



INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (hereinafter referred to as the “Contract” or “Agreement”) is entered into on the ____ day of _____, 2024, by and between the Village of Oak Park, an Illinois home rule municipal corporation (hereinafter referred to as the “Village”), and J. Graham, LLC., a limited liability company (hereinafter referred to as the “Contractor”).

WHEREAS, Contractor submitted a Proposal dated May 1, 2024, a copy of which is attached hereto and incorporated herein by reference, to provide a viaduct art installation (hereinafter referred to as the “Work”) as depicted in Exhibit A for the Oak Park Avenue Streetscape Project (hereinafter referred to as the “Project”) pursuant to the Village’s Request for Proposals dated January 18, 2024, incorporated herein by reference as though fully set forth; and

WHEREAS, the Contractor represented in said Proposal that it has the necessary personnel, experience, and competence to promptly complete the Project and the Work required hereunder; and

WHEREAS, the Village does hereby retain the Contractor to perform the Work and services hereinafter described; and

WHEREAS, Contractor shall perform the Work pursuant to the terms and conditions of this Contract.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained in this Contract, and other good and valuable consideration received and to be received, it is mutually agreed by and between the parties as follows:

1. RECITALS INCORPORATED

The above recitals are incorporated herein as though fully set forth.

2. SCOPE OF WORK

Contractor shall perform the Work for the Project in accordance with its Proposal for a price not to exceed **\$235,000** (hereinafter referred to as the “Contract Price”). Contractor shall complete the Work in accordance with any applicable manufacturers’ warranties and in accordance with its Proposal, the Village’s Request for Proposals, and this Contract, all of which together shall constitute the “Contract Documents.” The Contractor

acknowledges that it has inspected the site(s) where the Work is to be performed and that it is fully familiar with all of the conditions at the site(s), and further that its Proposal has adequately taken into consideration all of the conditions at the sites. In the event the Contractor is required to make adjustments to the Work in order to facilitate its installation, the Contractor shall not be entitled to any additional compensation. The Contractor hereby represents and warrants that it has the skill and experience necessary to complete the Work in a good and workmanlike manner in accordance with the Contract Documents, and that the Work shall be free from defects.

All materials used in the creation and installation of the Work shall be suitable for all types of weather.

The Contractor shall be responsible for installation of the Work, including, but not limited to, bringing all necessary materials and equipment required for installation in the Village on a date and in a manner agreed to in writing at least two weeks in advance. The Village shall furnish and install twenty-eight (28) of the existing posts under the Oak Park Avenue viaduct at locations determined by the contractor, and the posts shall be painted black. The Village shall install electrical conduits with 120v electricity at locations determined by the Contractor for the back-lighting of the aluminum panels and archways in the panel cutouts. The Village shall make the electrical connection to the light fixtures.

The Contractor shall furnish and install four (4) additional panels, not depicted in Exhibit A. The Contractor shall install one (1) surface mounted 1.5" thick aluminum panels to each of the four corners of the viaduct walls (two on the Viaduct corners of South Boulevard, and two on the Viaduct corners of North boulevard). These panels shall also be painted with the Contractors original mural design.

Contractor shall achieve completion of all Work required pursuant to the Contract Documents by November 14, 2025 (hereinafter referred to as the "Contract Time"). Contractor shall have no claim for damages, for compensation in excess of the Contract Price, or for a delay or extension of the Contract Time based upon conditions found at, or in the vicinity of, the site(s).

3. DESIGNATED REPRESENTATIVES

Contractor shall designate in writing a person to act as its designated representative with respect to the Work to be performed under this Contract who shall have the power and authority to make or grant or do all things, certificates, requests, demands, approvals, consents, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of Contractor and with the effect of binding Contractor. The Village is entitled to rely on the full power and authority of the person executing this Contract on behalf of Contractor as having been properly and legally given by Contractor. Contractor shall have the right to change its designated representative by providing the

Village with written notice of such change which notice shall be sent in accordance with Section 19 of this Agreement.

The Village's Public Works Director shall be deemed the Village's authorized representative for purposes of this Agreement, unless applicable law requires action by the Corporate Authorities, and shall have the power and authority to make or grant or do those things, certificates, requests, demands, approvals, consents, notices and other actions required that are ministerial in nature or described in this Agreement for and on behalf of the Village and with the effect of binding the Village as limited by this Contract. Contractor is entitled to rely on the full power and authority of the person executing this Agreement on behalf of the Village as having been properly and legally given by the Village. The Village shall have the right to change its authorized representative by providing Contractor with written notice of such change which notice shall be sent in accordance with Section 19 of this Agreement.

4. TERM OF CONTRACT

Contractor shall perform the Work pursuant to this Contract beginning on the effective date as defined herein and ending on the date that the Work is completed as determined by the Village. The Contractor shall invoice the Village for the Work provided pursuant to this Contract at the rates set forth in its Proposal. The term of this Contract may be extended in writing for additional periods of time pursuant to the consent of the parties.

5. PAYMENT SCHEDULE

The Contractor shall receive payment according to the schedule below:

- I. \$45,000 to be paid to prepare final drawings for the aluminum and mural design upon completion of the agreement by all parties and receipt of contract bond and certificate of insurance per the contract requirements
- II. \$35,000 to be paid upon approval of the final design and issuance of a notice to proceed by the Village for the purchase of materials and to start fabrication of the Work.
- III. \$45,000 to be paid upon completion of the mural painting of onto the aluminum panels
- IV. \$45,000 to be paid upon the purchase of the lighting for the viaduct installation
- V. \$65,000 to be paid upon after installation and final acceptance of the Work by the Village

Contractor shall, as a condition precedent to its right to receive any payment, submit to the Village an application for payment and such receipts, vouchers, and other documents as may be necessary to establish the Contractor's payment for all labor and material and the absence of any interest whether in the nature of a lien or otherwise of any party in any property, work, or fund with respect to the Work performed hereunder. Such documents shall include, where relevant, the following forms, copies of which are attached hereto:

- (i) Contractor's sworn statement;
- (ii) Contractor's partial or final waiver of lien;
- (iii) Subcontractor's sworn statement(s); and
- (iv) Subcontractor's partial or final waiver of lien.

Payment by the Village shall be conditioned upon an inspection by the Village of the Work completed and submission of required waivers by the Contractor. Payment by the Village shall in no way constitute a waiver of, or relieve the Contractor from, any defects in the Work. All payments shall be made in accordance with the Illinois Local Government Prompt Payment Act, 50 ILCS 505/1 *et seq.* Final payment for any Work performed by the Contractor pursuant to an invoice by Contractor shall be made by the Village to the Contractor when Contractor has fully performed the Work and the Work has been approved by the Village and submission of required waivers and paperwork by Contractor. Approval of the Work and issuance of the final payment by the Village shall not constitute a waiver of, or release Contractor from, any defects in the Work.

The Village shall have the right to withhold from any payment due hereunder such amount as may reasonably appear necessary to compensate the Village for any actual or prospective loss due to Work which is defective or does not conform to the Contract Documents; damage for which Contractor is liable hereunder; liens or claims of liens; claims of third parties, subcontractors, or material men; or any failure of the Contractor to perform any of its obligations under this Contract. The Village may apply any money withheld or due Contractor hereunder to reimburse itself for any and all costs, expenses, losses, damages, liabilities, suits, judgments, awards, and attorney's fees incurred, suffered, or sustained by the Village and chargeable to Contractor.

6. REVIEW OF WORK IN PROGRESS

Village shall have the right at commercially reasonable times to review the progress of the Work, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

MURAL REVIEWS

The first round of mural proofs will be delivered within six (6) weeks of the first payment. Requests for revisions are due to the contractor via email or Zoom call within four (4) weeks of receiving the proofs. Revisions will be delivered within two (2) week so of the email or Zoom call. Two (2) rounds of revisions are included and anything beyond two rounds will be an hourly rate of \$125/hour.

7. TERMINATION

The Village may terminate this Contract for cause, which includes but is not necessarily limited to, the Contractor's failure to perform the Work pursuant to this Contract. The

Village shall provide the Contractor with five (5) days' written notice of a termination for cause pursuant to the provisions of Section 19 below. The Village may also terminate this Contract when it determines the same to be in its best interests by giving fourteen (14) days' written notice to Contractor pursuant to the provisions of Section 19 below. In such event, the Village shall pay to Contractor all amounts due for the Work performed up to the date of termination.

8. TERMINATION FOR DEATH OR INCAPACITY

If the Contractor becomes unable to complete this Contract due to death or incapacitation, such death or incapacity will not be deemed a breach of this Contract. However, nothing in this section shall obligate the Village to pay for more of the Work than was completed prior to such death or incapacity.

In the event of incapacity, the Contractor may assign the Contractor's obligations and services under this contract to another Contractor provided that the Village in its sole discretion, approves of the new Contractor.

In the event of the death of the Contractor, this Contract shall terminate effective the date of death. Should the Village accept the partially completed Work, the Contractor's executor shall deliver to the Village the Work in whatever form or degree of completion it may be at the time. Title to the Work shall at that point transfer to the Village. However, the Work shall not be represented to be the completed Work of the Contractor unless the Village is otherwise directed by the Contractor's estate.

9. COMPLIANCE WITH APPLICABLE LAWS

Contractor shall comply with all applicable laws, regulations, and rules promulgated by any federal, state, county, municipal and/or other governmental unit or regulatory body now in effect during the performance of the Work. By way of example only and not as a limitation, the following are included within the scope of the laws, regulations and rules with which the Contractor must comply: all forms of workers' compensation laws, all terms of the equal employment opportunity rules and regulations of the Illinois Department of Human Rights, statutes relating to contracts let by units of government, and all applicable civil rights and anti-discrimination laws and regulations.

10. INDEMNIFICATION

To the fullest extent permitted by law, the Contractor shall waive any right of contribution against the Village and shall indemnify and hold harmless the Village and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including, but not limited to, legal fees (attorney's and paralegal's fees, expert fees and court costs) arising out of or resulting from the performance of the Contractor's work, provided that any such claim, damage, loss or expense is attributable

to bodily injury, sickness, disease or death, or injury to or destruction of property, other than the work itself, including the loss of use resulting therefrom, or is attributable to misuse or improper use of trademark or copyright-protected material or otherwise protected intellectual property, to the extent it is caused in whole or in part by any wrongful or negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right to indemnity which the Village and its officers, officials, employees, volunteers and agents would otherwise have. The Contractor shall similarly protect, indemnify and hold and save harmless, the Village and its officers, officials, employees, volunteers and agents against and from any and all claims, costs, causes, actions and expenses, including, but not limited to, legal fees incurred by reason of the Contractor's breach of any of its obligations under, or the Contractor's default of, any provisions of this Contract. The indemnification obligations under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Contractor or any subcontractor under workers' compensation or disability benefit acts or employee benefit acts.

11. INSURANCE

Contractor shall at Contractor's expense secure and maintain in effect throughout the duration of this Contract, insurance of the following kinds and limits set forth in this Section. Contractor shall furnish "Certificates of Insurance" to the Village before beginning work on the Project pursuant to this Contract. All insurance policies shall be written with insurance companies licensed to do business in the State of Illinois and having a rating of at least A- according to the latest edition of the Best's Key Rating Guide; and shall include a provision preventing cancellation of the insurance policy unless thirty (30) days prior written notice is given to the Village. This provision shall also be stated on each Certificate of Insurance: "Should any of the above described policies be canceled before the expiration date, the issuing company shall mail thirty (30) days written notice to the certificate holder named to the left."

The limits of liability for the insurance required shall provide coverage for not less than the following amounts, or greater where required by law:

(A) Commercial General Liability:

- i. Coverage to include Broad Form Property Damage, Contractual and Personal Injury.
- ii. Limits:

General Aggregate	\$ 2,000,000.00
Each Occurrence	\$ 2,000,000.00
Personal Injury	\$ 2,000,000.00

iii. Coverage for all claims arising out of the Contractor's operations or premises and anyone directly or indirectly employed by the Contractor.

(B) Workers' Compensation:

i. Workers' compensation insurance shall be provided in accordance with the provisions of the laws of the State of Illinois, including occupational disease provisions, for all employees who perform the Work pursuant to this Contract, and if work is subcontracted pursuant to the provisions of this Contract, Contractor shall require each subcontractor similarly to provide workers' compensation insurance. In case employees engaged in hazardous work under this Contract are not protected under the Workers' Compensation Act, Contractor shall provide, and shall cause each subcontractor to provide, adequate and suitable insurance for the protection of employees not otherwise provided.

(C) Comprehensive Automobile Liability:

i. Comprehensive Automobile Liability coverage shall include all owned, hired, non-owned vehicles, and/or trailers and other equipment required to be licensed, covering personal injury, bodily injury and property damage.

ii. Limits:
Combined Single Limit \$1,000,000.00

(D) Umbrella:

i. Limits:
Each Occurrence/Aggregate \$2,000,000.00

(E) The Village and its officers, officials, employees, agents and volunteers shall be named as additional insureds on all insurance policies set forth herein except workers' compensation. The Contractor shall be responsible for the payment of any deductibles for said insurance policies. The coverage shall contain no special limitations on the scope of protection afforded to the Village and its officers, employees, agents, and volunteers.

(F) The Contractor understands and agrees that any insurance protection required by this Contract or otherwise provided by the Contractor, shall in no way limit the responsibility to indemnify, keep and save harmless, and defend the Village, its officers, officials, employees, agents and volunteers as herein provided. The Contractor waives and shall have its insurers waive, its rights of subrogation against the Village, its officers, officials, employees, agents and volunteers.

12. GUARANTY

Contractor warrants and guarantees that its Work provided for the Project to be performed under this Contract, and all workmanship, materials, equipment, and supplies performed, furnished, used, or installed under this Contract, performed, furnished, used, or installed under this Contract, shall be free from defects and flaws in workmanship or design; shall strictly conform to the requirements of this Contract; and shall be fit and sufficient for the purposes expressed in, or reasonably inferred from, this Contract. Contractor further warrants and guarantees that the strength of all parts of all manufactured materials, equipment, and supplies shall be adequate and as specified and that the performance requirements of this Contract shall be fulfilled.

Contractor shall, at no expense to the Village, correct any failure to fulfill the above guaranty that may appear at any time. In any event, the guaranty herein expressed shall not be sole and exclusive, and is additional to any other guaranty or warranty expressed or implied.

13. REPAIRS

The Contractor shall guarantee the Work to be free from defects and shall make any repairs for problems caused by Contractor for five (5) years. Such defects shall include paint touch ups and repairs to the aluminum structure. If such repairs are required within the first five (5) years, the Village shall notify the Contractor in writing. Upon receipt of the written notice, the Contractor shall, within a time period agreed to by Village, perform or make, or cause the performance or making of, the necessary repairs to the Work. During that five (5) year period, the Contractor shall repair the Work at his sole cost and expense. After the five (5) year period, the Contractor shall be available for consultation and to make repairs for a reasonable fee.

14. VARA WAIVER FOR WORKS OF VISUAL ART

The Contractor has waived his rights under the Visual Artists Rights Act.

15. COPYRIGHT

The Contractor shall retain all rights under copyright law to which the Work, preliminary studies, drawings, specifications, and models may be subject. The Contractor represents and agrees that the Contractor is the sole creator of the Work and that the Work has not been previously displayed in whole or part, and that nothing in the Work will infringe the copyright of any third party. Nothing shall prevent the Contractor from creating future artwork in the Contractor's manner and style of artistic expression. The Contractor grants to the Village solely the singular Work detailed herein.

16. WARRANTY OF TITLE

The Contractor warrants and represents that, upon delivery of the Work and final payment to the Contractor, the Village shall acquire good title to the Work, and that the Work shall be free from any and all claims, liens, and charges by any person or entity, including but not limited to any employee, supplier, or subcontractor. Notwithstanding the foregoing, in no event shall the Village receive title until and unless all outstanding invoices have been paid. The Contractor warrants and represents that the Work is the result of the artistic effort of the Contractor or disclosed and attributed collaboration, the Work does not infringe upon any copyright, and that the Work is unique and limited to an edition of one (1).

17. LICENSE TO USE

The Contractor hereby grants Village the right to a royalty-free, perpetual license to use any depictions of the artwork for non-commercial purposes. To the extent practicable, the Contractor must be credited as the creator of the Work.

18. AFFIDAVIT OR CERTIFICATE

Contractor shall furnish any affidavit or certificate in connection with the work covered by this Contract as required by law.

19. NOTICES

Any notice required to be given by this Contract shall be deemed sufficient if made in writing and sent by certified mail, return receipt requested, by personal service, or by email transmission to the persons and addresses indicated below or to such addresses and persons as either party hereto shall notify the other party of in writing pursuant to the provisions of this Section:

To the Village:

Village Manager
Village of Oak Park
123 Madison Street
Oak Park, Illinois 60302
Email: villagemanager@oak-park.us

To Contractor:

Graham Carraway
J.Graham, LLC
1722 E 25th Avenue
Denver, CO 80205
Email: howdy@jgrahamstudios.com

Mailing of such notice as and when above provided shall be equivalent to personal notice and shall be deemed to have been given at the time of mailing.

Notice by email transmission shall be effective as of date and time of facsimile transmission, provided that the notice transmitted shall be sent on business days during business hours (9:00 a.m. to 5:00 p.m. Chicago time). In the event email notice is transmitted during non-business hours, the effective date and time of notice is the first hour of the first business day after transmission.

20. AUTHORITY TO EXECUTE

The individuals executing this Contract on behalf of Contractor and the Village represent that they have the legal power, right, and actual authority to bind their respective parties to the terms and conditions of this Contract.

21. EFFECTIVE DATE

The effective date of this Contract as reflected above and below shall be the date that the Village Manager executes this Contract on behalf of the Village.

22. ENTIRE CONTRACT; APPROVAL OF SUBCONTRACTORS

This Contract, including the documents incorporated by reference herein, sets forth the entire Contract between the parties with respect to the accomplishment of the Work. No right or interest in this Contract shall be assigned, in whole or in part, by either party without the prior written consent of the other party. The Village reserves the right to approve the use of subcontractors to complete any portion of the Work and to approve any applicable contract between the Contractor and a proposed subcontractor to perform any of the Work. This Contract shall be binding upon the parties and upon their respective heirs, executors, administrators, personal representatives, successors, and assigns, except as herein provided.

23. INDEPENDENT CONTRACTOR

Contractor shall have the full control of the ways and means of performing the Work referred to above and that the Contractor and its employees, representatives or subcontractors are not employees of the Village, it being specifically agreed that the Contractor bears the relationship of an independent contractor to the Village. The Contractor shall solely be responsible for the payment of all salaries, benefits and costs of supplying personnel for the Work.

24. CONTRACT BOND

Before commencing the work on the Project, Contractor shall furnish a Contract Bond. The Contract Bond shall be in an amount equal to 100% of the full amount of the Contract Price as security for the faithful performance of its obligations pursuant to the Contract Documents and as security for the payment of all persons performing labor and furnishing

materials in connection with the Contract Documents. Such bond shall be on a standard AIA document, shall be issued by a surety satisfactory to the Village, and shall name the Village as a primary co-obligee. The Contract Bond shall become a part of the Contract Documents. The failure of Contractor to supply the required Contract Bond within ten (10) days after the Notice of Award or within such extended period as the Village may grant if the Contract Bond does not meet its approval shall constitute a default, and the Village may either award the Contract to the next lowest responsible proposer or re-advertise for proposals. A charge against Contractor may be made for the difference between the amount of Contractor's Proposal and the amount for which a contract for the Work is subsequently executed, irrespective of whether the amount thus due exceeds the amount of the bid guarantee.

25. GOVERNING LAW AND VENUE

This Contract shall be governed by the laws of the State of Illinois both as to interpretation and performance. Venue for any action pursuant to this Contract shall be in the Circuit Court of Cook County, Illinois.

26. AMENDMENTS AND MODIFICATIONS

This Contract may be modified or amended from time-to-time provided, however, that no such amendment or modification shall be effective unless reduced to writing and duly authorized and signed by the authorized representative of the Village and the authorized representative of the Contractor.

27. NON-WAIVER OF RIGHTS

No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof, nor any payment under this Contract shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

28. CONFLICT

In case of a conflict between any provision(s) of the Village's Request for Proposals or the Contractor's Proposal and this Contract, this Contract and the Village's Request for Proposals shall control to the extent of such conflict.

29. HEADINGS AND TITLES

The headings and titles provided in this Contract are for convenience only and shall not be deemed a part of this Contract.

30. COOPERATION OF THE PARTIES

The Village and Contractor shall cooperate in the provision of the Work to be provided by Contractor pursuant to this Contract and in compliance with applicable laws, including, but not limited to, the Illinois Freedom of Information Act, 5 ILCS 140/1 *et seq.* (“FOIA”), and the provision of any documents and information pursuant to a FOIA request. Contractor shall provide any and all responsive documents to the Village pursuant to a FOIA request at no cost to the Village.

31. COUNTERPARTS; FACSIMILE OR PDF/EMAIL SIGNATURES

This Contract may be executed in counterparts, each of which shall be considered an original and together shall be one and the same Contract. A facsimile or pdf/email copy of this Contract and any signature(s) thereon will be considered for all purposes as an original.

32. EQUAL OPPORTUNITY EMPLOYER

Contractor is an equal opportunity employer and the requirements of 44 Ill. Adm. Code 750 APPENDIX A and Chapter 13 (“Human Rights”) of the Oak Park Village Code are incorporated herein by reference.

The Contractor shall not discriminate against any employee or applicant for employment because of race, sex, gender identity, gender expression, color, religion, ancestry, national origin, veteran status, sexual orientation, age, marital status, familial status, source of income, disability, housing status, military discharge status, or order of protection status or physical or mental disabilities that do not impair ability to work, and further that it will examine all job classifications to determine if minority persons or women are underutilized and will take appropriate affirmative action to rectify any such underutilization. The Contractor shall comply with all requirements of Chapter 13 (“Human Rights”) of the Oak Park Village Code.

In the event of the Contractor’s noncompliance with any provision of Chapter 13 (“Human Rights”) of the Oak Park Village Code, the Illinois Human Rights Act or any other applicable law, the Contractor may be declared non-responsible and therefore ineligible for future Agreements or subcontracts with the Village, and the Agreement may be cancelled or voided in whole or in part, and such other sanctions or penalties may be imposed or remedies invoked as provided by statute or regulation.

In all solicitations or advertisements for employees placed by it on its behalf, the Contractor shall state that all applicants will be afforded equal opportunity without discrimination because of race, sex, gender identity, gender expression, color, religion, ancestry, national origin, veteran status, sexual orientation, age, marital status, familial

status, source of income, disability, housing status, military discharge status, or order of protection status or physical or mental disabilities that do not impair ability to work.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK –
SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be signed by their duly authorized representatives on the dates set forth below.

VILLAGE OF OAK PARK

J. GRAHAM, LLC.

By: Kevin J. Jackson
Its: Village Manager

By: Graham Carraway
Its: President

Date: _____, 2024

Date: _____, 2024

ATTEST

ATTEST

By: Christina M. Waters
Its: Village Clerk

By:
Its:

Date: _____, 2024

Date: _____, 2024