



City of Saint John

Request for Proposal

2010-993001P

Public Art – Saint John 225

Sealed proposals addressed to Dave Logan, Purchasing Agent, 2nd Floor, Municipal Operations Complex, 175 Rothesay Avenue, Saint John, N.B., E2L 4L1, and marked on the envelope:

“PROPOSAL 2010-993001P – Public Art – Saint John 225”

will be received **until 4:00 p.m., Thursday, June 24, 2010** for the design, development, creation, delivery and installation of permanent, exterior, unsheltered public artwork (“**Public Art**”) that will be prominently displayed along Saint John’s Harbour Passage, as part of Saint John’s celebration of its 225th anniversary and its designation as a Cultural Capital of Canada for 2010; all subject to and in strict accordance with the specifications, terms, conditions and documents contained in the **Request for Proposals (RFP) -- Public Art Opportunity** attached hereto and forming a part hereof.

Proposals will be opened publicly in the office of the Purchasing Agent, 2nd Floor, Municipal Operations Complex, 175 Rothesay Avenue, immediately following the proposal closing time.

The lowest or any proposal not necessarily accepted.

Chris Roberts, CPP

Buyer

(506) 658-2979





Request for Proposals (RFP) -- Public Art Opportunity

To: All Canadian Professional Artists
From: The City of Saint John, New Brunswick

Request for Proposals - Public Art Opportunity: As part of the celebration of the 225th anniversary of The City of Saint John (the "**City**") – Canada's first incorporated city, and as part of the City's designation by the federal Department of Canadian Heritage as a *cultural capital of Canada for 2010*, the City is pleased to invite professional artists resident in Canada to submit formal proposals to design, develop, create, deliver and install permanent exterior public artwork ("**Public Art**") that will be prominently displayed along Saint John's Harbour Passage.

The Public Art may consist of a single piece or multiple elements. Subject to compliance with the terms of this Request for Proposals ("**RFP**"), the City welcomes submissions involving any form of visual art conceived in any durable and maintainable medium and material, or combinations thereof.

Implementation of the selected Public Art will begin after the competition and selection process is complete by late Summer, 2010. Subject to the timetable for creation and installation of the Public Art provided in the selected proposal, and subject also to any City requirements, it is anticipated that the installation of the chosen Public Art will take place in the late Fall of 2010 or Spring of 2011. This is subject to change, at the City's reasonable discretion and also for circumstances beyond the City's control.

Location of Public Art: The Public Art will be installed at an outside, unsheltered location on a triangular-shaped parcel of land along Saint John's Harbour Passage, bordered at grade level by three (3) Harbour Passage pathways and bordered above the parcel by Saint John Harbour Bridge and an exit ramp (the "**Site**"). A plan depicting the Site, and known subsurface utility lines and surface easements, is attached to this RFP as **Attachment A**, forming a part hereof. Attachment A also includes an aerial photograph and Site photographs. Artists should be aware that elevations and views shown in Attachment A do not disclose potential visual obstructions, such as benches, lighting standards, shrubs, trees, bridge supports and abutments, etc. **Site visits are therefore strongly encouraged.**

Taking into consideration input from the selected Artist, the City reserves the right to erect plaques or other descriptive/interpretive signage relating to the Public Art at or near the Site.

Saint John 225: An Overview: *Saint John 225* is the official anniversary celebrations of the City of Saint John and its incorporation as Canada's first, or *original*, city. The City was incorporated on May 18, 1785. *Saint John 225* is a year-long program that explores the flow of people and ideas through the City's history and culture.

The City was designated a 2010 Cultural Capital of Canada by the Canadian Heritage Minister in August 2009. This designation provides significant funding toward a 12-month program designed to promote the City's arts, culture and heritage.

The name *Saint John 225: The Original City/La ville originale* has three meanings, each representing an important aspect of Saint John:



1. It reflects Saint John's historic roots as the first incorporated city in Canada;
2. It affirms the City's role as the originator of a number of Canadian movements, organizations and entities; and
3. It highlights that spark of creativity that ignites artists and performers to express themselves with works of great originality.

The Public Art installation is part of the *Saint John 225* official program and reflects the program's overall principles, which include:

Artistic Diversity: Both contemporary and traditional art forms are valued and creative risk-taking is encouraged.

Cultural Diversity: The celebration and promotion of the many different ethnic and linguistic cultures. New Brunswick is Canada's only officially bilingual province and the City is subject to the *Official Languages Act* of New Brunswick.

Accessibility and Participation: Arts and culture programs should be offered in such a way as to encourage maximum interest, participation and appreciation.

Recognition of Achievement in Arts and Culture: Creativity, innovation and excellence should be valued, supported and celebrated as essential elements of arts community development.

Partnerships: Governments, businesses, individuals and the arts community should work together to enhance the provision of arts and culture.

Public Art: Public art should be encouraged, properly maintained and promoted.

History and Heritage: The preservation and promotion of Saint John's unique history and heritage, including its built heritage, is encouraged.

Integration: Arts and culture development must be integrated into city planning.

Saint John: The Meeting Place/Le rassemblement: *The Meeting Place/Le rassemblement* is *Saint John 225's* working title for the Public Art. To commemorate the City's 225th anniversary, *Saint John 225* will commission one signature piece of Public Art to reflect and celebrate the many people who have lived at the confluence of the St. John and Kennebecasis Rivers and the Bay of Fundy.

"*The Meeting Place*" and "*Le rassemblement*" reflect the area's traditional role as a place where people and cultures have gathered. The completed Public Art will be installed along Harbour Passage, a three-kilometre walking/biking path that encircles Saint John's natural harbour and connects waterfront parks, recreation spaces and heritage sites. It currently stretches from Water Street in the City's South End, around the top of the harbour to the north side of the City. Plans for extending Harbour Passage to the west side of Saint John are ongoing.

Saint John as The Meeting Place/Le rassemblement

- **Geography:** Saint John is where the river meets the sea. Shortly after the Kennebecasis River flows into it, the powerful St. John River flows through the Reversing Falls into the Bay of Fundy, creating a natural harbour.
- **Heritage:** The river and the bay form a natural transportation route and this area has been a meeting place of people and cultures for centuries. The Wolastoqiyik (Maliseet) maintained a village (Ouygoudy) on the west side of the harbour, where they would trade with other members of the Abanaki Confederacy, including the Mi'kmaq and Passamaquoddy.



- **Cultures:** It was the Wolastoqiyik of Ouygoudy who greeted Samuel de Champlain when he arrived in the harbour in 1604. As it was for the Wolastoqiyik, this region was strategically important to the French, who built Fort La Tour (located very near the Site), and then to the British, who constructed Fort Howe (located not far to the north of the Site). Following the end of the American Revolutionary War, Saint John was a major entry point for United Empire Loyalists, who began arriving in the early 1780s. They were a diverse lot, including Dutch, Huguenot, English, Scots, Irish and African Americans, both slave and free. Saint John has continued to welcome people from around the world, including Jews and Lebanese in the early 1900s and, more recently, people from Asia, the Balkans and the Middle East.

This Public Art project is intended to fuse the Saint John region's natural and cultural heritage with artistic expression - to create a unique, interpretive Public Art project. The selected Public Art will operate on a number of levels:

First - It will be a stand-alone piece of public art, to be viewed and appreciated by people as they travel along Harbour Passage.

Second - It will interpret a number of significant chapters in Saint John's history, and will encourage people to reflect on that history - and may even challenge their own interpretations or assumptions.

Third - It will imbue Harbour Passage with a strong sense of place because the piece will trigger viewers' imaginations, carrying them back in time to consider the richness of the City's diverse history.

More information about *Saint John 225* and the City can be found at www.saintjohn225.com and www.saintjohn.ca.

One Percent for Art Program: Artists should also be aware that the City adopted a comprehensive *Arts and Culture Policy* on September 20, 2005. One component of that Policy is the City's so-called ***One Percent for Art Program***. The purposes of this funding program are: to enhance culture and the arts in Saint John; to provide opportunities for established artists to exhibit quality works of art in public spaces; and to enhance public awareness of the visual arts in the City of Saint John. As part of this program, three (3) pieces of public art were commissioned and publicly unveiled by the City (through its commissions Saint John Energy and Saint John Transit) in 2009. More information on these public art projects can be obtained from the City's Cultural Affairs Office.

Artist Eligibility: This RFP is open to all professional artists who: (i) are Canadian citizens or have permanent resident status (as defined by *Citizenship and Immigration Canada*); (ii) are residents of Canada; (iii) have completed their basic training (or equivalent) and have produced an independent body of work; and (iv) have received the recognition of their peers through public presentation of work in a professional context ("**Artists**").

Full-time undergraduate students at a school, college or university are not eligible to apply. Graduate students are eligible only if they otherwise meet the definition of Artists set out above, and if the Public Art project the subject of this RFP is not related to their program of study. A letter from the proponent's program director that verifies this information must be included with the proposal.



General Criteria for Public Art: The selected Public Art must address, and be reflective of, Saint John's history and *The Meeting Place/Le rassemblement* description discussed above in this RFP. In addition, Artists must keep in mind that:

- the Site may not be a suitable venue for displaying all forms of artwork;
- the Public Art will be open to the elements at all times of the year, including coastal fog, saltwater run-off and other caustic, oxidizing and erosive conditions, so it must have proven durability and require minimal maintenance; and
- copyright in the Public Art (including all successful Artists' preliminary and final drawings or renderings, and any maquettes, but excluding the successful Artists' moral rights in the Public Art) will become the property of the City; and (without limitation) the City will have the right to freely reproduce images of the Public Art in any form and medium for any commercial, municipal, publicity and promotion purposes of the City and its agencies, boards, committees and commissions.

Contents of Proposals: No email submissions will be accepted. All proposals must be submitted as hard "paper" copies (except where otherwise noted) and are to include three (3) copies of the following:

- a written resume of the Artist and of the Artist's other principal team members (if any), that demonstrates Artist eligibility under this RFP and that includes any experience that may be relevant to this Public Art project;
- samples of previous work, submitted as hard copies or as digital images (in standard PC-readable file format referred to below, on a separate CD);
- names and contact information of three (3) references;
- a written outline of the Artist's concept for, and description of, the Public Art (not to exceed 500 words) that also includes:
 - the Artist's approach to this Public Art project, stating how the Public Art is intended to be interpreted and understood by the City and by the general public;
 - where the Public Art should be located at the Site, and the reason(s) for such location(s);
 - the Public Art's approximate dimensions and weight;
 - a description of the materials and other physical elements that make up the Public Art, together with any other required materials, elements and services (including support structure, foundation, lighting, power, water and any other special requirements for installation);
 - the durability and suitability of all such materials and elements to an outdoor, unsheltered, coastal and very public environment;
 - a brief description of the fabrication, transportation and installation process;
 - a statement setting out the total cost to the City of the Public Art (including applicable HST), as transported to and installed at the Site;
 - the Artist's timetable for completion of fabrication, transportation and installation; and
 - a description of the contemplated maintenance program/procedures for the Public Art, as required;
- clearly labeled sketches, pictures, photographs and/or other renderings of what the proposed Public Art will look like at the Site (preferably from several elevations, including each of the elevations as viewed most frequently by the general public); and



- the **Artist's Agreement** (including assignment and warranty) set out in **Attachment B** attached hereto, forming a part hereof, dated and signed by the Artist.

Any digital images and other electronic data that are submitted must be PC compatible (.jpg, .tiff, .doc, .pdf or .bmp format), have an approximate resolution of 1024 x 768 pixels, and be submitted on a CD (no zip disks, hyperlinks or e-mail submissions will be accepted); and digital images should be labeled as follows: *Artistname_Number.format*.

Artists wishing to have their support materials returned must indicate this with their submissions. Proposals of those Artists selected to proceed to any next stage of the selection process will not be returned until final selection has been completed and successfully awarded.

Public Art Budget and RFP Costs: The total budget allocated for the selected Public Art is \$200,000.00 (exclusive of any applicable HST and any honorarium that might be paid to short-listed proponents as part of the selection process). This amount is the total remuneration that will be paid to the successful Artist under and in accordance with this RFP. This amount of \$200,000.00 includes all of the successful Artist's costs, fees, salaries, services, materials, duties and taxes (other than applicable HST and any honorarium). It also includes the cost of transportation of the Public Art to the Site and any other costs associated with its installation that the City does not agree (in its discretion) to assume.

Except as stated in this RFP with respect to any honorarium awarded to short-listed Artists, any and all costs incurred by each Artist in preparing any submission and responding to this RFP are for the account of the Artist.

RFP Terms Binding on Proponents: All proposals submitted in response to this RFP are deemed to incorporate in them all the terms and conditions contained in this RFP, including all attachments; and all Artists and other parties who comprise a proponent are bound by this RFP and all such attachments, terms and conditions. Additional terms and conditions (including the form of Artist's contract to be entered into between The City and the successful Artist) that form an integral part of this RFP are set out in **Attachment C**.

Selection Process: The final selection of Public Art will be made by Common Council of the City, on the recommendation of the *Saint John 225 Committee*. Its decision is final and binding on all proponents who submit proposals in response to this RFP. The selection process will be facilitated by the *Saint John 225 Committee*, its *Public Art Advisory Sub-committee* (composed of members of the *Saint John 225 Committee*, City staff and members of the *Saint John Community Arts Board*), which (in turn) will assess and consider recommendations presented to it by a *Public Art Jury* composed of members of the New Brunswick or broader arts community. **The City reserves the right to change the members of the above committee, sub-committee and/or jury, and the selection process, at any time, without notice to any proponent.**

In addition to compliance by the Artist with the other terms of this RFP, factors that will be taken into account in the selection process will include the Artist's previous experience and previous works, the creativity of the proposed Public Art, the perceived value received for the Public Art budget expenditure, visibility of the Public Art to the general public at all times of the year (day and night), and the aesthetics, acceptability and relevance of the Public Art to the Site and to the general public.



After completing a preliminary review of all submissions and proposals, the City may decide to shortlist up to three (3) proponents and request (and to be received by the City by a deadline provided by the City) models, samples, renderings, maquettes and/or other additional information from some or all of such short-listed proponents for purposes of assisting the City in its selection process. In such circumstances, an honorarium (in an amount as determined by the City) may be paid to such proponents to defray some or all of such proponents' reasonable costs associated with the City's request.

Except for any honorarium that might be awarded to selected short-listed artists, all costs and expenses incurred by Artists in responding to this RFP are for the Artist's account.

One or more works of art may be selected from different Artists, in which event the total budget amount of \$200,000.00 will be allocated and divided among the selected Artists in a reasonable manner that is agreed to by the City and the selected Artists.

The City reserves the right to reject any and/or all submissions and proposals, to alter, extend, terminate or postpone this RFP (including deadlines and any other dates stated herein) for any or no reason, and to issue a new request for proposals or negotiate directly with one or more Artists.

RFP-Related Questions and Enquiries: Any questions, concerns (including RFP Errors as referred to in Attachment B), need for clarification, requests for Site tours and other enquiries of any kind (collectively, "Enquiries") are welcome, but they must be **in writing** and directed by e-mail or fax communication only to the Purchasing Agent at the contact address below:

David Logan – Purchasing Agent
Department of Materials and Fleet Management
City of Saint John
175 Rothesay Avenue
Saint John, NB
E2L 4L1
Tel.: 506-649-6038
Fax: 506-658-4742
E-Mail: dave.logan@saintjohn.ca

The City and/or the Purchasing Agent may respond to proponent' Enquiries individually or collectively, disclosing all Enquiries, and all answers thereto, at the same time to all proponents. **Enquiries relating to this RFP must be received by the Purchasing Agent no later than 4:00 p.m. Atlantic time on Thursday, June 10, 2010.**

Submission of Proposals – and Deadline: Proponents must deliver three (3) copies of their proposal (including all supporting documentation) **no later than 4:00 p.m. Atlantic time on Thursday, June 24, 2010** to the Purchasing Agent at the address shown below. Each proposal must clearly indicate the Artist's name and return address, and must be clearly marked as follows:

Proposal: 2010-993001P – Public Art – Saint John 225
David Logan – Purchasing Agent
Department of Materials and Fleet Management
City of Saint John
175 Rothesay Avenue
Saint John, NB
E2L 4L1



Late proposals will be time and date stamped and returned to the Artist unopened. Upon request, Artists will be notified of the results of the selection process (after it is complete) by mail.

Informal or Conditional Proposals: Proposals which are incomplete, conditional, illegible or obscure, or contain reservations, erasures, alterations or irregularities of any kind, may be rejected as informal. Proposals that contain prices or pricing that appear to be unbalanced or incorrect, in a manner that may adversely affect the interests of the City, may be rejected.

Conflict of Interest: Artists must disclose to the City in their proposal any potential conflict of interest, including any conflict which may involve City employees, City contractors or consultants engaged in connection with *Saint John 225*, Common Council members, members of the Saint John 225 Committee or any of its subcommittees or members or employees of City agencies, boards, or commissions who may have a financial or personal interest in the Artist. If such conflict of interest does exist the City may, in its discretion, refuse to consider the proposal.

Proposal Not to be Withdrawn: To ensure that the City has sufficient time to review all submissions, including any additional submissions of short-listed Artists, each Artist’s proposal is open for acceptance by the City, irrevocable, not to be withdrawn by the Artist and valid and in full force and effect from the time of delivery thereof to the City to and including the earlier of: (i) receipt by an Artist of notification in writing from the City that such Artist has not been selected or short-listed; and (ii) **4:00 p.m. Atlantic time on Friday, September 24, 2010**. No negotiation, discussion or other dealing of any kind initiated or participated in by the City with any one or more of the proponents, and no exercise by the City of any right under this RFP, affects the irrevocable nature of each proposal.

Attachments to RFP: This RFP includes the following attachments:

- **Attachment A –Location for Public Art – and – Site Information**
- **Attachment B – Artist’s Agreement**
- **Attachment C – Additional RFP Standard Terms and *Public Art Contract***

Listing of Relevant RFP-Related Dates	
RFP Issue Date	Friday, March 26, 2010
Websites Posting Date	Friday, March 26, 2010
Artist RFP Enquiry Deadline	Thursday, June 10, 2010 – 4:00 pm
Artist RFP Response Deadline	Thursday, June 24, 2010 – 4:00 pm
Jury & Committee Deliberations – No. 1	Week of July 12, 2010 (or earlier)
Notice re Shortlisted (SL) Artists	Friday, July 16, 2010
SL Artist Response Deadline	Thursday, August 17, 2010 – 4:00 pm
Jury & Committee Deliberations – No. 2	Monday, August 23, 2010 (or earlier)
SJ 225 Committee Approval	Wednesday, August 25, 2010 – 12:00 pm
Common Council Approval	Monday, September 13, 2010
Public Art Contract In Place	Week of September 20, 2010
Proposal Expiration Date	Friday, September 24, 2010

All dates shown above may be subject to change in accordance with this RFP’s terms and conditions.



Attachment A

Location for Public Art – and – Site Information

[Refer to attached Site plan and Photographs.]

Artists should be aware that information shown in this Attachment A does not disclose all information that may be relevant to proponents, including potential visual obstructions, such as benches, lighting standards, shrubs, trees, bridge supports and abutments, etc. **Site visits are therefore strongly encouraged.**



Attachment B

Artist's Agreement

In consideration of the opportunity to enter The City of Saint John's *Request for Proposals – Saint John 225 Public Art Opportunity* (the "**RFP**"), and other good and valuable consideration, the undersigned (the "**Artist**") hereby agrees, assigns and warrants to and in favour of the City of Saint John and its successors and assigns (collectively, the "**City**") as follows:

1. The Artist hereby transfers and assigns to the City all right, title and interest (including copyright and any other intellectual and other property right, excluding only the Artist's moral rights) in and to the present and future artwork, concepts, ideas, drawings, maquettes, renderings and other work submitted by and/or forming the subject matter of the Artist's proposed Public Art (as defined in the RFP) and as described in the Artist's proposal submitted to the City in response to or arising out of the RFP, and in respect of which this Artist's Agreement forms a part (collectively, the "**Artist's Work**").
2. The Artist represents and warrants to the City that:
 - a. the Artist's Work is original and the Artist is the sole creator of the Artist's Work;
 - b. the Artist holds all intellectual and all other property rights associated with the Artist's Work and has not assigned or transferred any right, title or interest in the Artist's Work to any other person or entity; and
 - c. the Artist holds all rights necessary to give full force and effect to this Artist's Agreement.
3. The Artist agrees to observe and be bound by all terms and conditions of the RFP.
4. In the event that the Artist is not selected by the City as the successful Artist under the RFP, the Artist acknowledges that the rights granted by the Artist to the City herein will revert to the Artist upon notice to the Artist that the Artist was not selected by the City.

Dated at _____ this ____ day of _____, 2010.

[Name of Artist: _____]



Attachment C

Additional RFP Standard Terms and Public Art Contract

1.0 **RFP Not an Offer:** Each Artist who submits a proposal acknowledges and agrees, and is deemed to acknowledge and agree, that this RFP does not constitute an offer or invitation to treat by the City in any form or circumstance. No legal relations arise from this RFP or from the City's receipt and/or evaluation or other dealing with any proposal. Liability of the City to any proponent (and whether in contract, tort, at law, in equity or otherwise howsoever occurring) arises solely upon the execution and delivery by the City and the successful Artist of the ***Public Art Contract***, and then solely and strictly in accordance with the terms thereof.

2.0 **Confidential Information:** All information provided by or on behalf of the City, including this RFP, (collectively, "**Confidential Information**") is the sole and exclusive property of the City. Confidential Information will be used by each Artist and proponent subject to and strictly in accordance with this RFP and solely for the purpose of submitting a proposal herein and (if an Artist or proponent becomes the successful Artist) in performing the ***Public Art Contract*** entered into between the City and the successful Artist, and for no other purpose or use whatsoever.

3.0 **Errors or Deficiencies:** Each proponent will promptly notify the City of any error, ambiguity, discrepancy, mistake or deficiency (collectively, an "**RFP Error**") that it discovers in any of the documents comprising this RFP. Any notification of an RFP Error, and/or any request for clarification thereof will be submitted in writing to the City's Project Coordinator. The City reserves the right not to respond to any such disclosed RFP Error, and not to distribute copies of any such disclosed RFP Error to other proponents. If, in its sole and absolute discretion, the City believes that an RFP Addendum is necessary or desirable as a result of anything disclosed by such RFP Error, the City will issue an appropriate RFP Addendum to all prospective proponents.

4.0 **RFP Addenda:** The City may, in its sole and unfettered discretion, at any time prior to five (5) days before the expiration of the proposal deadline, issue addenda to this RFP that respond to an RFP Error and/or that clarify, supplement, change or otherwise amend this RFP (collectively, "**RFP Addenda**"). All RFP Addenda will be sent in writing to all proponents, and receipt thereof will be promptly acknowledged by each proponent in writing. RFP Addenda will, as applicable, supplement, amend, delete and/or supersede the information and requirements contained in this RFP and (as applicable) any previously issued RFP Addenda. Clarifications, amendments, deletions, additions or addenda made in any manner other than by written RFP Addenda issued by the City will not be part of this RFP and will not be binding on the City.

5.0 **No Reliance on City:** Each proponent will (entirely at its expense) carefully examine, and will be deemed to have carefully examined, the whole of the terms, conditions, instructions, specifications, designs, drawings, plans and all other documents forming part of this RFP (including all RFP Addenda). Each proponent is solely responsible for conducting its own thorough and complete examination of this RFP and the Site, and for ensuring that it has a full and complete understanding thereof. Each proponent will promptly report, and/or request clarification of, any RFP Error which it discovers during the course of such examination. While the City has acted in good faith and in a commercially reasonable manner in the preparation of this RFP, all information and knowledge (including Confidential Information) contained in this RFP, or provided or made available as part of this RFP, including any RFP Addenda and other clarifications, amendments and/or addenda thereto, are provided and/or made available by the City to each proponent entirely on an "as is, where is" and "without recourse" basis. Neither the City nor any of its elected officials, mayor, councillors, commissioners, committee members, employees, advisers, volunteers or consultants makes any representation or warranty or offers any assurance whatsoever as to the accuracy, appropriateness or completeness of any such information (including Confidential Information). Any representation or warranty implied by statute, common law, customary practice or otherwise under any applicable law is hereby expressly disclaimed. Each proponent is solely responsible for ensuring, entirely at the proponent's cost and expense, that it has all of the information necessary to respond to this RFP and prepare and submit its proposal and for fully informing and satisfying itself as to:



- (a) the accuracy, appropriateness and completeness of all information upon which each proponent relies;
- (b) all requirements of this RFP and the Public Art Project;
- (c) all general and local conditions (including specific and general Site conditions and general conditions at and about Saint John, New Brunswick, Canada) which may be encountered in the provision, performance, delivery, installation and maintenance of the Public Art; and
- (d) all other matters which may in any way affect its provision and performance of the Public Art (including, without limitation, all matters which may affect costs of the proponent and the time required by proponent to perform all obligations).

6.0 **False or Misleading Information:** The City may, in its sole discretion, independently verify any information in any Proposal or information regarding any proponent and/or any of the proponent's members. The findings of such independent verification and investigation, if any, will be considered in the evaluation of such proponent's Proposal. The City reserves the right to disqualify any proponent whose Proposal contains false or misleading information.

7.0 **Continuing Rights of City:** Notwithstanding any other provision of this RFP, but without prejudice to or any limitation upon any other rights and remedies of the City under this RFP, the City reserves the right to proceed in connection with this RFP, any and/or all proposals and/or the Public Art Project as the City, in its sole and unfettered discretion, determines best suits its needs, and both before and after the proposal deadline. Without in any way limiting the generality of the foregoing, the City may:

- (a) cancel this RFP and/or the Public Art Project, in whole or part, at any time prior to the execution and delivery of the **Public Art Contract** by both the City and the proposed successful Artist;
- (b) modify and/or extend the proposal deadline and/or any other time period specified in this RFP;
- (c) issue RFP Addenda or other modifications, amendments and/or a second or modified RFP in respect of the Public Art Project;
- (d) increase, reduce or otherwise change the limits and scope of the Public Art Project;
- (e) divide and/or split up the Public Art Project, and award any part thereof to one or more different proponents or other Artists;
- (f) change any dates, schedules, deadlines and/or time periods in this RFP;
- (g) disqualify and/or reject any or all proposals, whether or not completed properly and in full compliance with this RFP, and whether or not such proposals contain all required information;
- (h) waive any irregularity, error, mistake, omission, non-conformance or non-compliance (and whether material or not) in or by any proposals and/or in this RFP;
- (i) discuss, negotiate with and/or accept new and/or additional information from any or all proponents prior to the selection of one or more preferred proponents and/or the successful Artist, without offering other proponents an opportunity to amend their proposals or to provide new and/or additional information;
- (j) discuss, negotiate with and agree to any changes, amendments or modifications to the proposal of one or more proponents, without in any such case giving any other proponents any notice thereof and without offering any other proponents an opportunity to change, amend, or modify their proposals; and
select one or more preferred proponents and the successful Artist, and award the **Public Art Contract** to any proponent, that the City considers, in its sole and unfettered discretion, best serves the City's requirements under this RFP and/or in respect of the Public Art Project.

8.0 **City Decision Final and Binding:** The City's decision to accept any proposal and/or to award the **Public Art Contract** to the successful Artist is binding on all proponents and Artists, and not subject to appeal or challenge of any kind in any jurisdiction.



PUBLIC ART CONTRACT

THIS PUBLIC ART AGREEMENT (“**Agreement**”) made as of _____ [Insert date] by and between:

THE CITY OF SAINT JOHN, a body corporate by Royal Charter, confirmed and amended by Acts of the Legislative Assembly of the Province of New Brunswick, City Hall, PO Box 1971, 15 Market Square, Saint John, NB E2L 4L1 (hereinafter called the “**City**”), and

[Insert full name and address] (hereinafter called the “**Artist**”).

WHEREAS the City solicited proposals for public artwork to be created, delivered and installed at a location as more particularly described herein along Harbour Passage in Saint John, New Brunswick (the “**Site**”) pursuant to a *Request for Proposals – Public Art Opportunity* (the “**RFP**”) to which the Artist submitted a proposal in response (collectively, in accordance with the RFP, the “**Project**”); and

WHEREAS the City, with the participation and assistance of the Saint John 225 Committee and the Saint John Community Arts Board (hereinafter collectively called the “**Arts Board**”), and other advisors and juries, approved the proposal of the Artist in connection with the Project;

NOW, THEREFORE, the parties do hereby for valuable consideration covenant and agree as follows:

1. Delegation by City: The City hereby delegates the administration of this Agreement to David Logan, Purchasing Agent, City of Saint John [506-649-6038]. The Artist agrees to work with, and to cooperate fully with said representative of the City.

2. Description of Artwork: Subject to and in accordance with the project, the Artist will create and install the following work of art at the Site:

Title:

Dimensions:

Medium:

Description of the Work:

(the above work of the Artist, together with the present and future artwork, concepts, ideas, drawings, maquettes, models, samples, renderings and other work forming the subject matter thereof, and together further with all right, title and interest (including copyright and any other intellectual and other property right, excluding only the Artist’s moral rights) therein and thereto, hereinafter collectively defined as the “**Work**”).

3. Standards of Performance: The Artist has familiarized him/herself with the Project, the Site and the local conditions under which the Work is to be installed and maintained, and has communicated any material observations, and any concerns, to the City.

4. Changes in Design: The Artist will create the Work in accordance with the Project and the approved design. Recognizing that the shift in scale from model to full scale requires artistic adjustments, the Artist may, with the City’s prior consent, make minor changes in the final Work as is deemed aesthetically or structurally necessary.

5. Permanent Location: The permanent location of the Work will be at the Site, at the location thereon described below:



6. Price and Payment Schedule: Subject to the Artist's compliance with this Agreement and the Project, the City will pay the Artist a total sum of _____ dollars (\$_____), plus applicable HST. Payment will be made in the following sequence:

\$_____ upon signing of this Agreement by the Artist and the City;

\$_____ upon completion of one half (1/2) of the required construction or creation of the Work, in accordance with this Agreement;

\$_____ upon installation of the Work in its permanent location, in accordance with this Agreement;

\$_____ upon inspection and final acceptance of the installed Work by the City and the receipt from the Artist of the certification referred to in section 15 below and all maintenance instructions and photographic and other documentation required under this Agreement; and

\$_____ (being not less than ten percent (10%) of the total sum shown above) upon expiration of all applicable mechanics' lien and other statutory lien holdback periods, and the receipt from the Artist of satisfactory independent written evidence that no such liens exist.

To receive payments subsequent to the initial payment, the Artist will submit a billing or invoice to the City when each of the stages outlined above have been reached, together with a written certificate of the Artist that such stage has been successfully achieved under the Agreement.

7. Final Acceptance: Final acceptance will be reached when the City signifies that the Work has been completed and installed according to terms of this Agreement. Sole ownership of the Work by the City occurs when a letter of final acceptance is sent by the City to the Artist. Such letter will initiate the final payment process, and (subject to applicable holdback requirements) final payment will be made within thirty (30) days of the date of acceptance. Copies of the letter of acceptance will be forwarded to the Arts Board.

8. Assignment of Work and Services: The work and services of the Artist are personal and will not be assigned, sublet or transferred. This prohibition of assignment does not prevent the Artist from employing qualified personnel who work under the Artist's supervision.

9. Artist as Independent Contractor: The Artist agrees to perform all work under this Agreement as an independent contractor and not as an agent or employee of the City. The Artist as independent contractor will furnish all supervision, labour, materials, equipment, supplies, other incidentals, as well as storage, transportation, shipping, and installation of the Work.

10. Inspection and Review: The City has the right at reasonable times and with advance notice to review the Work while in the process of execution and to request and receive progress reports. The City will have the right of entry at all reasonable times to the premises where work is being done and/or where materials for the Work are stored for purposes of inspecting the Work and materials and for determining their state of progress; and for recovering the Work or materials in the case of default by the Artist under this Agreement.

11. Installation Time Schedule: The Artist will begin work on or before receipt of the first payment due, and will complete the Work and installation thereof by the date of _____ [Insert completion date], unless that date is extended by the City, in which case it will become the responsibility of the Artist to store the Work before its installation. In the event that the Work and the installation are not completed by the above date, the Artist will incur a penalty of one percent (1%) of the remaining balance which would be due the Artist upon completion and installation under this Agreement for each day after the above date until completion of the Work and installation. The Artist will notify the City and the Arts Board of installation times and dates at least 14 days prior to installation.

12. Documentation and Records: Within thirty (30) days of installation of the Work, the Artist will furnish the City with at least six (6) separate first class digital images (in jpeg format, or as otherwise reasonably requested by the City)



of the Work and (if requested) a minimum of six (6) professional quality 35mm slides and two (2) 8"x10" colour glossy photographs of the Work, and will provide a full written narrative description of the Work.

13. Public Notice: The City agrees to provide and install an identification plaque for the Work within six (6) months of the final acceptance date. The written contents of the plaque will include at least the following information:

Title of Artwork: _____

Year: _____

Artist: _____

Commissioned by: The City of Saint John for its citizens and visitors, in recognition of the City's 225th anniversary and its designation as a Cultural Capital of Canada for 2010, and pursuant to the City's *Arts and Culture Policy*.

The plaque will be of such medium and design as to be appropriate to the Work itself and the permanent location of the Work, and the Artist will be consulted as to design. In the case of a series of Works, the Artist and the City will reach agreement in writing concerning the number of plaques needed for appropriate identification.

14. Warranties and Transfer: The Artist will promptly repair or replace, at no cost to the City, all defects in materials or workmanship of which the Artist has been properly notified within a period of one (1) year from date of completion (including final installation) of the Work. The Artist represents and warrants to the City that the design of the Work is the original product of the Artist's own creative efforts. The Artist further represents and warrants to the City that: (i) the Artist holds all intellectual and all other property rights associated with the Work and has not assigned or transferred any right, title or interest in the Work to any other person or entity; and (ii) the Artist holds all rights necessary to give full force and effect to this Agreement. The Artist hereby agrees that all right, title and interest in the Work are delivered, and the Artist hereby grants, assigns and transfers, to the City the Work, free and clear of any liens, claims and encumbrances of any kind arising from any source whatsoever.

15. Indemnity and Liability: The Artist hereby, at the Artist's own cost and expense, indemnifies, saves harmless and defends the City, and its respective directors, officers, elected officials, agents, consultants, employees and members, from and against all claims, damages, losses and expenses, including legal fees, arising out of, or resulting from, the performance by the Artist under this Agreement or the breach or failure of the Artist so to perform hereunder, provided that such claim, damage, loss or expense is caused, in whole or in part, by any negligence, default, breach, act, or omission of the Artist, or of anyone directly or indirectly employed or retained by the Artist, or anyone for whose act the Artist may be liable. The Artist further indemnifies, saves harmless and defends the City, and its respective directors, officers, elected officials, agents, consultants, employees and members from and against any claims or liens of the Artist's subcontractors, and his, her and their labourers, employees, materials persons, mechanics, and suppliers. The extent of the indemnification provisions herein will not be limited by any provision for insurance contained in this Agreement. Before final payment is approved, the Artist will supply a completed certification of payment of all debts and claims relating to the Work and a lien release.

16. Insurance: Prior to the execution of this Agreement, the Artist will provide the City with a certificate or certificates evidencing automobile liability insurance and commercial general liability insurance, each policy being in an amount of not less than \$1,000,000.00 combined single limit for each occurrence, and providing the City with thirty (30) days written notice prior to cancellation. The commercial general liability insurance will name any subcontractors employed or retained by the Artist and will include (and the certificate provided to the City will disclose): (i) operations of the Artist in connection with this Agreement; (ii) products and completed operations coverage; (iii) contractual liability with respect to this Agreement; (iv) the City added as an additional insured; (v) a cross liability clause; and (vi) owned and non-owned automobile coverage.

17. Compliance with Laws: In the performance of this Agreement and provision of the Work, the Artist will comply with all applicable workplace, health and safety laws and all other federal, provincial, municipal and local laws, by-laws, rules and regulations.



19. Maintenance: As a condition of, and prior to, final acceptance of the Work, the Artist will supply the City with written maintenance instructions. During the Artist’s lifetime, the Artist will supply, at no charge, advice as to problems arising in relation to maintenance of the Work.

20. Repairs: The City will make every reasonable effort to consult with the Artist in all matters concerning repairs and restoration of the Work. All restoration work will be done in accordance with proper restoration and conservation standards in Canada.

21. Relocation: The Work will be placed in the location for which it was selected. The City agrees that the Artist will be notified if, for any reason, the Work has to be removed or moved to a new location.

22. Ownership of Documents and Models: Drawings, specifications, and models of the Work, or which relate to the Work, including all preliminary studies, remain the property of the City following proper completion of the Work under this Agreement or following termination of this Agreement by the City where caused by the default of the Artist. All such drawings, specifications, and models of the Work, or which relate to the Work, including all preliminary studies, will not be used by the Artist on other projects or extensions of this Project except where agreed by the City pursuant to a subsequent agreement in writing between the Artist and the City.

23. Notice: The Artist agrees to notify the City of changes in the Artist’s address within ninety (90) days of that change, and failure to do so will be deemed a waiver of Artist’s rights contained in this Agreement. All communications and notices required or permitted under this Agreement will be in writing and will be deemed sufficiently served if hand delivered or sent by registered mail or prepaid courier.

24. Termination: This Agreement may be terminated by the City upon written notice to the Artist in the event of failure by the Artist to perform in accordance with the terms of this Agreement. Nothing in this Agreement abrogates or limits any claims which the City may have against the Artist for failure to perform in accordance with this Agreement, including any claim for reimbursement of funds advanced to the Artist under section 6 above.

25. Non-Waiver: Except as expressly provided in this Agreement, no failure or waiver or successive failures or waivers on the part of either party hereto, their successors or permitted assigns, in the enforcement of any condition, covenant or article of this Agreement operates as a discharge of any condition, covenant or article, or renders the same invalid, or impairs the right of either party hereto, their successors or permitted assigns, to enforce the same in the event of any subsequent breaches by the other party hereto, its successors or permitted assigns.

26. Modification of this Agreement: This Agreement may be amended or modified only if in writing and signed by the parties, and represents (together with all terms and conditions of the RFP in connection with the Project) the entire agreement of the parties.

27. Inurement and Binding Effect: This Agreement inures to the benefit of the City, and its successors and assigns, and is binding upon the Artist.

Witness:

THE CITY OF SAINT JOHN

By: _____
[Mayor]

By: _____
[Common Clerk]

Resolution Date: _____, 2010

Artist: _____

[Print name of Artist]