

Artwork Contract
“Children Are Our Future”

This Contract is by and between the City of Waukesha, a Wisconsin municipal corporation, 201 Delafield Street, Waukesha, Wisconsin 53188, referred to herein as the City; SHARP Literacy, Inc., Inc. Together, the City and SHARP Literacy, Inc. are referred to as the Parties.

Recitals

The City wishes to accept for placement in Frame Park artwork commissioned by SHARP Literacy, Inc.

Now, therefore, the City and SHARP Literacy, Inc. agree, and contract as follows:

1. **Scope of Work.** SHARP Literacy, Inc. shall commission a sculpture entitled *Children Are Our Future*. All expenses of the creation of the stainless steel and concrete sculpture shall be borne solely by SHARP Literacy, Inc. SHARP Literacy, Inc. shall be responsible for delivery and installation of the artwork in Frame Park, in the location specified by the City. The scope of the project is more particularly described in the attached Exhibit A, which is incorporated herein.
2. **Delivery and Installation.** SHARP Literacy, Inc. shall bear the risk of damage to the artwork until it is fully installed in Frame Park, and SHARP Literacy, Inc. is responsible for packing, loading, moving, unloading, unpacking and installing the stainless steel and concrete sculpture into place in Frame Park at the location designated by the City. SHARP Literacy, Inc. acknowledges that the stainless steel and concrete sculpture will be in a public area, accessible to the public, and that adults and children will be in contact with the artwork; therefore, SHARP Literacy, Inc. shall install the artwork so that it is solidly mounted, will not tip, and will not have unreasonably sharp or otherwise-dangerous surfaces or edges.

SHARP Literacy, Inc. shall provide barricades or fencing, as directed by the City, during installation of the ceramic mask sculpture. The work site shall be kept clean, free of debris and trash. At the conclusion of installation, SHARP Literacy, Inc. shall remove all waste and debris, leaving the site clean.
3. **Payment.** City is not obligated to make payment to SHARP Literacy, Inc.
4. **Time.** SHARP Literacy, Inc. shall commence the stainless steel and concrete sculpture as promptly as is possible and shall complete the sculpture no later than October 31, 2022, subject only to delays for circumstances beyond SHARP Literacy, Inc.’s control, provided SHARP Literacy, Inc.’s recommences work promptly in good faith upon the return of normal circumstances.
5. **Assignment Prohibited.** This Contract, and SHARP Literacy, Inc.’s responsibility to create the stainless steel and concrete sculpture under this Contract, may not be assigned in whole or in part by SHARP Literacy, Inc. without the City’s written consent.
6. **Standard of Performance, Warranty of Quality.** SHARP Literacy, Inc. warrants that the Sculpture will be created according to generally-accepted practices and using generally-accepted methods, commensurate with the quality of other works, to the highest standards of the Artist’s trade. SHARP Literacy, Inc. warrants to the City that the Sculpture will be free from defects in materials and workmanship, for a period of three years after delivery of the Sculpture to the City. SHARP Literacy, Inc. shall repair or replace the Sculpture, as necessary to conform with this warranty, if the City notifies SHARP Literacy, Inc. of defects in materials or workmanship within the stated three-year period.

7. **Ownership of Sculpture, Warranty of Title.** Upon installation in Frame Park and final acceptance by the City, title to the stainless steel and concrete sculpture shall pass to the City. SHARP Literacy, Inc. warrants to the City that it owns the sculpture and it is free and clear of all claims, liens and encumbrances. SHARP Literacy, Inc. further warrants that upon installation in Frame Park and final acceptance by the City, all copyright interests in the ceramic mask sculpture shall transfer to the City.
8. **Amendment.** This Contract can only be amended by the written, mutual agreement of the Parties. No change to the scope of the ceramic mask sculpture project, shall be effective unless done by the written mutual agreement of the Parties.
9. **Parties Are Independent Contractors.** Nothing in this Contract shall be construed to create any relationship between the Parties other than independent contractors. Unless specifically provided in this Contract, the Parties are not agents for one another, have no authority to bind the other contracts, and have no vicarious liability for the other's acts or omissions.
10. **Governmental Immunities and Notice Requirement Preserved.** Nothing in this Contract shall be construed to be a waiver or modification of the governmental immunities or notice requirements imposed by Wis. Stats. §893.80 or any other law.
11. **Assistance of Counsel, Voluntary Contract.** The Parties acknowledge that they have either had the assistance of legal counsel in the negotiation, review and execution of this Contract, or have voluntarily waived the opportunity to do so; that they have read and understood each of this Contract's terms, conditions and provisions, and their effects; and that they have executed this Contract freely and not under conditions of duress.
12. **Adequacy of Consideration.** The Parties acknowledge that the consideration expressed in this Contract is adequate and sufficient to make the obligations contained in this Contract binding upon the Parties.
13. **Severability.** If any term of this Contract is held unenforceable by a court having jurisdiction, then to the extent the unenforceable term can be severed from the remainder of this Contract without affecting the enforceability of the remainder of this Contract or substantially frustrating its purpose, it will be so severed, and the remainder of this Contract will remain in effect and enforceable.
14. **Survival and Parties Bound.** Unless specifically limited in this Contract, any term, condition or provision of this Contract will survive the execution of this Contract or any stated time periods, to the extent necessary for their performance. This Contract is binding upon, and inures to the benefit of, the Parties' successors, assigns, heirs, executors, trustees and personal representatives.
15. **Governing Law and Jurisdiction.** This Contract will be construed and enforced according to the laws of Wisconsin. If a lawsuit arises out of this Contract, it shall be filed in the state Circuit Court for Waukesha County, Wisconsin. The Parties consent to personal and subject-matter jurisdiction in Wisconsin and waive all jurisdictional defenses.
16. **Integration.** This Contract constitutes the entire agreement of the Parties, and any other oral agreements or understandings, not expressed in a written, mutually-executed amendment to this Contract, shall be void.

City of Waukesha

By Shawn N. Reilly, Mayor
Date:_____

Attested by Gina L. Kozlik, City Clerk
Date:_____

SHARP Literacy, Inc.,

Date:_____