

Dated .....2018

**BRISTOL CITY COUNCIL**

— and —

**[name of Artist]**

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**Contract for the provision of Artwork on Shop Shutters at  
Gainsborough Square**

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Legal Services  
Bristol City Council  
City Hall  
College Green  
Bristol  
BS1 5TR

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DRAFT

THIS AGREEMENT is made on [date].

## PARTIES

- (1) **Bristol City Council** of City Hall, College Green Bristol BS1 5TR(the);
- and
- (2) [name of artist] of [address] (the **Artist**).

## THE PARTIES AGREE:

### 1 Definitions and interpretation

- 1.1 In this Agreement, except where a different interpretation is clear from or necessary in the context, the following terms shall have the following meanings:

**Completion Date** means [date];

**Artwork** means the artwork to be provided by the Artist under the terms of this Agreement more specifically set out in Schedule 1;

**Copyright** means the entire copyright, design right, rental right, right to authorise or prohibit lending, database right, right of communication to the public and distribution right subsisting now or created at any time in the future under the laws of the United Kingdom and all analogous rights subsisting now or created at any time in the future under the laws of each and every other jurisdiction throughout the world.

**Price** means a maximum sum of £11,000.00

**Service(s)** shall mean those activities in preparation for the provision of the Artwork as are set out in brief contain in Schedule 1

- 1.2 In this Agreement, unless the context requires otherwise:

1.2.1 words and expressions that are defined in the Copyright, Designs and Patents Act 1988 shall bear the same meanings in this Agreement;

1.2.2 words importing the singular number shall include the plural and vice versa;

1.2.3 words importing any particular gender shall include all other genders;

1.2.4 references to persons shall include bodies of persons, whether corporate or incorporate;

1.2.5 words importing the whole shall be treated as including a reference to any part of the whole.

- 1.3 Any reference in this Agreement to any statute or statutory provision shall be construed as referring to that statute or statutory provision as it may from time to time be amended, modified, extended, re-enacted or replaced (whether before or after the date of this Agreement) and as including all subordinate legislation from time to time made under it.

- 1.4 References in this Agreement to clauses and schedules are to clauses of and schedules to this Agreement, except where otherwise expressly stated.
- 1.5 Headings are used in this Agreement for the convenience of the parties only and shall not be incorporated into this Agreement and shall not be deemed to be any indication of the meaning of the clauses, schedules or exhibits to which they relate.

**2 Background**

The Artist has agreed to provide the Artwork and other Services for the Client on the terms and conditions set out in this Agreement.

**3 Artist to provide the Artwork**

- 3.1 In consideration of the Price, the Artist shall provide the Artwork in such materials are set out in Schedule 1 to the best of his ability, in accordance with the brief set out therein.
- 3.2 The Artist shall complete the Artwork and Services by the Completion Date time being of the essence.
- 3.3 If the Artist shall, otherwise than by reason of circumstances beyond his control, fail to complete and make the Artwork available to the Client by the Completion Date or by any subsequent date to which the Client may consent in writing, then the Client may by summary notice to the Artist terminate this Agreement, and then any money previously paid by the Client to the Artist shall immediately be repayable to the Client.

**4 Death of Artist before completion**

If the Artist dies before completing the Artwork and Services, the Client shall have the option, exercisable by giving notice in writing to the Artist's personal representatives within n months of the Artist's death, either to:

- 4.1 pay the balance of the Price, and on payment the Client shall become the owner of the Artwork to the extent that it exists as at the date of the Artist's death; or
- 4.2 cancel this Agreement, in which event the Client shall be entitled to repayment out of the Artist's estate of all money previously paid by him to the Artist under this Agreement.

**5 Payment of the Price**

5.1 The Client shall pay to the Artist the Price by the following instalments:

	£	
1	2,000	On appointment of the artist (to enable purchase of materials and initial time for set up costs).
2	3,000	On completion of: A minimum of 4 workshops Overall artwork design produced for the shopfronts across the two parades and colour palette agreed with BCC and at least 4 of the shopkeepers
3	4,000	The detailed design and and completed painting of 4 shutters and associated shutter frame/box  A short evaluation report describing how the project went, focusing on highlights and key challenges.

On line pictures for future use by BCC and others involved.

The detailed design and completed painting of 2 shutters and associated shutter frame/box

4 2,000

Presentation on line of the resulting pictures for future use by BCC and others involved.

Total 11,000

5.2 On payment of the balance of the Price pursuant to clause 0, the Artist shall transfer ownership of the Picture to the Client with full title guarantee.

## 6 **Assignment of copyright in the Picture**

6.1 Conditional upon the payment by the Client to the Artist of the Price in full, the Artist hereby assigns to the Client with full title guarantee and by way of present assignment of future copyright the entire copyright in the Artwork for the full period during which such copyright may subsist, including all renewals, reversions, extensions and revivals of such period.

6.2 Notwithstanding clause 6.1 the Artist shall retain a non-exclusive, royalty free licence to exhibit copies of the artwork and to use them for the purposes of advertising and publicising their services.

## 7 **Moral rights**

The Artist asserts to the Client, the Client's assigns and the Client's successors in title his moral right to be identified as the author of the Artwork (including without limitation his right to be identified in the event of any public exhibition of the Picture or of any copy of it made in pursuance of clause 6) in accordance with the Copyright, Designs and Patents Act 1988 Sections 77 and 78.

## 8 **Artist's resale right**

If the Client sells the Artwork, the Artist may be entitled to a royalty pursuant to the Artist's Resale Right Regulations 2006.

## 9 **Insurance**

9.1 The Artist shall maintain the following insurance policies (the "**Required Insurances**"):

9.1.1 public liability insurance with a limit of indemnity of not less than five million (£5,000,000) in relation to any one claim arising from the Service; and

9.1.2 [employer's liability insurance with a limit of indemnity of not less than five million (£5,000,000) in relation to any one claim arising from the Service;]

9.2 Where the Artist is in breach of clause 9.1, the Council may pay any premiums necessary to keep the Required Insurances in force or procure such insurances itself and may in either case recover such sums from the Artist.

9.3 As and when reasonably required in writing by the Council, the Artist shall provide the Council with copies of current insurance certificates or other evidence demonstrating to the satisfaction of the Council that the requirements of this clause 9 are being met.

9.4 Neither party shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or an additional insured person.

## **10 General**

### **10.1 Further assurance**

The parties agree to do all such things and to sign and execute all such documents and deeds as may reasonably be required in order to perfect, protect or enforce any of the rights or title granted to the Client pursuant to this Agreement and generally to achieve the intention of the parties as expressed in this Agreement.

### **10.2 Force majeure**

10.2.1 If either party is prevented from fulfilling its obligations under this Agreement by reason of any supervening event beyond its control (including, but not limited to, war, national emergency, flood, earthquake, strike or lockout (other than a strike or lockout induced by the party so incapacitated) or illness), the party unable to fulfil its obligations (the **Incapacitated Party**) shall immediately give notice of this to the other party and shall do everything in its power to resume full performance of its obligations as soon as possible.

10.2.2 Subject to compliance with the requirements of clause 10.2.1, the Incapacitated Party shall not be deemed to be in breach of its obligations under this Agreement during the period of incapacity, and the other party shall continue to perform its obligations under this Agreement save only in so far as they are dependent on the prior performance by the Incapacitated Party of obligations which it cannot perform during the period of incapacity.

10.2.3 If the period of incapacity exceeds 6 months, then this Agreement shall automatically terminate, unless the parties first agree otherwise in writing.

### **10.3 Whole agreement**

10.3.1 This Agreement contains the whole agreement between the parties and supersedes and extinguishes any prior written or oral agreements, promises, assurances, warranties, representations and understandings between them in relation to its subject matter.

10.3.2 Each party acknowledges that in entering into this Agreement it does not rely on , and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

10.3.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

10.3.4 Nothing in this clause shall limit or exclude any liability for fraud.

10.3.5 No oral explanation or oral information given by either party shall alter or affect the interpretation of this Agreement.

### **10.4 Reservation of rights**

All rights not specifically and expressly granted to the Client by this Agreement are reserved to the Artist.

### **10.5 Joint and several**

All agreements on the part of either of the parties which comprises more than one person or entity shall be joint and several.

### **10.6 Proper law and jurisdiction**

This Agreement shall be governed by English law in every particular, including formation and interpretation, and shall be deemed to have been made in England,

and, subject to clause 10.7, the parties agree to submit to the exclusive jurisdiction of the English courts.

#### 10.7 **Dispute resolution**

10.7.1 If any dispute arises in connection with this Agreement, the parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution, London (**CEDR**) Model Mediation Procedure. Unless otherwise agreed between the parties, within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a party must give notice in writing (**ADR notice**) to the other party to the dispute, requesting mediation. A copy of the ADR notice should be sent to CEDR.

10.7.2 Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR notice.

#### 10.8 **Notices**

10.8.1 Any notice, consent or the like (in this clause referred to generally as **notice**) required or permitted to be given under this Agreement shall not be binding unless in writing and may be given personally or sent to the party to be notified by prepaid first-class post (or by airmail post if notice is to be sent from the United Kingdom to anywhere outside the United Kingdom or vice versa) at its address as set out above or as otherwise notified in accordance with this clause.

10.8.2 Notice given personally shall be deemed given at the time of its delivery.

10.8.3 Notice sent by post in accordance with this clause 10.6 shall be deemed given at the commencement of business of the recipient on the second business day following its posting, unless sent from the United Kingdom to anywhere outside Europe or vice versa in which case it shall be deemed given at the commencement of business of the recipient on the seventh business day following its posting.

#### 10.9 **No modification**

This Agreement may not be modified except by an instrument in writing signed by both of the parties or their duly authorised representatives.

#### 10.10 **Waiver**

The failure by either party to enforce at any time or for any period any one or more of the terms or conditions of this Agreement shall not be a waiver of them, nor of the right at any time subsequently to enforce all terms and conditions of this Agreement.

#### 10.11 **Severance**

If any provision of this Agreement is declared by any judicial or other competent authority to be void, voidable, illegal or otherwise unenforceable, or if indications of this are received by either of the parties from any relevant competent authority, the parties shall amend that provision in such reasonable manner as achieves the intention of the parties without illegality, or at the discretion of the Client, that provision may be severed from this Agreement, and in either event, the remaining provisions of this Agreement shall remain in full force and effect.

#### 10.12 **VAT**

All sums payable to the Artist under this Agreement are exclusive of VAT, which shall, where applicable, be paid in addition at the rate in force at the due time for payment, subject to the Artist either supplying a VAT invoice to the Client or informing the Client of his VAT registration number.

**10.13 Rights and remedies cumulative**

All rights and remedies available to the parties under the terms of this Agreement and under the general law shall be cumulative, and no exercise by either of the parties of any such right or remedy shall restrict or prejudice the exercise of any other right or remedy granted by this Agreement or otherwise available to it.

**10.14 Confidentiality**

10.14.1 The terms of this Agreement are confidential to the parties.

10.14.2 Each party agrees to maintain secret and confidential all confidential information obtained from the other, both pursuant to this Agreement and before and in contemplation of it (including, but not limited to, information concerning the terms of this Agreement), and all other information that it may acquire from the other in the course of this Agreement, and to respect the other’s proprietary rights in such material, and to use the same exclusively for the purposes of this Agreement, and to disclose the same only to its professional advisers and those of its employees, officers, agents and representatives pursuant to this Agreement (if any) to whom and to the extent that such disclosure is reasonably necessary for the purposes of this Agreement (and which employees, officers, agents and representatives shall be made aware of and required to acknowledge these confidentiality arrangements in writing).

10.14.3 The obligation set out in clause 10.14.2 shall not apply to any information which:

- (a) before its receipt from one party, was lawfully in the possession of the other and at its free disposal; or
- (b) is subsequently disclosed to the recipient party without any obligations of confidence by a third party who has not derived it directly or indirectly from the other party; or
- (c) is or becomes generally available to the public through no act or default of the recipient party or its agents, employees, officers and representatives; or
- (d) is required by law to be disclosed.

**11 Third parties**

Nothing contained in this Agreement is intended to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any third party.

In witness whereof the parties have set their hands the day and date first set out above

Signed.....	(For and behalf of Bristol City Council)
Signed.....	(The Artist)

## SCHEDULE 1.

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Bristol City Council is commissioning a community artist (or team of two) to work with local people including retailers and residents in Gainsborough Square, Lockleaze to design and deliver shop shutter paintings for the shops in Gainsborough Square.

This work is part of a wider investment in Lockleaze to increase housing and ensure that the area continues to meet the needs and ambitions of local people.

The City Council has accessed some funding to help local shopkeepers to refresh the look of the two shopping parades including repainting the shutters, new shop signs and potentially other things such as elements of the shop frontages such as window designs and perhaps new planters outside the shops). The shop shutters which you will design and paint in this project are a first step.

In Gainsborough Square there are two shopping parades, which have 6 shops each, so 12 shop fronts and shutters as a whole. Our aim is to update and refresh the visual appearance of the parades so that the area looks attractive, appealing and interesting even when the shops are closed.

Bristol City Council has started to work with the local retailers and there is already some interest in having shutters repainted.

Between the shops there are doors to the homes above. (As another part of the other works these doors will be repainted to match the colour palette that you will be developing as part of this work). There are pictures of the parades at the end of this document.

A significant part of the work is engaging local people in the project, as the shops are a central part of the local area, frame the central square and are very important to local people. The paintings on the shutters should appeal to a wide range of people. It is important to the council that local residents feel involved in the change happening in their area, where possible and this project provides a good opportunity for engagement as well as a valuable arts opportunity.

## **The Contract Value and Timescale**

- a) The project is expected to start in mid July 2018.
- b) The contract will be for approximately 4 months with the work to be completed by 31<sup>st</sup> October 2018. The majority of the work is to be undertaken in July, August and September.
- c) The value of this contract is up to £11,000.
- d) There is a possible extension for some further work in the same area, which may be commissioned within the following 12 months
- e) The extension value will be below £3,600.

## **The Specification**

There are several elements to this project::

### **A. Working with the shopkeepers**

- a) Working with the shopkeepers to develop and maintain their interest and gain agreement to having their shutters painted. You will need to be able to talk to a variety of people, and you will be supported in this by the city council – we will introduce you to the retailers.
- b) You will need to take into account that the shopkeepers will already have views on the colour schemes and image of their shops. We are not expecting that the shopkeepers will change from their colours to ours, so your final design will need to take this into account.

### **B. The Design**

- a) The overall aim of the project is to ensure that the parades look attractive as a whole, so we are looking for a design that can be applied across all the shops in each parade. This may be achieved by the colour palette, the motives and the theme – or you may have other ideas on how to achieve this.
- b) We are not looking for one large frieze to be painted across all the shops, rather for individual parts that contribute to an attractive whole.
- c) Your designs should aim to produce a smart, individual shopfront for each shop as well as an appealing whole parade.
- d) The end result should be sophisticated, with appeal to a wide range of ages (i.e. not just very young or youth) and be looking fresh (not 'dated') for several years.
- e) Themes that initial conversations with local people and organisations have raised and that we would like to develop are nature, the natural world and healthy eating. (For young children understanding their local area and the natural world are in the

curriculum; healthy eating is a city-wide priority and promoted by a local community café, as is growing your own food; Lockleaze is next door to the Grade 2 park and wood land of Stoke Park estate – which would be good to celebrate and make connections with. You will agree the overall design with the commissioning officer at Bristol City Council before painting the design on the shutters. It will also be necessary to agree the individual shop shutter design with each individual shopkeeper.

- f) The overall design may be used to inform any further works on the shopfronts and related areas.

### **C The Colour Palette**

- a) As part of the design you will develop a colour palette which is suitable to be used on complementary works in other projects. For example on one of the parades there are three large doorways to upper floors, between the shops, which need redecorating. The colours chosen for this will be taken from the colour palette that you set out for the shopfronts. You may make recommendations on the colours to be used to complement your overall design.

### **D Working with local residents**

- a) It is important to us that some local people are engaged in the process of design, as part of our engagement with the community as the city council and others invest in housing etc. that changes the place where they live.
- b) As part of this project you will run some workshops with local people to give them the opportunity to contribute to the development of the design the motives and colour schemes.
- c) These workshops could be held at a variety of venues and organisations, such as local schools (timetable permitting), summer play-schemes; residential homes; or other local community organisations. The city council will introduce you to some of these organisations.
- d) The brief states a minimum of 4 workshops but we would be interested in bids that provide more and also we would like to have your ideas on the format of the workshops.
- e) You will need to have a good understanding of best practice around safeguarding children, young people and vulnerable adults and public liability insurance for £5 million in place.
- f) Please note that if you wished to run your own workshops you would need to show us evidence of DBS checks. This is not an issue if you are working alongside staff in an existing organisation such as a school or holiday club where you will be accompanied at all times by the DBS checked staff.

- g) Please note that we are keen that it is not solely young people that have this opportunity - we are interested in engaging all age groups.
- h) It is not necessary that you use the exact designs produced by the workshops - we are expecting only that the workshops inspire and inform your design. You should be able to feedback to the people from the workshops on how their work inspired the final design - this may be through a meeting, display, or a brief piece of writing.

## **E Painting the Shutters**

- a) You will paint the shutters and associated paintwork (shutter frame and box).
- b) We are not expecting local residents to be involved in the painting work.
- c) You will need to show that you have the necessary skills and expertise to undertake this large scale outdoor work.

## **The Budget**

- a) The budget of £11,000 is based on painting 6 shutters. The table below shows the breakdown of the total budget.
- b) There is additional budget available for further shutters. It is expected that some shopkeepers may come on board as the project progresses. Ideally the project would achieve all 12 shutters being painted. (Some may be painted in plain colours from the palette if the shop keepers cannot agree on a design element) Artists being able to accommodate this staged approach will be at an advantage.
- c) The project budget includes artist fees, materials, and any costs associated with the workshops including room hire and materials.
- d) The budget will be paid in instalments:

Instalment	£	
1	2,000	On appointment of the artist (to enable purchase of materials and initial time for set up costs).
		On completion of:
2	3,000	A minimum of 4 workshops Overall artwork design produced for the shopfronts across the two parades and colour palette agreed with BCC and at least 4 of the shopkeepers
3	4,000	The detailed design and completed painting of 4 shutters and associated shutter frame/box A short evaluation report describing how the project went, focusing on highlights and key challenges. On line pictures for future use by BCC and others involved.
4	2,000	The detailed design and completed painting of 2 shutters and associated shutter frame/box Presentation on line of the resulting pictures for future use by BCC and others involved.
Total	11,000	

### Project Management

- a) As part of the project you should budget to allow time for several meetings with BCC staff. To include an initial set up meeting, 3 short monitoring meetings or on-site visits and a final feedback meeting at the end of the project.
- b) Artists will be expected to be in regular touch by email and telephone with BCC staff at least fortnightly.
- c) As you are working with local people who may have differing views you will need to be aware of the need for confidentiality, for sensitive handling of different views and aim to contribute to building positive relationships.

### Timetable for the Project Delivery

Early - mid July	Artist Commissioned
Late July to mid-August	Workshops Design Development
August	Shop shutter painting begins
August and September	Shop shutter painting completed

Ideally the workshops and the process of shutter painting will contribute to the summer activities in Lockleaze and enlivening Gainsborough Square