically for the City and therefore, the Artist agrees to not sell or licence the design of the Artwork to any other party before giving the City first right of refusal. The Artist also acknowledges and agrees that the City may photograph, film, videotape the Artwork (completed or as a work-in-progress) and may reproduce, publish and distribute copies of such photographs, cinematographic works in perpetuity, throughout the world and by any and all means and in any and all media formats, whether now known or hereafter developed.
- 9.5 The Artist reserves the right to be identified as creator of the Artwork. The City will give credit to the Artist as creator of the Artwork in such manner as the City deems appropriate in its sole discretion.
- 9.6 The Artist and the City agree that any rights for commercial reproduction of the Artwork may be negotiated and form part of a separate agreement between them.
- 9.7 The City acknowledges and will respect the Artist's statutory moral rights and will not undertake to intentionally alter, damage or destroy the Artwork.
- 9.8 The Artist acknowledges and agrees that once title to the Artwork has transferred to the City, the City has the right, in its sole discretion, to move, de-accession or dispose of the Artwork, in whole or in part, as it deems necessary or desirable.
- 9.9 The Parties acknowledge and agree that if the City decides to sell or dispose of the Artwork, the Artist shall be given the right of first refusal to purchase the Artwork from the City at its then value as determined by an appraisal completed by a qualified appraiser that is approved by the City. The Artist shall have thirty (30) days from the date of the appraisal to give the City written notice of his intent to exercise the right of first refusal. The right of the Artist is specific to the Artist personally and shall not be transferred, assigned, pledged or pass by way of inheritance to another by operation of law to a third party.
- 9.10 The Artist warrants that in producing the Artwork, the Artist will use first class professional skills and diligence and all workmanship will be of the highest quality and properly expressive of the City approved design.
- 9.11 The Artist warrants that the materials, labour and services necessary for the fabrication of the Artwork will be durable, good quality materials that are free from defect and appropriate to the Artwork and in accordance with the City approved design.

- 9.12 The Artist represents and warrants that the Artwork:
- (a) shall be in accordance with the requirements specified in the Agreement and all applicable laws, by-laws, regulations and standards; and
  - (b) shall in no way infringe or violate the intellectual property rights of any person.

## 10. ADDITIONAL GENERAL TERMS AND CONDITIONS

- 10.1 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.
- 10.2 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.
- 10.3 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.
- 10.4 Applicable Law: This Agreement shall be governed by the laws of the Province of New Brunswick and the laws of Canada applicable therein. The Artist acknowledges that the City is subject to the *Right to Information and Protection of Privacy Act*. The courts in the Province of New Brunswick shall have the exclusive jurisdiction to adjudicate any matter which may arise in connection with this Agreement, and the Parties hereby accept, submit and attorn to the non-exclusive jurisdiction of such courts and all courts competent to hear appeals therefrom.
- 10.5 Severability: If any provision in this Agreement or its application to any Party or circumstances is for any reason restricted, prohibited or unenforceable, such provision shall be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining provisions which shall remain in full force and effect.
- 10.6 Notice: Any notice required or desired to be sent pursuant to this Agreement shall be either sent by prepaid first class mail to the addresses shown below and such notice shall be deemed to be received on the earlier of actual receipt or five (5) days from its mailing, whichever is earlier or shall be sent by e-mail.

Any Party may change its address by first serving notice on the other Parties.

Percy Sacobie  
30 Barlow Court  
Fredericton, NB E3A 5V9

The City of Fredericton  
397 Queen Street  
Fredericton, NB E3B 1B5  
Attention: Cultural Development Officer

e-mail: percysacobie@gmail.com

e-mail: [angela.watson@fredericton.ca](mailto:angela.watson@fredericton.ca)

Fredericton International Airport  
Authority Inc.  
22-2570 Route 102 Highway  
Lincoln, NB E3B 9G1  
e-mail: info@yfcfredericton.ca

The Beaverbrook Art Gallery  
703 Queen Street, PO Box 605  
Fredericton, NB E3B 5A6  
Attention: Manager of Collections & Exhibitions  
e-mail: jleroux@beaverbrookartgallery.org

- 10.7 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 the Parties, directly or through their agents, have participated in the preparation hereof.
- 10.8 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 on a timely basis. If the Parties are unable to resolve the dispute in this manner within a reasonable time, then any dispute between the Parties 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 or may be selected by a Judge of the Court of Queen'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 the cost of such shall be borne equally by the Parties.
- 10.9 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 Parties without undue delay.
- 10.10 Waiver: No breach of any provision of this Agreement shall be waived except with the express written consent of the Parties not in breach.
- 10.11 Independent Contractor: The relationship between the Parties is one of independent contractors. Nothing contained in this Agreement is intended to place the City and the Artist in the relationship of partners, joint venturers, principal-agent, employer-employee, and neither the City nor the Artist shall have any right to obligate or bind the other party in any manner whatsoever. The Artist is responsible for all legally required employer and employee contribution and deductions, compensation and benefits for itself and its personnel. The City is not obligated and does not intend to provide or maintain worker's safety insurance coverage with respect to the Artist, nor

will the Artist be entitled to City employee benefits plans or employment insurance benefits upon termination of this Agreement.

- 10.12 Survival: Notwithstanding the expiration or termination of this Agreement, it is expressly provided that the 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.
- 10.13 Incapacity or frustration: In the event of death or incapacity of the Artist, the City:
- (a) shall have the right of ownership of the unfinished Artwork upon paying the Artist or the Artist's personal representative a sum in direct proportion to the percentage of the work completed; and
  - (b) shall have the right to complete the Artwork, provided that it does not alter the original intent of the Artist.
- 10.14 Delays: If a Party is unable to meet any of the timelines imposed by this Agreement that Party shall notify the other Parties immediately upon becoming aware of the inability.
- 10.15 Successors and Assignment: This Agreement shall enure to the benefit of and be binding upon the Parties, their executors, administrators, successors, heirs, legal representatives and assigns. No assignment of this Agreement will be made by the Artist without written consent of the City.
- 10.16 Time: Time will be material and of the essence of this Agreement.
- 10.17 Independent Legal Counsel: The Parties acknowledge and agree that they have had the opportunity to consult with their own lawyer with respect to the terms of this Agreement prior to signing this Agreement and have either sought out or declined such consultation or review by their respective lawyer.
- 10.18 Costs: It is acknowledged that each Party shall pay his own costs, charges and expenses of and incidental to the preparation of this Agreement.
- 10.19 Counterparts: This Agreement may be executed in one or more counterparts, each of which when signed and delivered 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.

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

**IN WITNESS WHEREOF** the Parties hereto have caused these presents to be duly executed as of the day and year first above written.

Signed, Sealed and Delivered )

\_\_\_\_\_  
Angela Watson  
Witness

\_\_\_\_\_  
Percy Sacobie  
Artist

**THE CITY OF FREDERICTON**

\_\_\_\_\_  
Kate Rogers  
Mayor

\_\_\_\_\_  
Jennifer Lawson  
City Clerk

**FREDERICTON INTERNATIONAL  
AIRPORT AUTHORITY INC.,**

\_\_\_\_\_  
Johanne Gallant  
President & CEO

\_\_\_\_\_  
Meredith Boyle  
Director of Finance

**THE BEAVERBROOK ART GALLERY**

\_\_\_\_\_  
John Leroux, PhD  
Manager of Collections and Exhibitions

## **SCHEDULE “A”**

A large painted mural (8'-0" high x 24'-0" wide) tentatively entitled “Making Legends – Glooscap and Beaver Series”. It will consist of six individual 4' x 8' prepared Masonite panels on a stabilized wood frame, all suspended with metal girts. The theme and design will be based on the story of Glooscap in the regional landscape including the Wolastoq River, as interpreted by the Artist.

### **SCOPE OF WORK & DELIVERABLES**

#### *Phase 1 - Detailed Layout and Composition Design*

Within three (3) months of signing the Agreement, the Artist will provide the City with a scaled preparatory drawing as required to accurately document the mural based on the theme outlined above to be executed by the Artist.

#### *Phase 2 - Execution*

Upon the City’s written approval of the preparatory drawing, the Artist will be directed to proceed with and complete the final execution of the mural as per the approved drawing.

Once the Artwork is considered complete, with no deficiencies, and ready to be delivered to the site and installed the Artist will notify the City by providing the Notice of Completion (Schedule “B”). After the Artwork has been delivered and installed at the Airport by the Gallery, the Artist will submit the Notice of Installation (Schedule “C”) to the City. Once a final inspection takes place the City will issue the Notice of Acceptance (Schedule “D”) to the Artist. The Artist will then provide the Transfer of Title (Schedule “E”) to the City.

1. Design Precedents:

Attached are drawings of the Artist’s previous recent paintings and that are similar in style and visual approach to the proposed mural.

2. Location or placement of the Artwork:

The work will be hung on the south-eastern wall in the new departure seating area of the Airport.

3. Dimensions of the Artwork:

8'-0" high x 24'-0" wide x 3" thick

4. Materials and Finishes:

The panel materials will be 3/8" thick 4'x8' Masonite panels on a hardwood backing frame for stability, using fastening screws and glue. The final paint finish will be acrylic paint on a gessoed base, laid directly on the Masonite surface.

5. Installation:

The mural will be supported by a continuous gravity bar system on a metal z-girt securely fastened to the metal studs behind the upper wall's drywall surface.

6. Maintenance and cleaning provisions:

The Artwork should require no special cleaning or maintenance, beyond dusting the upper frame every few years, (or when lights are replaced in the room). For any repair instructions (if required or if damage occurs), see the maintenance report provided by the Artist to the City pursuant to this Agreement.

Design Precedents (*as attached*)













**SCHEDULE "B"**

**NOTICE OF COMPLETION**

**TO: The City of Fredericton**

I, Percy Sacobie, give notice to the City of Fredericton that I have satisfactorily completed the Artwork called "Making Legends – Glooscap and Beaver Series" to be located in the departure lounge at the Fredericton International Airport in Lincoln, New Brunswick. I also confirm that the Artwork can now be transported to the Airport for installation by the Beaverbook Art Gallery.

Date: \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Percy Sacobie

**SCHEDULE "C"**

**NOTICE OF INSTALLATION**

**TO: The City of Fredericton**

I, Percy Sacobie, give notice to the City of Fredericton that the Artwork referred to as "Making Legends – Glooscap and Beaver Series" has been installed at the Fredericton International Airport in Lincoln, New Brunswick.

Further, I have clear title to the Artwork.

Date: \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Percy Sacobie

**SCHEDULE "D"**

**NOTICE OF ACCEPTANCE**

**TO: Percy Sacobie**

I, Angela Watson, Cultural Development Officer with the City of Fredericton hereby confirm acceptance of the Artwork called "Making Legends – Glooscap and Beaver Series" that has been installed at the Fredericton International Airport in Lincoln, New Brunswick.

Date: \_\_\_\_\_, 202\_\_.

\_\_\_\_\_  
Angela Watson



**PROVINCE OF NEW BRUNSWICK**

**COUNTY OF YORK**

**AFFIDAVIT OF EXECUTION**

Subscribing Witness: Angela Watson  
397 Queen Street  
Fredericton, NB  
E3B 1B5

Person Who Executed the Instrument: Percy Sacobie

Place of Execution: Fredericton, New Brunswick

Date of Execution: July \_\_\_\_, 2021

I, Angela Watson, the subscribing witness, make oath and say:

1. That I was personally present and saw the attached instrument duly executed by the party specified and that I am the subscribing witness;
2. That the party’s identity has been proven to my satisfaction or that I know the party;
3. That the instrument was executed at the place and on the date specified above;
4. That at the time of execution of the instrument I was of the full age of sixteen years; and
5. That the party who executed the instrument is, in my belief, of the age of majority.

SWORN TO at the City of )  
Fredericton in the County of York )  
and Province of New Brunswick, on )  
the \_\_\_\_ day of July, 2021. )

BEFORE ME: )

\_\_\_\_\_  
Donna L. Legacy )  
A Commissioner of Oaths )

\_\_\_\_\_  
Angela Watson

**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 26<sup>th</sup> day of )  
 July, 2021. )  
 )  
 )  
 )  
 \_\_\_\_\_ )  
 )  
 A Commissioner of Oaths )  
 Being a Solicitor )

\_\_\_\_\_  
 Jennifer Lawson

**AFFIDAVIT OF CORPORATE EXECUTION**

Deponent: **Johanne Gallant**  
2270 Route 102 Hwy, Unit 22  
Lincoln, NB E3B 9G1

Office Held by Deponent: President and Chief Executive Officer

Corporation: **FREDERICTON INTERNATIONAL AIRPORT  
AUTHORITY INC.**

Other Officer Who Executed  
the Instrument: **Meredith Boyle**  
2270 Route 102 Hwy, Unit 22  
Lincoln, NB E3B 9G1

Office Held by Other Officer  
Who Executed the Instrument: Director of Finance

Place of Execution: Fredericton, New Brunswick

Date of Execution: July 16, 2021

I, **Johanne Gallant**, make oath and say:

1. THAT I hold the office specified above in the corporation specified above, and am authorized to make this affidavit and have personal knowledge of the matters hereinafter deposed to;
2. THAT the attached instrument was executed by me and the other officer specified above, as the officers duly authorized to execute the instrument on behalf of the corporation;
3. THAT the seal of the corporation was affixed to the instrument by the order of the Board of Directors of the corporation;
4. THAT the instrument was executed at the place and on the date specified above.

**SWORN TO BEFORE ME** at the City )  
of Fredericton, in the County of York )  
and Province of New Brunswick, )  
this \_\_\_\_ day of July, 2021. )

\_\_\_\_\_)  
)  
A Commissioner of Oaths )  
Being a Solicitor )

\_\_\_\_\_)  
**Johanne Gallant**

**PROVINCE OF NEW BRUNSWICK**

**COUNTY OF YORK**

**AFFIDAVIT OF CORPORATE EXECUTION**

I, John Leroux, 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 Manager of Collections and Exhibitions of the Beaverbrook Art Gallery (hereinafter called the "Corporation") and I am authorized to make this affidavit and 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 "John Leroux" subscribed to the foregoing instrument is my signature.
4. The Manager of Collections and Exhibitions 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 )  
 July, 2021. )

\_\_\_\_\_) )  
 A Commissioner of Oaths )  
 Being a Solicitor )

\_\_\_\_\_) )  
 John Leroux, PhD