

## **AGREEMENT FOR RESTORATION OF COMMUNITY BRIDGE**

This agreement (“Agreement”) is made and entered into this 4<sup>th</sup> day of November 2022, by and between The City of Frederick, a municipal corporation of the State of Maryland (the “City”) and Studio William Cochran, Inc., T/A Cochran Studio (the “Artist”) (each individually a “party” and collectively the “parties”).

### **BACKGROUND**

In 1993, the City commissioned William Cochran to complete that public art project commonly known as “Community Bridge” as part of the Carroll Creek Park project. The Community Bridge mural was completed and installed in 1998 (the “Original Artwork”) and has deteriorated to some extent since that time. To address such deterioration, the Board of Aldermen allocated funding for the restoration of the Original Artwork as part of the Fiscal Year 2023 budget process. The purpose of this Agreement is to memorialize the terms and conditions under which the Artist will use such funding to recreate all parts of the Community Bridge mural on City-supplied panels to a level of quality that matches or exceeds the Original Artwork. The newly recreated work is referred to in this Agreement as the “Work”. The installation of the Work will be governed by a future contract between the City and a third party and is not included in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants contained herein, the City and the Artist agree as follows:

### **ARTICLE I. SCOPE OF SERVICES.**

#### **1.1. General.**

- (a)** The background recitals stated above are hereby incorporated into and made a substantive part of this Agreement.
- (b)** The Artist is responsible for compliance with all applicable laws and regulations, including any permitting requirements. The City will notify the Artist if a permit is required and will be responsible for any permit application fees.

#### **1.2. Scope and Execution of the Work.**

- (a)** The scope of work under this Agreement includes 2,531 square feet of finished painting by the Artist over an estimated duration of 42 months. This scope of work does not include the 144 square feet on the eight panels in Fiscal Year 2022 under previously encumbered funding. The total area of the bridge mural is 2,675 square feet.
- (b)** Except as otherwise provided herein, the Artist shall perform all services and furnish all supplies, material, and equipment as necessary for the design, execution, and fabrication of the Work, including but not limited to studio space, painting assistants, incidental expenses, and overhead, as further described and depicted on Exhibit A, attached hereto and incorporated herein by this reference. The City will provide funding for mineral paint, substrate panels, panel fabrication, transport, and installation as further described in Exhibit A.

- (c) The Artist shall furnish to the City a tentative schedule for completion of fabrication and installation of the Work, including a schedule for the submission of progress reports, if any. After written approval of the schedule by the City, the Artist shall fabricate the Work in accordance with such schedule, subject to the provisions of Section 3.2 of this Agreement. Such schedule may be amended by written agreement between the City and the Artist without requiring the modification of this Agreement.
- (d) The City may review and inspect the Work at reasonable times during the fabrication thereof.
- (e) The Artist shall complete the fabrication of the Work in substantial conformity with the Original Artwork. The Artist shall present to the City in writing for further review and approval any significant changes in the Work not permitted by or not in substantial conformity with the Original Artwork. A “significant change” is any change in the scope, design, color, size, material, texture or location on the Site of the Work which affects installation, scheduling, site preparation, maintenance for the Work or the concept of the Original Artwork.
- (f) Upon installation of the Work, the Artist shall provide to the City written instructions for appropriate maintenance and preservation of the Work.

### **1.3. Final Acceptance.**

The Artist shall advise the City in writing when each panel of the Work has been completed. The City shall inspect each panel and notify the Artist in writing of its final acceptance of each panel of the Work.

### **1.4. Risk of Loss.**

The risk of loss or damage to the Work shall be borne by the Artist until final acceptance of each panel of the Work, as provided in Section 1.3 of this Agreement, and the Artist shall take such measures as are reasonable to protect each section of the Work from loss or damage until final acceptance.

### **1.5. Insurance.**

The Artist shall obtain and maintain continuously in effect at all times during the execution of the Work, at the Artist's sole expense, comprehensive general liability insurance in the minimum amount of two million dollars (\$2,000,000).

### **1.6 Ownership of Documents.**

Upon final acceptance of the Work, all studies, drawings and designs prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist. There will be no blueprints unless the Artist makes a change in the design in accordance with this Agreement. In that case, the City may select, and Artist shall convey to the City, one set of the original blueprints submitted, the City representing that such drawings will be used by it solely for exhibition.

## **ARTICLE II. COMPENSATION AND PAYMENT SCHEDULE.**

### **2.1. Fixed Fee.**

The City shall pay the Artist a fixed fee of seven hundred ninety thousand, nine hundred thirty-seven dollars and fifty cents (\$790,937.50) (the "Fee"), which shall constitute full compensation for all services and materials to be performed and furnished by the Artist under this Agreement. Funding is contingent on the City's approval of the budget for FY24-FY26 as proposed in CIP 410037.

### **2.2. Additional Services.**

This Agreement shall not prevent additional services by the Artist and/or compensation to the Artist, provided such additional services and compensation are totally funded by private sources or through grants at no cost to the City. Any monies donated by private sources to the City for the Work shall be paid to the Artist as received.

### **2.3. Schedule.**

The Fee shall be paid in accordance with this section. Eighteen percent (18%) of the Fee shall be paid to the Artist upon the execution of this Agreement, recognizing that the Artist has already invested time and expense in preliminary design coordination with the City. The remainder of the Fee shall be payable after the Artist submits invoices to the City, upon the completion of each panel of the Work. The parties anticipate invoicing to occur monthly for the panels finished during that time.

## **ARTICLE III. TIME OF PERFORMANCE.**

### **3.1. Duration.**

The services to be required of the Artist as set forth in Article I shall be completed in accordance with the schedule for completion of the Work as proposed by the Artist and approved by the City.

### **3.2. Time Extensions.**

The City may grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the City in performing its obligations under this Agreement or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unexpectedly burdensome. Further, the City shall grant a reasonable extension of time to the Artist in the event that the Artist desires to perform additional work at the Site, at the Artist's expense and with the City's approval, which approval shall not be unreasonably withheld. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

## **ARTICLE IV. WARRANTIES.**

### **4.1. Warranties of Title.**

The Artist represents and warrants that:

- (a)** The Work is solely the result of the artistic effort of the Artist and his agents and employees;

- (b) Except as otherwise disclosed in writing to the City, the Work is unique and original and does not infringe upon any copyright;
- (c) The Work, or a duplicate thereof, has not been accepted for sale elsewhere; and
- (d) The Work is free and clear of any liens from any source whatever.

#### **4.2. Warranties of Quality and Condition.**

The Artist is not responsible for damage to the Work resulting from defects in the design or construction of the site, its maintenance, its surroundings, or the Flood Control Project or Linear Park. The Artist is not responsible for damage to the Work due to vandalism.

The Artist represents and warrants that:

- (a) The execution of the Work will be performed in a workmanlike manner;
- (b) The Work will be free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and
- (c) Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist to the City hereunder.

### **ARTICLE V. COPYRIGHT.**

#### **5.1. Reproductions.**

The Artist retains all rights under the Copyright Act of 1976, 17 U.S.C. Section 101 et seq., and all other rights in and to the Work except ownership and possession, except as such rights are limited by this section. In view of the intention that the Work in its final dimension shall be unique, the Artist shall not make any additional exact duplicate, dimensional reproductions of the final Work, nor shall the Artist grant permission to others to do so except with the written permission of the City. The Artist grants to the City, Frederick County government and tourism, Downtown Frederick Partnership; Heritage Frederick, African American Resources Cultural and Heritage Society, Frederick Arts Council, and Rotary Club of Carroll Creek and its assigns an irrevocable license to make two-dimensional reproductions of the Work for noncommercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, and catalogues or other similar publications, provided that these rights are exercised in a tasteful and profession manner.

#### **5.2. Notice.**

All reproductions by the City and City-approved promotional agencies shall contain the title of the Work, a credit to the Artist and a copyright notice substantially in the following form:

© William M. Cochran, date of publication.

### **5.3. Credit to City.**

The Artist shall use his best efforts to give a credit reading substantially, "an original work owned and commissioned by the City of Frederick, Maryland," in any public showing under the Artist's control of reproduction of the Work.

## **ARTICLE VI. MAINTENANCE AND REPAIRS.**

### **6.1. Maintenance.**

The City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The City shall reasonably assure that the Work is properly maintained and protected, taking into account the instructions of the Artist provided in accordance with this Agreement, and shall reasonably protect and maintain the Work against the ravages of time, vandalism and the elements. This clause extends to the plaque located on the Site that identifies the Artist, the title of the Work, the year of completion, donors, and educational information.

### **6.2. Repairs and Restoration.**

The City may determine when and if repairs and restorations to the Work will be made. During the Artist's lifetime, the Artist shall have the right to approve all repairs and restorations, provided, however, that the Artist shall not unreasonably withhold approval for any repair or restoration of the Work. If the Artist unreasonably fails to approve any repair or restoration, the City may make such repair or restoration. To the extent practical, the Artist, during the Artist's lifetime, shall be given the opportunity to make or personally supervise significant repairs and restorations and shall be paid a reasonable fee for any such services, provided that the City and the Artist shall agree in writing, prior to the commencement of any significant repairs or restorations, upon the Artist's fee for such services.

### **6.3. Alteration of the Work or the Site.**

The City agrees that it will not intentionally damage, obstruct, alter, modify or change the Work without the prior written approval of the Artist. The City shall notify the Artist of any proposed alteration or obstruction of the Site that would affect the intended character and appearance of the Work and shall consult with the Artist in the planning and execution of any such alteration and shall make a reasonable effort to maintain the integrity of the Work. Nothing in this Section shall preclude any right of the City to remove the Work or to destroy the Work.

## **ARTICLE VII. ARTIST AS INDEPENDENT CONTRACTOR.**

The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City nor shall the Artist exercise supervision over any employee or official of the City.

## **ARTICLE VIII. ASSIGNMENT, TRANSFER, SUBCONTRACTING.**

Neither the City nor the Artist shall assign or transfer an interest in the Agreement without the prior written consent of the other. The Artist may subcontract portions of the services to be provided hereunder at the Artist's expense provided that said subcontracting shall not affect the design,

appearance or visual quality of the Work and shall be carried out under the personal supervision of the Artist.

## **ARTICLE IX. TERMINATION.**

### **9.1. Breach of Agreement.**

If either party willfully or negligently fails to fulfill in a timely and proper manner, or otherwise violates, any of the material terms of this Agreement, the other party may terminate the Agreement by giving written notice to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party will have thirty (30) days after receipt of the notice to cure the default. If it is not cured, then this Agreement will be deemed to terminate automatically. In the event of default by the City, the City shall promptly compensate the Artist for all services performed by the Artist prior to termination. In the event of default by the Artist, all finished and unfinished drawings, sketches, photographs, and other work products prepared and submitted or prepared for submission by the Artist under this Agreement will at the City's option become its property, provided that no right to execute the Work shall pass to the City. Notwithstanding the foregoing, the Artist shall not be relieved of liability to the City for damages sustained by the City by virtue of a breach of this Agreement by the Artist, and the City may reasonably withhold payments to the Artist until such time as the exact amount of such damages due the City from the Artist is determined.

### **9.2. Death of Artist.**

In the event the Artist dies prior to the completion of the Work, the materials and the design, to the extent not protected by copyright law, shall become the property of the City. The City shall have the right to hire a replacement artist, from a list of artists approved by the Artist, on a "for hire contract" basis to complete the Work. All rights of reproduction will remain with the Artist's heir and assigns.

### **9.3. Surviving Covenants.**

The covenants and obligations set forth in Paragraph 5.3 and Article XI shall be binding upon the parties, their heirs, legatees, executors, administrators, assigns, transferees and all their successors in interest, and the City's covenants do attach and run with the Work and shall be binding to and until twenty (20) years after the death of the Artist. However, the obligations imposed upon the City under Article XI of this Agreement will terminate on the death of the Artist.

The warranties described in Section 4.2 shall survive for a period of one year after the final acceptance of the Work. The City shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranty which is curable by the Artist and which cure is consistent with professional conservation standards.

## **ARTICLE X. ADMINISTRATION AND NOTICES.**

### **10.1. Administration.**

The Deputy Director for Parks and Recreation shall administer this Agreement on behalf of the City. Wherever this Agreement requires any notice to be given to or by the City, or any determination or action to be made by the City, the Deputy Director for Parks and Recreation shall represent and act for the City.

**10.2. Notices.** All notices shall be in writing and shall be sufficiently given and served upon the other party by hand delivery or first-class mail and addressed as follows:

To the City:  
The City of Frederick  
Deputy Director for Parks and Recreation  
121 North Bentz Street  
Frederick, MD 21702

To the Artist:  
William Cochran  
Studio William Cochran T/A Cochran Studio  
7192 Meadowbrooke Drive  
Frederick, MD 21702

**10.3. Change of Artist's Address.**

The Artist shall notify the City of changes in his address. The failure to do so, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce those provisions of the Article that require the express approval of the Artist.

**ARTICLE XI. MISCELLANEOUS.**

**11.1. Jurisdiction and venue.**

This Agreement shall be governed by the laws of the State of Maryland, and the parties agree that the venue for the resolution of any disputes will be in the courts of the State of Maryland located in Frederick County.

**11.2. Severability.**

If any term or provision of this Agreement is determined by a court to be invalid or unenforceable, such finding will not affect the remaining terms and provisions of this Agreement, which shall remain in full force and effect.

**11.3. Integration.**

This Agreement constitutes the entire final agreement between the Parties. Except as otherwise provided in this section, the Parties intend that with respect to the matters provided for herein, this Agreement will supersede all prior oral or written agreements, commitments, or understandings between the City and the Artist or between the City and William Cochran as an individual. The Parties agree that on the date the City gives final acceptance for the installation of the Work, all such prior agreements, commitments, and understandings will be deemed to be void and of no further force or effect. The prior agreements contemplated by this section include but are not limited to the June 23, 1993 Agreement for Commission of Public Art Work between the parties and the amendments thereto, the June 12, 2006 Agreement for Artistic Repair and Restoration Services, and the June 9, 2017 Agreement for Repairs and Restoration to the Community Bridge.

**11.4. Modification.**

Except as otherwise provided herein, this Agreement may not be modified except in writing and duly executed by each party.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first set forth above.

**The City of Frederick**

**Studio William Cochran, Inc.  
T/A Cochran Studio**

By   
**Michael C. O'Connor, Mayor**

William Cochran  
**William M. Cochran, Principal**

**APPROVED FOR LEGAL SUFFICIENCY:**

By Rachel S. Nessen  
**Rachel S. Nessen, Acting City Attorney**

Exhibit A

## Cochran Studio

November 30, 2021 [Revised October 19, 2022]

To Bob Smith, Deputy Director, Parks and Recreation, City of Frederick

### Addenda #7 V5 Proposal: Community Bridge Restoration

This is the painting proposal for the CIP item now in development for the FY'23 budget process. It is not to be considered comprehensive or inflexible. It is intended to provide the cost and to list a range of considerations for discussion.

#### Proposed combined and revised scope of work:

**2,531 sq ft of finished painting by artist William Cochran over an estimated duration of 42 months.** This work will recreate all parts of the Community Bridge mural to a level of quality that matches or exceeds the original. This scope of work does not include the 144 square feet on the eight panels (highlighted on the schematic below) in FY '22 under previously encumbered funding (PO 22-002113). The total area of the bridge mural is 2675 square feet.



**Total cost of the 2,531 square feet scope of work described herein: \$790,937.50**

This scope of work assumes the following:

- All painting takes place in the facility of Cochran Studio, except for onsite touch-up after installation, and except for the heavy capstones, that must be painted onsite by the artist after they are uninstalled, pressure-washed, re-installed and mortared into place by others.
- The cost of painting **includes** the use (monopolization) of the studio space and all equipment, manpower, painting assistants, incidental expenses and overhead.
- The mineral paint, substrate panels, panel fabrication, transport, and installation as well as ongoing coordination and collaboration with SRG are **excluded** from this scope of work and will be provided by the City of Frederick.

- Any electric or gas-powered lifts or other onsite equipment necessary to fulfill this scope will be provided by the city.
- All technical design and material selections will be developed in collaboration with the City's consultants, who have sole responsibility for the technical design, the drawings and the appropriateness of the materials and material combinations for the intended purpose, including all measures for waterproofing and drainage.
- All technical design drawings shall be stamped by a licensed engineer.
- This Addenda and any contract(s) with the artist that result from this CIP item will incorporate and honor the applicable terms of the original 1993 Work of Art Commission Agreement. The completed work will fall under the same protections and maintenance, care and insurance obligations in the Agreement as applied to the original work. Following the same template of the 1993 Agreement:

1) The artist requests 18% of the total amount upon formal approval of this scope of work, recognizing the artist must set up the studio, acquire equipment and supplies, hire assistants, and commit the entire studio to this project for at least 42 months, and that he has already invested considerable unpaid time and expense in coordinating with the city on this project over many years,

2) Production time will be invoiced approximately monthly. On average a 100-foot section is expected to consume about 250 hours, or about 8 weeks (highly variable, depending on the section). We propose invoicing for complete individual panels rather than by square feet, usually in groups of two or more, identified by panel number according to a provided Master Panel ID Map. Invoices will have photo documentation of each completed new panel side-by-side with a documentary image of the original panel when new, to confirm quality and detail.

3) The artist will maintain comprehensive liability insurance in the amount of \$2 million for the duration of the project.

4), Community Bridge has successfully contributed to the downtown for many years. This scope of work is to exactly replace the the original artwork. This scope therefore assumes this project is not subject to regulatory review by city commissions, including HPC or PAC.

5) The provisions in the 1993 Agreement to protect the work from vandalism have never been acted upon. As part of this CIP item, the artist will suggest a range of measures to deter and reduce vandalism, based on long observation at the bridge, among them:

- a. an iron staircase and viewing platform on the southeast corner to open that "closed" corner to circulation, for security and ease of use
- b. upgraded lighting beneath and around the bridge
- c. a removeable, sacrificial, renewable, environmentally sound anti-graffiti clear coat on all lower mural surfaces
- d. painting the underside of the bridge, together with a plan for rapid repainting in the event of tagging