



NEW ENGLAND FOUNDATION FOR THE ARTS

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## PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT (this “Agreement”), entered into on August 16, 2023 is made by and between **New England Foundation for the Arts, Inc., (“NEFA”)**, a Massachusetts non-profit corporation with a principal place of business at 1000 Washington Street, 2<sup>nd</sup> Floor, Boston, MA 02118, AND **the town/city of [municipality]** with its principal place of business at **[address]**.

In this agreement **the town/city of [municipality]** is referred to as the “Contractor”; NEFA and Contractor will collectively be referred to as the “Parties”.

In exchange for valuable consideration, the sufficiency of which is hereby acknowledged, and in consideration of the mutual covenants and promises set forth herein, the Parties collectively agree as follows:

1. **Services and Work Products.** During the term of this Agreement, the Parties shall collectively furnish the “Services and/or Work Products” as described below:

a. Services

Contractor administers a Call for a Call for Temporary Public Art in 2024, that exemplify applied learnings from the *Making it Public* workshop series and alignment with [NEFA’s Public Art Values](#).

i. See Appendix A for a detailed Scope of Work.

b. Work Products

Contractor shall produce a Call for Temporary Public Art in 2024, in alignment with municipal procurement of public art in Massachusetts.

i. See Appendix A for details.

Contractor shall provide 2-3 high resolution images of the final temporary artwork funded, along with relevant image descriptions and photo crediting information.

2. **Payments.** In exchange for the satisfactory performance of the Services and the timely completion and delivery of the Work Products prior to Termination, NEFA shall pay the Contractor the following amounts in accordance with the terms set forth below.

a. The Contractor shall be paid by NEFA, according to the following payment schedule:

	Payment Amount
20% of funding will be issued from NEFA to the municipality upon NEFA counter-signing the agreement; payment will be issued by January 30, 2024.	\$3,000

40% of funding will be issued from NEFA to the municipality upon: <ul style="list-style-type: none"><li>- Approval of the Call for Temporary Public art from NEFA and</li><li>- Municipality publicizing the Call for Temporary Public Art</li></ul>	\$6,000
40% of funding will be issued from NEFA to the municipality upon completion of the artist selection process.	\$6,000

3. **Term.** The term of this Agreement (the "Term") shall commence as of the later date of the final execution of this contract, and it shall expire by January 30, 2025. All Services and Work Products are to be complete by the expiration of this Agreement. This Agreement may be renewed prior to expiration of the Term, only by the written agreement of all Parties.
4. **Termination.** This Agreement may be terminated for any reason by any party without penalty prior to the expiration of the Term by such party providing at least thirty (30) days written notice to the others, at the addresses listed above. If any party provides such written notice, this Agreement shall terminate effective on the date specified in such notice. Upon termination by either party, NEFA shall only be liable for payment of amounts earned by Contractor as a result of work satisfactorily performed prior to the effective date of the termination. The Contractor shall have no further responsibility to perform any task under this Agreement after the effective date of the termination. Contractor's obligations under the succeeding paragraphs of this Agreement shall survive termination.
5. **Indemnification.** To the extent permitted by MA state law, the Parties agree to individually assume responsibility for any and all claims, losses, or liability arising from any act, omission, or failure of itself, its subrecipients, subcontractor, officers, agents, and employees relating to this agreement. The parties further agree to hold each other harmless from such claims to the extent permitted by law.
6. **Contractor as Independent Contractor.** The Parties agree that in all respects the Contractor's relationship to NEFA shall be that as independent Contractor. The Parties shall not act or represent that they are acting as an agent, and shall have no authority to create, assume or incur any obligation or liability on the part, of the other party. Nothing in this Agreement is intended to limit a party's right to contract or affiliate with any other third party. Contractor acknowledges and agrees that he/she shall not be deemed a NEFA employee and shall not be entitled to any employee benefits, including any insurance benefits, otherwise available to NEFA employees. Contractor operates free from the direction and control of NEFA in connection with the performance of the Services and shall be free to devote its/their time and resources to such other activities as he/she deems appropriate, consistent with its/their obligations under this Agreement.
7. **Conflict of Interest.** NEFA is a charitable tax-exempt organization and must therefore engage only in activities which accomplish one or more of its tax-exempt purposes. The Contractor warrants that it/they has/have received and reviewed NEFA's Conflict of Interest Policy and is not involved, and shall not be involved during the Term, in any activity which constitutes a conflict of interest under the terms of that policy. The Contractor agrees to notify NEFA immediately in writing if any situation arises which might constitute a conflict of interest as defined in the policy.

8. **Crediting.** NEFA shall provide attribution to the Contractor when it uses any Work Products created under this Agreement. The Contractor shall provide attribution to NEFA when it uses any Work Products under the Agreement, as follows: "Funding was provided [in part] by New England Foundation for the Arts (NEFA)."
9. **Use of Promotional Materials.** NEFA shall have the ability to use the name of the Contractor and the name of its/their project in mediums such as photography, video, reviews, and descriptive text, and other artist promotional materials related to this contract, in the promotion of NEFA programs through publications, NEFA's web site, video sampler, and the like and as otherwise necessary to carry out the terms of this Agreement. The Contractor shall not use NEFA's name, symbols, or service marks, except as specified and required under this Agreement, without the prior written approval of such use and its form by NEFA.
10. **Ownership and Rights.** The Parties shall provide one another with unlimited access to any work product created under this Agreement, including but not limited to all work papers, data, reports, questionnaires and other material prepared, produced or collected as part of this Agreement. The Parties retain the rights to reproduce, publish, and otherwise use, and authorize others to use any work developed under this Agreement.
  - a. Notwithstanding the foregoing, to the extent that any work product created under this Agreement derives from, is based upon or arises out of Contractor's pre-existing works (collectively, "Derivative Works"), Contractor shall grant a gratis, perpetual, worldwide license to NEFA in all Derivative Works.
11. **Confidentiality.** As used in this Agreement, "Confidential and Proprietary Information" means any business or technical information and materials regarding NEFA that is disclosed to the Contractor or to which the Contractor have access hereunder (including, without limitation, inventions, improvements, techniques, processes, research and development plans, data, formulas, products, technology; marketing and sales plans, financial forecasts, profits, costs, operations, donor information, grantee information, names of personnel and compensation data), which: (i) if disclosed in writing, is marked "confidential" or "proprietary" at the time of such disclosure; (ii) if disclosed orally, is identified as "confidential" or "proprietary" at the time of such disclosure, and is summarized in a writing sent by the disclosing party to the receiving party within thirty (30) days after any such disclosure; or (iii) under the circumstances of disclosure, a person exercising reasonable business judgment would understand to be confidential or proprietary.
  - a. Contractor will use Confidential and Proprietary Information only in the manner and for the purposes expressly set forth in this Agreement and in compliance with Massachusetts state laws, including but not limited to the Massachusetts Public Records Law, MGL c. 66. Section 10.
  - b. The Parties acknowledge that the Contractor is a public entity. It will take no affirmative steps to disclose information identified as "confidential" and/or "protected" or other similar description to third parties. In the event of a request for information pursuant to the Commonwealth of Massachusetts Public Records Law, M.G.L. c. 66, § 10, or upon the Contractor's receipt of legal process to turn over any such described information, Contractor will promptly notify NEFA of the request or order so that it can obtain legal protection to defend itself against such disclosure. Failure by either NEFA to obtain legal process within 7 business days of Contractor's notification of a public records request or order, or earlier subject to a judicial order, shall entitle Contractor to disclose the requested information with impunity.

12. **Contractor Representations And Warranties.** Contractor represents and warrants that:  
(a) Contractor has the complete power and authority to enter into this Agreement, to grant and assign the rights granted and assigned under this Agreement, and to perform its obligations hereunder; (b) Contractor has no pre-existing obligations or commitments (and will not assume or undertake any obligations or commitments) that would interfere with or restrict the Contractor's performance of its obligations under this Agreement; and, (c) None of the work product produced by Contractor under this Agreement will violate or infringe the intellectual property rights of any third party.
13. **Transferability.** The Parties agree that they will not transfer or assign their rights and obligations under this Agreement to another party without express written approval of all Parties.
14. **Access to Records.** NEFA, the Federal agency whose grant funds this agreement, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this agreement for the purpose of making audits, examinations, excerpts and transcriptions.
15. **Governing Law.** This Agreement is subject to and to be construed in accordance with the laws of the Commonwealth of Massachusetts and each party consents to the exclusive jurisdiction and venue of the state and federal courts of Massachusetts for all disputes or claims hereunder.
16. **Entire Agreement.** This Agreement sets forth the entire understanding of the parties and supersedes any and all prior agreements or understandings, whether written or oral, with respect to the subject matter hereof. No terms or conditions, other than those set forth herein, and no amendments or modifications hereto shall be binding unless made in a writing signed by both parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first written above.

**Town/City of [municipality], MA**  
By:

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Signature

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Printed name

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Employer Identification Number

**New England Foundation for the Arts, Inc.**  
By:

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Jane Preston, Deputy Director, Programs;  
Authorized NEFA Officer

## Appendix A: Scope of Work

### Purpose:

The [New England Foundation for the Arts](#) (NEFA) in partnership with [the Metropolitan Area Planning Council's \(MAPC\) Arts and Culture Department](#) (MAPC) Arts and Culture Department, invites municipalities in Massachusetts to participate in the *Making it Public for MA Municipalities* 2024 cohort.

Through *Making it Public* and funding artists through municipalities, NEFA aims to foster a community of practice that is inspiring more vibrant and just public spaces and culture through public artmaking across MA. To learn more about NEFA's vision and values for public art, visit [NEFA's website](#).

Participating municipalities will be asked to provide at least **two staff members\*** who can commit to fully participating in the workshop series (January-April 2024) and conduct a Call for Temporary Public Art (April 2024-January 2025).

### Municipalities selected for the 2024 Cohort will:

- Participate in *Making it Public*, a free biweekly workshop series with 6 training sessions over 11 weeks (January-April 2024) facilitated by MAPC and designed to support Massachusetts municipal staff in facilitating a more inclusive and equitable process for administering a Call for Temporary Public Art.
- Apply the learnings from the workshop series to release a Call for Temporary Public Art by the end of August 2024. Each participating municipality will receive a \$15,000 grant from NEFA to fund artists selected through the Call for Temporary Public Art in 2024. Additional technical assistance from NEFA and MAPC will also be available (April 2024- January 2025).
- Support the selected artist(s) throughout the process, implementation, and celebration of the public art project in 2025 (e.g. permits, accessing an approved vendor, connecting with other municipal departments, etc.).

### Roles and Responsibilities:

#### **[Municipality]** will:

- **Support municipal staff (2) who are interested and available, to participate in the 2024 *Making it Public* workshop series and conduct a Call for Temporary Public Art in 2024.** (OPTIONAL: Participating municipalities are also welcomed to invite a 3<sup>rd</sup> team member. This may be another municipal staff or a community-based partner who may be interested in supporting your municipality in fostering more vibrant and just public artmaking in your communities. Note: the additional team member should not be expected to administer the Call for Temporary Public Art process, particularly if they are not a municipal employee.)
  - **Estimated Time Commitment:**
    - January 23-April 2, 2024
      - Estimating 2-5 hours/week per participant (to attend the workshop and complete the weekly biweekly assignments). Orientation, workshops and drop-in group office hours are all virtual and will be conducted live on Zoom.
    - April 2024-January 2025
      - Estimating a minimum of:
        - 20 hours of work to launch the call
        - 20 - 30 hours to administer the call and support the selection process.

- 2025
  - o Depending on when the project takes place in 2025, estimating 20 hours to support the selected artist(s) throughout the process, implementation, and celebration of the public art project (e.g. permits, accessing an approved vendor, connecting with other municipal departments, etc.).

**See important deadlines regarding deliverables outlined in the detailed timeline below.**

- **Authorize funding for a Call for Temporary Public Art.** Signature of municipal officer duly authorized to bind municipality to:
  - o Receive \$15,000 of grant funding from NEFA.
  - o Re-grant AT LEAST 80% (\$12,000) of the NEFA grant (\$15,000) as payment directly to the selected artist(s) by the municipality through the Call for Temporary Public Art. Note about funding from NEFA: The remaining 20% (\$3,000) may go towards the artist(s) selected, or be used towards participating in this opportunity and administering these funds (e.g. provide a stipend to community-based partners to participate in Making it Public 2024, support equitable and inclusive outreach strategies and/or honoraria to reviewers in the artist selection process, etc.). OPTIONAL: Municipalities may choose to match the NEFA grant up to \$15,000 (making total grant available for this Call for Temporary Public Art up to \$30,000).
  - o Support the selected artist(s) throughout the process, implementation, and celebration of the public art project (e.g. permits, accessing an approved vendor, connecting with other municipal departments, etc.).

**NEFA will:**

- **Co-host *Making it Public***, a free virtual training customized for municipal staff in Massachusetts by the Metropolitan Area Planning Council's Arts and Culture Department to equip MA municipalities to foster a community of practice that is inspiring more vibrant and just public spaces and culture through public artmaking across MA. See detailed timeline below.
- **Provide Municipality up to 2 hours of 1-on-1 technical assistance** with developing the Call for Temporary Public Art; technical assistance will be provided by Metropolitan Area Planning Council (MAPC) and NEFA staff.
- **Provide \$15,000 grant funding to Municipality.**
  - o If municipality does not uphold any of the following requirements, NEFA reserves the right to withhold some or all of the grant funding:
    - Municipal commitment to authorize funding for a Call for Temporary Public Art
    - AT LEAST 80% (\$12,000) of the NEFA grant must be re-granted directly to the artist(s) selected through the Call for Temporary Public Art in 2024 as either seed or match funding.
    - Call for Temporary Public Art must exemplify applied learnings from the *Making it Public* workshop series and alignment with [NEFA's Public Art Values](#).
  - o NEFA will distribute grant payment to Municipality accordingly:
    - 20% of funding will be issued from NEFA to the municipality upon NEFA counter-signing the agreement; payment will be issued by January 30, 2024.

- 40% of funding will be issued from NEFA to the municipality upon: Approval of the Call for Temporary Public art from NEFA and municipality publicizing the Call for Temporary Public Art.
- 40% of funding will be issued from NEFA to the municipality upon completion of the artist selection process.

### Detailed Timeline

Timeline	Details
January - April 2024	<p><b>Making it Public for MA Municipalities runs January 23, 2024 through April 2, 2024.</b></p> <ol style="list-style-type: none"> <li>1. <b>Tuesday, January 23, 2024; 10a-12p – Orientation (required)</b></li> <li>2. <b>Tuesday, January 30, 2024; 10a-12p – What is Public Art?</b></li> <li>3. <b>Tuesday, February 6, 2024; 10-11a – Drop-in Group Office Hours</b></li> <li>4. <b>Tuesday, February 13, 2024; 10a-12p – Foundations of a Temporary Call for Public Art</b></li> <li>5. <b>Tuesday, February 20, 2024; 10-11a – Drop-in Group Office Hours</b></li> <li>6. <b>Tuesday, February 27, 2024; 10a-12p – Criteria, Application and Reviewer Rubric</b></li> <li>7. <b>Tuesday, March 5, 2024; 10-11a – Drop-in Group Office Hours</b></li> <li>8. <b>Tuesday, March 12, 2024; 10a-12p – Grant Agreements w/Artists and Chapter 30B</b></li> <li>9. <b>Tuesday, March 19, 2024; 10-11a – Drop-in Group Office Hours</b></li> <li>10. <b>Tuesday, March 26, 2024; 10a-12p – Supporting Artists Through the Process</b></li> <li>11. <b>Tuesday, April 2, 2024; 10-11a – Drop-in Group Office Hours</b></li> </ol> <p><b>Workshops</b> are bi-weekly on Tuesdays, January 31 through April 2, 2024 from 10a-12p ET. Participation in all 6 workshops is required.</p> <p><b>Drop-in Group Office Hours</b> - Tuesdays from 10-11a ET, during off weeks: Optional bi-weekly space to speak with facilitators and peers about the homework and/or workshop content as you begin to build you Call for Temporary Public Art. Although Drop-in Group Office Hours are not required, participation is highly recommended.</p>
April 2024 - January 2025	<p><b>Important deadlines for deliverables:</b></p> <p><b>By Friday April 12, 2024</b> - All participants submit a DRAFT of the Call, Application, Selection Rubric for review and approval by NEFA.</p> <p><b>By Friday May 31, 2024</b> - All participants submit FINAL Call, Application, Selection Rubric for final approval and DRAFT Grant Agreement for review and final approval before publicizing the call (timing will vary based on when municipality is aiming to publicize the call).</p> <p><b>By Friday August 30, 2024</b> - All Participants publicize approved Call for Temporary Public Art.</p> <p><b>Friday January 31, 2025</b> - Select Artist(s). Additional technical assistance from MAPC and NEFA will be provided from April 2024-January 2025.</p>
2025	Participants support artists through implementation and celebration!