

**CITY OF PORTSMOUTH**

**LEGAL DEPARTMENT**

**MEMORANDUM**

DATE: June 14, 2023  
TO: KELLI BARNABY, CITY CLERK  
FROM: SYNTHIA M. RAVELL, LEGAL ADMINISTRATOR *SMR*  
RE: LICENSE AGREEMENT – PRESCOTT PARK  
NH ART ASSOCIATION

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Attached for permanent filing please find the original Prescott Park License Agreement for NH Art Association between the City and NH Art Association for its use of Prescott Park for a period of five (5) years commencing May 15, 2023.

Attachment

cc: Judie Belanger, Finance Director  
Peter Rice, Public Works Director  
Judith Renaud, City Controller

**PRESCOTT PARK LICENSE AGREEMENT  
FOR  
NH Art Association**

**PARTIES.** This license agreement (“**Agreement**”) is by and between the City of Portsmouth, a municipal corporation organized and existing under the laws of the State of New Hampshire, with a principal place of business at 1 Junkins Avenue, Portsmouth, New Hampshire 03801 (the “**City**”), and

**Licensee**, NH Art Association, a non-profit corporation, organized and existing under the laws of the State of New Hampshire with a mailing address of 136 State Street Portsmouth, NH 03801.

This Agreement is dated (date of acceptance by City Council) May 15, 2023.

**RECITALS.** This License sets forth the rights, obligations and conditions of Licensee’s use of property and buildings on City property known as Prescott Park and bounded by State Street, Marcy Street and Mechanic Street (the “**Park**”)

- The City owns Prescott Park and is responsible for preserving its historic resources and operating Prescott Park consistent with its fiduciary and charitable obligations.
- The 2017 Prescott Park Master Plan (adopted by the City Council February 6, 2017) is a foundational policy statement guiding the operations and programming authorized in Prescott Park. Further, the recommendations of the Prescott Park Policy Advisory Committee (Final Report December 2017) provide additional guidance in development of park policies and agreements.
- Prescott Park is first and foremost a waterfront open space for the people of Portsmouth. The “Park First” approach of the 2017 Prescott Park Master Plan is a framework for decision-making, which prioritizes the Park space as a City park and place for respite and quiet enjoyment.
- Ensuring a presence for theater, dance, music and visual arts in the Park is a tenet of the Prescott Park Master Plan.
- Prescott Park’s Shaw Warehouse, Marine Railway Building, and Sheafe Warehouse are invaluable historic and cultural resources, whose value in showcasing and interpreting the historic development of Portsmouth is inestimable.
- A Prescott Park Master Plan Implementation Committee was formed in 2020 to make recommendations on how to implement the Master Plan in phases. Additional environmental and engineering studies were performed and on July 11, 2022, the City Council approved the recommendations of the Prescott Park Master Plan Implementation Committee to move forward with Phase 1A Master Plan Improvements. Master Plan Improvements will be constructed during the term of this Agreement. The City will regularly communicate with NH Art Association to provide advance notice of Master Plan Improvements in order for the parties to address potential impacts on operations and programming.

**NOW THEREFORE:** For the public benefit and consideration set forth, the City grants a non-exclusive license to Licensee to use the licensed area defined in this Agreement for limited authorized activities subject to the following terms and conditions.

## **GENERAL**

1. **PUBLIC BENEFIT.** The City Council has determined that granting this License to the Licensee is in the public benefit. Specifically, the benefit is to ensure visual arts learning programs and exhibits in the Park. The public benefit is further discussed in Paragraph 5 relative to Consideration and Schedule D.
2. **LICENSED AREA.** The City and Licensee agree that it is not the intention of the parties to create a public forum within the Licensed Area, as the Park currently has a public forum designated area and there is no intention by this Agreement to expand or alter it. The Licensed Area for the Authorized Activities is as described in Schedule A.
3. **AUTHORIZED ACTIVITIES.** Licensee is permitted to use the Licensed Area for those activities identified in Schedule B and for no other purpose. Licensee shall conduct no other business, enterprise, program or activity in, on or around the Park other than specifically authorized by this Agreement.
4. **SCHEDULE OF PROGRAMMING.** Schedule C of this agreement outlines the submittal timeline for a proposed schedule by the Licensee. The schedule, when approved in writing by the City Manager, shall become a part of this Agreement as Schedule C, Addendum 1. Licensee shall conduct its operations in accord with Schedule C. Licensee shall not schedule, stage or promote any program, act or performance in which pyrotechnics, explosives or display of open flames are involved or used without prior and separate written approval.
5. **PUBLIC BENEFIT & CONSIDERATION.** In recognition of the value of the Licensee's programming to the City and the role the Park has in enabling the Licensee's programming, Licensee agrees to share in the City's expenses associated with the overall administration, maintenance and operations, upkeep, occupancy and related overhead costs to the City in accordance with Schedule D. Licensee and the City recognize the consideration outlined in Schedule D reflects a balance of the following factors: the public benefit of Licensee programming to the residents and to the vitality of the City (cultural, social and economic); the value of the Park's assets to Licensee operations; administrative, maintenance and operational costs to the City; impacts of Phase 1A Master Plan Improvements on operations and programming, if any, and impacts to the Park and the surrounding area in terms of the wear and tear, transportation and parking, and off-site sound exposure.
6. **TERM.** The term of this Agreement shall be five years commencing on the date of this Agreement and ending five years from that date unless terminated earlier due to default or by agreement.

7. **EXTENSION OF TERM.** Licensee may at the conclusion of year 4 of the term request an extension of the license for up to an additional five year term. The City shall negotiate in good faith an extension provided: (1) Licensee is not in violation or default of any material term of this Agreement; (2) Licensee has not received more than six (6) notices of default during the term; (3) Licensee has not received more than six (6) notices of infractions per season; and (4) the City has not been obligated to make any financial contributions to maintain the Licensed Area other than those obligations contemplated by this Agreement.
8. **EARLY TERMINATION.** Licensee may terminate this Agreement without penalty by written notice to the City upon the following conditions: (1) Licensee is not in default of any obligation; and (2) the City is provided notice no later than December 31 of the completed season.
9. **FINANCIAL INFORMATION.** In order to promote transparency and public confidence in financial transactions involving the use of the Park, Licensee shall provide timely financial information, including the following (the timing of the submittals below may be modified by the City Manager for good cause upon request of the Licensee presented in writing prior to the dates shown below):
  - A. Financial Profits and Loss Summary for the season immediately preceding shall be submitted annually no later than February 15<sup>th</sup>. The Licensee's fiscal year is a calendar year – May 1<sup>st</sup> to April 30<sup>th</sup>.
  - B. Audited financial statements and management letter, if available, shall be submitted on an annual basis at a reasonable time following completion and review with the Licensee's Board.
  - C. Other financial information (e.g., policies for cash handling, etc.) and books open for inspection as may be requested by the City.
10. **AS IS CONDITION.** Licensee accepts the Licensed Area "as is" and as fit for the Licensee's intended purposes. City is under no obligation to improve, fit-up or make ready the Licensed Area for Licensee's Authorized Activities. Licensed Area will be made available "broom clean".
11. **RESPONSIBILITY FOR COSTS OF OPERATIONS.** Unless otherwise stated in this Agreement, Licensee is responsible for all costs and expenses incurred by Licensee for performing its obligations under this Agreement and carrying out its mission and programming. Those costs may include but are not limited to administration, scheduling, set up of exhibits, maintenance of Licensee's equipment, and temporary facilities; permitting and licensing fees; waste and clean up as set forth in paragraph 14; as well as all subcontracted services and other costs of carrying out this Agreement.
12. **PUBLIC ACCESS TO OTHER PROGRAMMING.** Licensee recognizes the City schedules use of the Park for weddings, dock reservations, public forum area events and Four Tree Island Events. Licensee agrees to cooperate and make reasonable accommodations to facilitate these uses.

## PROPERTY REQUIREMENTS

13. **UTILITIES AND TAXES.** All utilities (water and sewer, electricity, fire alarm monitoring, and natural gas) associated with the use of the Licensed Area in Schedule A shall be the responsibility of the City. For the purposes of this section neither telephone nor other telecommunications utilities such as fiber-optics, cable, internet service or the like are utilities.

During the term of this Agreement, NHAA may apply for an exemption provided under RSA 72:23. Provided that NHAA meets the test for charitable use set forth in RSA 72:23 (i), no taxes shall be due. NHAA shall provide documentation to the City's assessor annually by April 15<sup>th</sup> of each year and any further documentation as may be reasonably requested to establish charitable use.

In the event the NHAA does not meet the test for charitable use set forth in RSA 72:23 (I) for any given year in during the term of this Agreement, and taxes are assessed, then NHAA shall have the right, but not the obligation, to terminate the Agreement after providing two (2) months written notice to the City. The taxes due shall be pro-rated to the date of the termination of the Agreement. If NHAA does not meet the test for charitable use and does not terminate this Agreement, failure to pay duly assessed property taxes when due shall be cause to terminate this Agreement by the City.

14. **MAINTENANCE.** Licensee shall be responsible at its own cost for maintaining any of its temporary structures, staging or exhibits and for ensuring that any of its equipment is in good and sanitary condition and repair. City shall be responsible for all maintenance of its structures including the licensed area in the Sheafe Building. Licensee shall notify the City as soon as possible in writing if Licensee identifies any areas that are in need of maintenance to preserve and protect the structural integrity and historic value of any building or to protect public health and safety.

15. **WASTE AND CLEAN-UP.** The Licensee shall not allow any waste, rubbish or other objectionable materials to accumulate within the Licensed Area or upon the surrounding Park grounds. The Licensee shall arrange and pay for proper solid waste receptacles, the location of which shall be approved by the City Manager. Licensee shall be expressly responsible for cleaning up debris, emptying trash bins and otherwise returning and restoring any exterior Licensed Area to a park-like condition after each use for an event or activity. To the extent the Licensed Area includes building space, the building shall be kept clean, free of debris and tidy. If the City sponsors or adopts any evaluation or pilot of an alternative waste collection system, Licensee will participate in such evaluation or pilot program.

16. **MASTER PLAN CAPITAL IMPROVEMENTS.** Licensee understands the 2017 Prescott Park Master Plan and the approved recommendations for Phase 1A Master Plan Improvements are the City's plan for all future renovations, modifications, and reconstruction in the Park. The design, timing of implementation, order of improvements, and the type of modifications, improvements, and related construction

efforts above and below ground for the Park will be directed by the City. Licensee recognizes that planning, design, and construction of Master Plan improvements will likely move forward during the License term. In particular, construction may cause disruption to Licensee programming and activities. All construction impacts and disruptions associated with execution of the Master Plan improvements will be carried out in close coordination with the Licensees through the creation of detailed Construction Management Plans for each phase.

17. **MODIFICATIONS.** No modifications of any kind to the Licensed Area, including structures within a Licensed Area, are permitted without prior written agreement of the City.

It is anticipated that the parties may amend Schedules A, B, C and D if construction related to Phase 1A Master Plan Improvements or other Master Plan Improvements disrupt operations and programming.

18. **EQUIPMENT/INSTALLATION OF ADDITIONAL EQUIPMENT.** With the prior written approval of the City, Licensee may install additional machinery, equipment or other personal property; if attached or affixed to the Licensed Area, such machinery, equipment or other personal property shall become the property of the City unless the City otherwise agrees in writing. With advance written consent of the City, Licensee may remove such machinery, equipment and other personal property from the Licensed Area, provided that any removal of machinery, equipment or other personal property does not adversely affect the structural integrity of any structure. If any damage is occasioned by such removal, Licensee agrees to promptly repair such damage at its own expense.

19. **RIGHT OF ENTRY.** The City shall have the right to enter into and upon the Licensed Area including all land and buildings at all times to inspect, make repairs or improvements to City-owned structures and land, to construct improvements related to Phase 1A Master Plan Improvements or other Master Plan Improvements, to remove items from the Licensed Area that are in violation of the this Agreement, and to protect the health, safety and welfare of users, employees and visitors or for any purpose; including for administering sound monitoring protocol described elsewhere in this agreement.

20. **INSURANCE.** Throughout the License Term, Licensee shall, at its sole cost and expense, maintain insurance against such risks and for such amounts as are customarily insured against by entities engaged in the types of activities in which Licensee will be engaged.

A. Types of insurance shall include:

- i. Commercial General Liability coverage protecting Licensee against loss from liability imposed by law or assumed in any written contract or arising from personal injury, including bodily injury or death, or damage to the property of others, caused by an accident or other occurrence, with a limit of liability of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.

- ii. Automobile Liability coverage protecting Licensee against loss arising from personal injury, including bodily injury or death, or damage to the property of others, caused by all automobiles with a limit of liability of not less than \$300,000 per occurrence. If Licensee does not own, lease or engage for hire vehicles, the Licensee may so affirmatively represent as such in writing, in which case coverage is not required.
  - iii. Licensee shall maintain such coverage necessary to insure its exhibits, equipment and other personal property placed in any municipal building or on any municipal property. Licensee shall also provide property coverage for any of its temporary structures and betterments.
  - iv. Workers' compensation insurance to the extent required by the laws of the State of New Hampshire.
  - v. Marine insurance/endorsement of at least \$1,000,000 is required if Licensee's Authorized Activities include use of any docking structure or marine activities.
- B. The parties acknowledge and agree that insurance coverages may need to be adjusted over the course of the term of this lease due to changes in the City's Member Agreement, due to inflation or changes in Licensee's Authorized Activities. The parties agree to make good faith efforts to mutually agree upon such updates and adjustments to insurance coverage so as to maintain commercially reasonable amounts and to apportion equitably such costs and risks.
- C. All insurance required by this Agreement shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by entities engaged in the types of activities in which Licensee will be engaged.
- D. The City shall be identified as an additional insured party on a primary and non-contributory basis on all liability policies.
- E. Licensee shall provide proof of insurance coverage satisfactory to the City which may include certificates of insurance or policy documents.
- F. The City shall maintain existing property and liability coverage on the buildings and property of Prescott Park. If the loss or claim arises in whole or in part from the activities of Licensee, the liability insurance of Licensee shall be primary and the City's secondary.
21. **INDEMNIFICATION.** Licensee agrees to defend, hold harmless and indemnify the City and its officers, agents and employees against any and all liability for bodily injury, death, and property damage arising from the existence of this Agreement or any activity conducted hereunder or any person or entity operating under Licensee's authority. This provision shall survive termination or expiration of the Agreement.

## **RESTRICTIONS**

22. **NON-DISCRIMINATION.** Licensee shall not discriminate on the basis of race, color, religion, gender, gender expression, age, national origin, disability, marital status, sexual orientation or military status.
23. **NO ALCOHOL, MARIJUANA OR ILLEGAL SUBSTANCES.** No alcohol, marijuana or illegal substances are permitted in the Park. Licensee shall communicate this restriction to all employees, volunteers and contractors and shall take steps to communicate this restriction to all invitees as instructed by the City Manager. No smoking is permitted inside any Park structures, including Licensed Areas.
24. **PARKING.** Licensee understands the North Parking and Water Street Parking lots in the Park are public, off-street parking lots and the City may establish rules and terms of use for these parking lots in accordance with City ordinances which may without limitation include: elimination or reduction in parking within the Park at any time (consistent with the Park Master Plan); metering one or both lots; and changing the 2017 pilot permit parking program. Licensee is expressly not authorized to lease, sub-license, award, or otherwise designate or reserve any parking spot in any area of the Park. The parties agree there is no obligation on behalf of the City to provide parking to the Licensee, paid or unpaid, within or outside the Park.
25. **COMMERCIAL ACTIVITY IN PARK.** As stated in Paragraph 3 above Licensee shall conduct no other business, enterprise, program or activity in, on or around the Park other than specifically authorized by this Agreement. There shall further be no selling of merchandise or concessions, solicitations, monetization of Park grounds, or charging of any fees unless specifically allowed under Authorized Activities.
26. **SIGNAGE.** Licensee shall not display, erect or permit any signage in the Licensed Area or Park which has not been approved by the City and described in Schedule E.
27. **NO AMPLIFICATION.** Licensee shall not employ any sound amplification unless such amplification is allowed under Authorized Activities and Licensee has met all setup, equipment and training conditions prior to commencement of use.

## **OPERATIONS AND RECOURSE FOR INFRACTIONS**

28. **POINT OF CONTACT.** Licensee shall designate in writing a person as a point of contact for City officials. In addition, Licensee shall further identify and publish on its website and other materials a protocol for Licensee to receive and review complaints and concerns from the public. Licensee will track the receipt of such complaints and concerns and Licensee's response and produce such information for inspection upon the City's request.
29. **REVIEW OF PERFORMANCE.** Up to three times per year, the City may request the Licensee to make a representative from its Board as well as administrative leadership

available to participate in a public meeting to hear public comment and to respond to questions and concerns. The timing, format and schedule of these public meetings shall be at the discretion and direction of the City Manager.

30. **APPROVAL OF TEMPORARY FACILITIES.** The process for City approval of the Licensee's temporary facilities (authorized facilities erected and disassembled on a seasonal basis) is outlined in Schedule B, Authorized Activities. The purpose of this approval is to ensure: (1) compliance with this Agreement as well as with life safety and building codes and the Americans with Disabilities Act; and (2) incorporation of public safety recommendations and risk management practices into the layout.
31. **RECOURSE FOR INFRACTIONS.** An infraction shall mean an event of non-compliance with this Agreement which the City has elected to treat as less than a Default under paragraph 33. Such infractions may include but are not limited to the following:
- placement of unauthorized signage
  - engaging in other business or activities that are not authorized
  - unauthorized use of amplification
  - failure to maintain clear sidewalks or aisles
  - failure to follow any health and safety directive of an authorized City official

In the event of infraction, the City may at the discretion of the City Manager exercise its right of entry as set forth in paragraph 19 to correct the infraction. In addition, the City may provide written notice to the Licensee of the infraction and assess a penalty of \$250 for each infraction. In the event that the City issues more than three notices of infraction in a thirty-day period, subsequent violations for the remainder of the calendar year may be increased at the City's discretion to \$400 per infraction. The City shall also have the right to demand assurances from Licensee and a plan of action for avoiding further infractions. Penalties shall be paid within 30 days of assessment.

32. **RESTORATION AND DAMAGES.** Licensee shall restore, replace and remedy promptly any damage caused to the Park by Licensee's activities. If the damage is not remedied promptly, the City - after written notice to Licensee - may, through its own forces or a contractor, restore, replace and remedy the damage in which case Licensee will be charged for that work.
33. **PUBLIC SAFETY AND PUBLIC HEALTH.** The City Manager, Chief of Police, Fire Chief and Public Works Director may, at their sole discretion, order additional measures beyond those described in this Agreement to protect the health and safety of Park visitors. Such additional measures may include without limitation the assignment of additional personnel or the erection of barriers. If such additional measures are ordered, Licensee shall pay for the cost of such additional measures. Current billing rates (for representation purposes as they are adjusted annually) are as follows:

- A. Portsmouth Police officer: \$85.90/hour minimum four hours. Cruiser rate: \$14.00/hour.
- B. Portsmouth Fire Department: Firefighter/Paramedic: \$65.00 /hour – minimum of two hours. No charge for vehicles.
- C. Department of Public Works (minimum of four hours):
  - Laborer: \$42.99/hour
  - Utility Mechanic: \$47.35/hour
  - Park Foreman 1: \$62.27/hour
  - Vehicles: Pickup Truck: \$15.00/hour; Dump Truck: \$65.00/hour; Backhoe: \$60.00/hour

### **DEFAULT AND CURE**

34. **DEFAULT.** The following shall be an "Event of Default" under this Agreement:
- A. The failure by Licensee to follow any public health or public safety directive;
  - B. The failure to observe or perform any obligation or covenant of the Agreement; if such failure is unrelated to public health or safety, Licensee shall have a fourteen (14) day period to cure the performance following written notice, unless otherwise indicated below;
  - C. More than six infractions by Licensee in a thirty (30) day period;
  - D. Any false or misleading material statement or representation by Licensee related to this Agreement and performance under it;
  - E. The dissolution or liquidation of Licensee; the failure by Licensee generally to pay its debts as they become due; an assignment by Licensee for the benefit of creditors (excepting such security interests entered into during the normal course of business); the commencement by Licensee (as the debtor) of a case in bankruptcy or any proceeding under any other insolvency law; the commencement of a case in bankruptcy or any proceeding under any other insolvency law against Licensee (as the debtor) or Licensee consents to or admits the material allegations against it in any such case or proceeding; or a trustee, receiver or agent (however named) is appointed or authorized to take charge of substantially all of the property of Licensee for the purpose of enforcing a lien against such property or for the purpose of general administration of such property for the benefit of creditors;
  - F. Licensee's loss of 501(c)(3) tax exempt status subject to a sixty (60) day period to cure;

- G. The failure of Licensee to comply with the terms or conditions of any federal, state or local funding sources for monies received subject to a sixty (60) day period to cure.

If by reason of force majeure a party is unable in whole or in part to carry out its obligations under this Agreement, that party shall give written notice of such force majeure event within a reasonable time of its inability to perform. Performance shall be suspended during continuance of the force majeure and for a reasonable time thereafter. The term "force majeure" shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, insurrections, riots, epidemics, natural disasters, partial or entire failure of utilities, shortage of energy or any other cause or event not reasonably within the control of the party claiming such inability and not due to its fault,

35. **REMEDIES ON DEFAULT.** Whenever Licensee shall commit any Event of Default, the City may with written notice take, to the extent permitted by law, any one or more of the following remedial steps:

- A. Assess to the Licensee any cost incurred by the City to correct, cure or remedy the Event of Default;
- B. Amend or limit the number of Authorized Activities;
- C. Take possession of and/or secure the Licensed Area;
- D. Declare any and all other payments due under this Agreement immediately due and payable;
- E. Take any action as it shall deem necessary to cure any such Event of Default, such action shall not be deemed to constitute a waiver of such Event of Default; and/or
- F. Terminate this Agreement; and take any other action at law or in equity which it deems necessary or desirable to collect the payments or other obligations then due or thereafter to become due hereunder, to secure possession of the Licensed Area, and to enforce the obligations, agreements or covenants of Licensee under this Agreement.

No action taken by the City pursuant to this paragraph (including repossession of the Licensed Area) shall relieve Licensee from its obligations required by this Agreement. After an Event of Default, Licensee shall have the right upon notice to the City to enter the Licensed Area with agents or representatives of the City to remove any Equipment or personal property owned by Licensee if such Equipment or personal property is not part of the Licensed Area.

36. **REMEDIES CUMULATIVE.** No remedy is intended to be exclusive of any other available remedy. Each remedy shall be cumulative and in addition to other remedies now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be

construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient.

37. **NO ADDITIONAL WAIVER IMPLIED BY ONE WAIVER.** In the event any obligation contained in this Agreement is breached by any party and thereafter waived by the other party, such waiver shall be limited to the particular breach waived and shall not be deemed to waive any other breach hereunder.
38. **NON-RECOURSE.** Notwithstanding any provision hereof to the contrary, or any other express or implied agreement between the parties, or any act or course of conduct hereunder, the obligations of the parties set forth herein shall solely be those of the entities named in the first paragraph of this Agreement. No Councilor, employee or agent of the City shall have any personal liability whatsoever under this Agreement, nor shall any officer, director, shareholder, general or limited partner, employee or agent of Licensee have any personal liability whatsoever under this Agreement, it being understood and agreed that the City shall look solely to the assets of Licensee for recourse hereunder.
39. **TERMINATION OR SURRENDER OF LICENSE.** Upon termination of this Agreement, or mutual cancellation thereof, the Licensee shall immediately surrender the Licensed Area.

#### **MISCELLANEOUS PROVISIONS**

40. **COMPLIANCE WITH LAWS.** The Licensee shall comply with all Federal, State and Municipal laws, ordinances and regulations affecting the Park and Licensed Area, the improvements thereon, or any activity or condition on or in the Licensed Area.
41. **FREE OF LIENS.** Licensee shall keep Park property free and clear of all liens arising out of the Licensee's occupancy and use of the Licensed Area and at all times promptly and fully pay or discharge any claims on which any lien could be based.
42. **NOTICES.** Any notice required under this License or other writing which may be given by either party to the other shall be deemed to have been given when made in writing and delivered in hand or delivered by U.S. Mail or a courier service with proof of delivery and addressed as follows:

To the City: Karen Conard, City Manager  
City Hall  
1 Junkins Avenue  
Portsmouth, NH 03801

With a copy to: Susan Morrell, City Attorney  
City Hall  
1 Junkins Avenue  
Portsmouth, NH 03801


To the Licensee: Kevin Dadoly, President  
NH Art Association  
136 State Street  
Portsmouth, NH 03801

To the Licenses: Amenda Kidd-Kestler, Executive Director  
NH Art Association  
136 State Street  
Portsmouth, NH 03801

43. **SEVERABILITY.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision.
44. **AMENDMENTS, CHANGES AND MODIFICATIONS.** This Agreement may not be amended, changed, modified, altered or terminated except in a writing executed by the parties.
45. **APPLICABLE LAW.** This Agreement shall be governed by the laws of the State of New Hampshire without regard or reference to its conflict of laws principles.
46. **COMPLETE AGREEMENT.** This Agreement and the Schedules A - E appended hereto constitutes the entire agreement between the parties and may be modified only be a writing agreed to by both parties.
47. **ASSIGNMENT AND SUBLETTING PROHIBITED.** Licensee shall not assign this Agreement or sublet any portion of the Licensed Area.

IN WITNESS WHEREOF, the parties have executed this License on  
June 13, 2023.

WITNESS:



**THE CITY OF PORTSMOUTH**

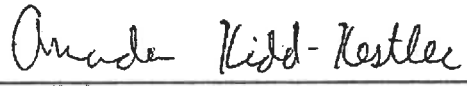


Karen Conard, City Manager  
Pursuant to vote by the City Council on May 15,  
2023.

WITNESS:

\_\_\_\_\_

**NH ART ASSOCIATION**



Signature of Duly Authorized Agent

Amanda Kidd - Kestler

Printed Name of Duly Authorized Agent (above)

**SCHEDULE A: LICENSED AREA**

A. The areas licensed to the Licensee are listed below.

Licensed Area	Authorized Uses As Limited by this Agreement	Square Feet
Sheafe Warehouse (First Floor)	Hosting of educational exhibit, public programming	1076
Certain areas immediately surrounding the Sheafe Warehouse	Specifically authorized demonstrations, art classes and public art demonstrations	250

## SCHEDULE B: AUTHORIZED ACTIVITIES

1. **General Authority.** The Licensee is authorized to carry out the following listed Activities in the Licensed Areas.

A. **To offer educational programming and exhibits in the visual arts through the following:**

- a. To conduct its annual Art Show and associated art demonstrations and talks within the Sheafe Warehouse.
- b. To hold temporary outdoor public art installations (up to three per season).
- c. To hold pop-up art classes sponsored by the NH Art Association in areas approved by the City Manager. Classes shall be offered by donation only.
- d. The sale of paintings associated with the Association's Art Show.

B. **Specific Prohibitions.** The following activities are specifically not permitted in Prescott Park:

- a. The storage of combustible materials.
- b. Smoking or use of open flame.
- c. The staging of theatrical or other events involving amplified sound or music.
- d. The sale of any goods, services or tickets other than addressed above.
- e. The sale, transport, use, and possession of alcoholic beverages by the Licensee is prohibited.

2. **Additional Conditions for Authorized Uses.** The authorized activities are conditioned upon the following:

A. **Public Safety & Crowd Management.** Licensee and City agree the responsibility for ensuring the safety of attendees at events first lies with the Licensee. In furtherance of the goal to ensure public safety and crowd management the preparations the Licensee shall confer directly and in advance with the City Manager's in order to prepare for any event which may require security measures.

B. **Merchandising.** The Master Plan governance recommendations recognize the value and purpose of open green spaces and urban parks as places of respite, recreation and enjoyment. According to the Plan "maintaining this special status includes limiting commercialization, which, unchecked, can disrupt the Park atmosphere". Consistent with this orientation, the following is agreed to when it comes to selling merchandise in the Licensed Area.

- a. **Authorized Points of Sale and Times.** The First Floor of Sheafe Warehouse is the sole authorized point of sale for merchandise.
- b. **Appearance and Configuration.** At all times this area shall be kept in a neat and orderly manner and configured in accordance with guidance issued by the City.

Licensee is permitted one donation box, which may be placed in the interior of the Sheafe.

- c. **Authorized Items for sale.** No merchandise may be sold to the public which is not expressly authorized. Items expressly authorized for sale include those below:
- Paintings, sculptures and 3D art pieces by NHAA Artists
  - Note cards (prints of NHAA artworks)
  - Portsmouth Puzzle- NHAA Artist selected annually
  - Other approved NHAA-created objects

## **SCHEDULE C: SCHEDULE OF PROGRAMMING**

**1. Timing of Submittal Approval Process.** Prior to February 15<sup>th</sup> of each year, the Licensee shall submit a schedule to the City Manager for her consideration, which proposes the yearly schedule for the use of the Licensed premises. Approval of the schedule from the City Manager shall be issued no later than March 15<sup>th</sup> of each season; this schedule shall include all event types (listed in Schedule B. Authorized Activities)

**SCHEDULE D: PUBLIC BENEFIT & CONSIDERATION**

**General Purpose.** In acknowledgement of the City's costs in operating Prescott Park and in balance with the benefits to the public of the Licensee programming, the Licensee and the City agree to the following consideration paid to the City in order to reduce the required annual operational subsidy of the Park.

The amounts shown below are due on July 1<sup>st</sup> (one-half of total amount due) and September 1<sup>st</sup> (one-half of total amount due).

**Year 1: \$1,733**

**The amounts due for Years 2-5 shall increase from the amount paid the prior year by the Boston Cambridge Nov-Nov CPI.**

The City recognizes that exigent circumstances (such as extraordinary wet weather conditions or other emergency causing prolonged disruption to operations and the implementation of Phase 1A Master Plan Improvements) may occur, which significantly impact the Licensee's ability to pay the amount listed above. Accordingly, the City Manager is authorized to negotiate a lower figure for the affected year.

## **SCHEDULE E- SIGNAGE**

In accordance with the License provision, no signage is authorized to be erected in the Park or in the Licensed Premises without express authorization. The following inventory of signs is authorized:

- a. Limited interpretative signage (erected for one day only) associated with the single-day public art installation.
- b. A sign to be erected on the inside of the exterior door (visible to the outside when opened) to the Sheafe Warehouse related to the Art Show and that season's NH Art programming to take place in the Park.
- c. A single A-Frame at Water Street
- d. A donor listing shall be permitted on one sign in an agreed upon location on an existing authorized sign above or other approved sign.