



**STATE OF NEW HAMPSHIRE
DEPARTMENT OF CULTURAL RESOURCES**

Division of Arts, Division of Historical Resources,
Division of Libraries, Film and Television Office
Office of Curatorial Services

*American Canadian French Cultural Exchange Commission,
Administratively Attached*

Van McLeod, Commissioner



October 31, 2013

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

REQUESTED ACTION

Authorize the Department of Cultural Resources, Division of the Arts, to enter into a contract in an amount not to exceed \$12,800, with Margaret Black, (Vendor code 253939) Topsfield, MA, to create artwork for the Anna Philbrook Center, Concord, effective upon approval of the Governor and Executive Council through June 30, 2015. 100% Other Funds

Funds are available in the account titled State Art Fund as follows:

	<u>FY 2014</u>
01-34-34-341010-11270000-054-500528 trust Fund Expenditures	\$12,800.00

EXPLANATION

In response to a Request for Proposals released on April 10, 2013, eleven New England area artists and two artists from outside New England presented proposals for the Anna Philbrook Center Renovations Percent for Art Project. Proposals included murals, mosaics, photography, ceramics and photography. Funding for the Anna Philbrook Center was approved by Governor and Executive Council 01/16/13 #8G, in accordance with RSA 19-A:9.

Pursuant to RSA 19-A:10, The Percent for Art Selection Committee, working with the Site Advisory Committee (which is made up of representatives from the agency housed in the building under construction, the project architect, state legislator from the district where the building is located, and user of the building) and an Art Selection Committee, (which includes professional artist, crafts people, art educators, gallery directors, architects, representatives from the State Arts Council) and a representative from the Bureau of Highway and Public Works recommended the above works for the site. At their meeting on July 29, 2013 the New Hampshire State Council on the Arts voted to approve the commission.

Margaret Black will create six pulp paintings on the theme of transitions. The proposed dimensions of the paintings are 37.5" x 85.5" with the final dimensions to be determined by the artist and the NHSCA staff after a site visit, and in consultation with the Anna Philbrook Center renovation project director. Each painting will be installed in the six niche sections of the wall that runs alongside the ramp in the Wing B waiting area. Each of the six pulp paintings will carry a visual metaphor of the theme of transitions using imagery of New Hampshire's state tree, the White Birch, as it appears from the dawn of spring to late autumn.

Respectfully submitted,

Van McLeod
Commissioner

253939

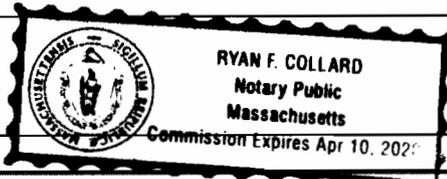
Subject: Percent for Art: Bureau of Graphic Services FORM NUMBER P-37 (version 1/09)

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS

1. IDENTIFICATION.

1.1 State Agency Name <u>Division of the Arts</u>		1.2 State Agency Address <u>19 Pillsbury St, Concord, NH 03301-4447</u>	
1.3 Contractor Name <u>Margaret Black</u>		1.4 Contractor Address <u>48 Prospect Street Topsfield MA 01983</u>	
1.5 Contractor Phone Number <u>978/887-8670</u>	1.6 Account Number <u>1127</u>	1.7 Completion Date <u>June 30, 2015</u>	1.8 Price Limitation <u>\$12,800.00</u>
1.9 Contracting Officer for State Agency <u>Lynn Martin Graton, Acting Director</u>		1.10 State Agency Telephone Number <u>(603) 271-2789</u>	
1.11 Contractor Signature <u>[Signature]</u>		1.12 Name and Title of Contractor Signatory <u>Margaret Black, artist</u>	
1.13 Acknowledgement: State of <u>Massachusetts</u> County of <u>Essex</u> On <u>9/20/13</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace <u>[Signature]</u> [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace <u>Ryan Collard FSR TD Bank</u>			
1.14 State Agency Signature <u>[Signature]</u>		1.15 Name and Title of State Agency Signatory <u>Lynn Martin Graton, Acting Director</u>	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: <u>[Signature]</u> Director, On:			
1.17 Approval by the Attorney General (Form, Substance and Execution) By: <u>[Signature]</u> On: <u>10/24/13</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.
3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").
3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT. Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.
5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.
5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.
5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.
6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Contractor shall comply with all applicable copyright laws.
6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.
6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL.
7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.
7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.
7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

Contractor Initials *MB*
Date *9/20/13*

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

- 8.1.1 failure to perform the Services satisfactorily or on schedule;
- 8.1.2 failure to submit any report required hereunder; and/or
- 8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

- 8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;
- 8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;
- 8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or
- 8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination

Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontracted by the Contractor without the prior written consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than fifteen (15) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be

Contractor Initials JB
Date 9/20/13

attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to endeavor to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("*Workers' Compensation*").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire.

19. CONSTRUCTION OF AGREEMENT AND TERMS. This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual

intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

Contractor Initials MS
Date 9/20/13

**EXHIBIT A – Margaret Black
Services**

SERVICES & INSTALLATION:

Consistent with the Request for Proposals dated April 10, 2013 and reflected in the artist's proposal received on June 7, 2013 and recommendations from the committee who convened on July 9, 2013, Margaret Black will create six pulp paintings on the theme of transitions. The proposed dimensions of the paintings are 37.5" x 85.5" with the final dimensions to be determined by the artist and the NHSCA staff after a site visit, and in consultation with the Anna Philbrook Center renovation project director. Each painting will be installed in the six niche sections of the wall that runs along side the ramp in the Wing B waiting area. Each of the six pulp paintings will carry a visual metaphor of the theme of transitions using imagery of New Hampshire's state tree, the White Birch, as it appears from the dawn of spring to late autumn.

Contract cost is all inclusive.

INSTALLATION:

An employee of the NHSCA will coordinate scheduling of transportation and installation of artworks and will be present onsite to assure contract compliance on the scheduled installation day. Installation shall take place during normal business hours and the artist agrees to take all reasonable precautions to avoid unsafe conditions for patrons and employees of the site.

The artist is required to arrive fully prepared for the installation of the artworks on the scheduled installation day.

A pre-installation site visit may be scheduled by NHSCA staff to help the artist assess installation requirements, as requested by the artist.

The materials and installation hardware of the Work shall remain free from all defects for a period of 90 days after installation. Any defect noted within 90 days of the installation date shall be repaired by the artist at their expense. The date and remedy of repair shall be coordinated with and approved by the NHSCA staff. Any repair shall restore the Work to the minimal maintenance condition as originally stated in the Request for Proposals.

Should the artist fail to remedy the defect within 60 days, and the State declines to make final acceptance of the Work, as provided in Exhibit B. the State may deem the artists in default and pursue legal remedies as provided in Sections 8 of the P-37 Form.

Contractor Initials

Date

MB
9/20/13

**EXHIBIT B – Margaret Black
Payment**

PAYMENT:

The Artist shall be compensated by the State of New Hampshire (State) in the total amount of the contract, which shall constitute full payment for all services, materials, travel, delivery, and installation (if specified under Exhibit A) to be furnished under the terms of this agreement. Such compensation shall be made in three installments, and processed upon receipt of invoices submitted by Artist, in triplicate, on forms provided by the State:

Payment Schedule for Commissions:

- First payment: Thirty-five percent (35%) of the amount referenced above shall be paid upon the effective date of this contract.
- Second payment: Thirty-five percent (35%) of the amount referenced above shall be paid when the project is seventy percent (70%) completed.
- Third and final payment: Thirty percent (30%) shall be paid after final acceptance by the State, wherein the State signifies that the Artwork has been completed.

Upon receipt and approval of the third and final invoice by the State, completion of an "Artist Worksheet" by the Artist detailing final information and recommendations for maintenance on the Artwork, and in consideration of the satisfactory performance of the services as determined by the State, the State shall consider this acceptance of the Artwork and submit invoice for processing.

The payment by the State of the full contract price shall be the sole compensation to the Artist for services and reimbursement to the Artist for all expenses, of whatever nature, in the performance of this contract and shall be considered complete. The State shall have no liability to the Artist other than the contract price.

Contractor Initials

Date

MB
9/20/15

**EXHIBIT C – Margaret Black
Special Provisions**

USE:

Once the Artwork is completed and becomes the property of the State, the State will not permit any use of the Artist's name or misuse of the Artwork which, in the State's opinion, would reflect discredit on the Artist's reputation or violate the spirit of the Artwork.

All preliminary data and research leading up to the execution of the final Artwork purchased by the State remain the sole property of the Artist.

The imagery developed by the Artist for the Artwork may continue to be used as the Artist chooses for other original works of art.

INSURANCE:

The insurance limits that are contained in section 14.1.1 pertaining to general liability are pertaining to general liability are modified so that the Comprehensive General Liability is \$1,000,000 per incident.

REPRODUCTION:

The Division of the Arts shall have the right to reproduce the image of the Artwork for purposes of supporting and promoting New Hampshire arts and for publicity purposes such as within booklets, press releases, Division of the Arts Website, e-news, etc., with credit given to the Artist in all cases.

ASSURANCE:

The materials of the artwork shall remain free from all defects for a period of 90 days from the date of installation. Any defect noted within 90 days of the installation date shall be repaired by the Artist at his/her expense. The date and remedy of any repair shall be coordinated with and approved by the NHSCA staff. Any repair shall restore the artwork to a condition requiring minimal maintenance as originally stated in the Request for Proposals. Should the artist fail to remedy any defect within 60 days of notification of defect, the State may deem the artists in default and pursue legal remedies as provided in Section 8 of the P-37 Form.

Contractor Initials

Date

MB
9/20/13

