



Midland Mural Festival – Artist and Artisan Terms and Conditions
Event Date – September 28, 2024
Location – Harbourside Park

The Town of Midland (the “staff”) hereby grants the Vendor a limited non-exclusive, non-assignable license to occupy booth space within the outdoor festival within the closed portion of Harbourside Park during the duration of the Festival, subject to the rules and regulations contained in this agreement:

1. **THE BOOTH SPACE APPLICATIONS AND CONTRACT** (the “Agreement”) will become a binding contract when accepted in writing by staff and confirmations of such acceptance is emailed by staff to the email address provided by the vendor on the front side hereof

2. **TERM** The term of the permit shall commence at 7:30 a.m. (EST) on Saturday, September 28, 2024 and shall end at 6:00 p.m. of the same day, and shall extend to those times before and after the Festival for installation and removal of exhibits/displays as staff may advise (the “Term”).

3. **PAYMENTS** Payment is required as follows:

- a) No application shall be considered complete without full payment. Credit Cards will be the only form of payment accepted.
- b) The vendor shall be liable for and responsible to pay any and all taxes imposed in connection with the license/permit granted hereunder including without limitation any applicable retail sales taxes, business license taxes, goods and services taxes, customs and duties.
- c) If any amounts payable are not received in accordance with this paragraph 3 then, at the option of staff, this Agreement may be terminated and, without prejudice to any other remedies it may have, staff may retain any amounts already paid as liquidated damages and not as a penalty.

4. **ASSIGNMENT OF BOOTH SPACE** All applications for booth space are subject to availability and vendor eligibility. Vendor acknowledges that staff may not be able to assign the specific booth or square footage applied for, in which case staff will advise the vendor of the available booths or square footage, as the case may be. Vendors may not transfer or sublicense all or part of its assigned booth space without the prior written consent of staff. While staff tries in earnest to accommodate special requests, staff cannot guarantee special request fulfillment ie. Vendors requesting specific placement.

5. **VENDOR**

- a) Staff reserves the right to determine the eligibility of all vendors and the appropriateness of products being displayed and/or sold in accordance with the theme of the festival prior to acceptance of this Agreement.
- b) The vendor shall provide staff with a list of products intended to be displayed and/or sold at the Festival for the purpose of determining eligibility. Staff will not consider acceptance until this list is submitted. Acceptance is at the sole discretion of staff.
- c) The vendor must be the authorized agent of all products intended to be displayed and/or sold at the Festival.
- d) The vendor agrees to comply with all applicable Federal, Provincial and Municipal laws, regulations, rules, orders, by-laws and directions from Festival staff.

6. VENDOR'S BOOTH Vendor will be responsible for the arrangement of products and exhibits/displays within its designated booth space. All products and exhibits/displays (including without limitation any and all materials and equipment) used in vendor's designated booth space must conform with and meet the requirements of applicable Municipal, Provincial and Federal laws, regulations, rules, orders, by-laws and directions as well as any rules, regulations and guidelines of the Town covering hazardous substances, fire, safety, health and all other matters. The vendor agrees to abide by and conform with the display limitations as outlined in this agreement and in the rules, regulations and guidelines of the Festival and agrees to permit the Festival staff, at any time, to enter and inspect the vendor's designated booth space. Management and/or Festival staff shall have the right to remove such persons or property as may be deemed necessary in order to ensure the safe and orderly operations of the Festival and the outdoor market. No vendor may dismantle its exhibit/display until after the official closing of the Festival. Failure to comply may cause staff to revoke future exhibiting privileges. The vendor further agrees to remove, at its expense, all products and exhibits/displays from the park by no later than 6 p.m. (EST) on the day of the Festival, or such other time as may be designated hereafter by the Festival staff, and to leave the premises in a clean, orderly state. In the event that the exhibitor fails to do so, the vendor agrees to pay for such additional costs and expenses as may be incurred by staff as a result thereof which may include the removal and storage or disposal of vendor's products and exhibits/displays by staff and/or the Town, it being acknowledged that neither Festival staff nor the Town shall be liable for any claims, damages, losses, costs or expenses arising from the vendor's failure to remove its products or exhibits/displays within the allotted time for same.

7. SALE OF MERCHANDISE

- a) Vendor's offering retail merchandise for sale are responsible for obtaining all licenses and permits from municipal, provincial or federal; authorities which may be required to operate or conduct trade or business during the Festival and pay all taxes that may be levied against it as a result of the operations of its trade or business in the booth space (including the collection and remittance of retail sales tax and HST).
- b) Vendors shall not, under any circumstances, solicit business in aisles or booth(s) other than their own nor shall they distribute samples and/or leaflets outside of the confines of their designated booth space; Staff reserves the right to prohibit the distribution or use of any offensive or objectionable material.
- c) Vendors shall not, under any circumstances, move their operations outside their designated booth space. Vendor's who move their tents or other components of their exhibit outside their designated area will be asked to move back to their designated area. Vendors who refuse to comply with staying within their designated area may have festival staff move components of their exhibit back to their designated area. Vendors who refuse to comply to operate within their designated area forfeit participation in future events.
- d) Products or services offered for sale to Festival visitors must have prices displayed.
- e) Exhibitors shall not engage in any deceptive, misleading, illegal or unethical practices or advertising; any deception or misrepresentation by the vendor or by anyone on its behalf as to any of the items shall be sufficient cause for termination of this agreement.

8. CANCELLATION BY VENDOR Whether or not the booth space is later assigned to another party, upon cancellation of the Agreement by the vendor, the vendor will forfeit all payments made to date, as liquidated damages and not as a penalty, without prejudice to any other remedies staff may have.

9. VENDOR CONDUCT The vendor shall conduct itself in a manner and operate its equipment at a level of sound that is considered to be proper and acceptable to the welfare of the Festival,

other vendor's and Festival visitors as determined at the sole discretion of staff. No microphones will be permitted in a vendor's booth space. Vendors shall be solely responsible for all acts or omissions of the vendor and its employees, agents and sub-contractors at any and all times while the vendor is in occupation of its designated booth space or any portion of it and vendor shall indemnify Festival staff from any and all claims, damages, losses, costs and expenses arising therefrom.

10. **DEFAULTS** In the event that the Vendor:

- a) Fails to occupy its designated booth space by the time set for completion of exhibits/displays for the Festival;
- b) Fails or refuses to comply with the orders or requests of the Festival staff;
- c) Permits any conduct or act which in the opinion of the staff is improper, or renders it inadvisable that the vendor should be allowed to continue carrying on business under this Agreement, or
- d) Fails to comply with the terms and conditions of the Agreement

Staff shall have the right to take whatever action is deemed to be necessary to enforce the provisions of this Agreement and, without limiting the generality of the foregoing, staff may terminate this Agreement and take possession of vendor's designated booth space, without refund of any amount of monies paid to date by the vendor and without prejudice to any other remedies that staff may have. If necessary, staff shall have the right to remove the vendor and all its property from the area in question at the vendor's sole cost and expense. Festival staff shall not be liable in damages or otherwise by reason of any such actions. Staff reserves the right, but shall not be obligated, to assign such booth space to another vendor in order to mitigate its damages.

11. **INSURANCE** The vendor, at its own expense, shall provide to staff, not later than thirty (30) days prior to the commencement of the Term, a certificate of comprehensive general liability insurance, to cover the entire period of the Festival, issued by an insurance company licensed to transact business in Canada in a form satisfactory to and in which staff and the Town of Midland and each of its officers and servants shall be named additional insureds. Such insurance shall provide a minimum limit of liability of two million dollars (\$2,000,000.00) for bodily injury and/or property damage in any one occurrence, shall include a cross-liability clause and shall provide that it will not be cancelled or materially altered prior to the termination of the Term. The vendor acknowledges that its equipment and property at the festival market is not protected by insurance against fire, theft, vandalism, etc. by the festival market and the protection of such is the responsibility of the vendor.

12. **LIMITATIONS OF LIABILITY** Festival staff will provide adequate and reasonable volunteers for the Festival. However, neither staff nor the Town, nor any of their respective directors, officers, employees, volunteers, agents or sub-contractors (collectively, the "Releasees") will be liable for, and the vendor hereby releases and forever discharges the Releasees from and against, any and all sub-contractors arising out of or in any way related to the vendor's use and/or occupation of booth space, the vendor's attendance at and participation in the Festival, or the acts or omissions (negligent or otherwise) of the vendor, its employees, agents or sub-contractors, notwithstanding that such loss or damage may have been contributed to or occasioned by the negligence of one or more of the Releasees. The vendor's products, property and exhibits/displays while at the festival market shall be at the sole risk of the vendor.

13. **INDEMNITY** The vendor agrees to indemnify and hold the Releasees, and each of them, harmless from and against any and all losses, damages, actions, claims, liabilities, costs,

expenses, rights and demands of any nature or kind whatsoever, including but not limited to personal injuries, death, disability, property damages, and legal fees and expenses for litigation and settlement, arising out of or in any way related to the license granted hereunder, any occurrence in or upon or at the Facility, the vendor's use and/or occupation of booth space, the vendor's attendance at and participation in the Festival, the vendor's violation of any laws or ordinances the violation or breach of any provision of this Agreement by the vendor, or the acts or omissions (negligent or otherwise) of the vendor, its employees, agents or sub-contractors, notwithstanding that any such loss or damage may have been contributed to or occasioned by the negligence of one or more of the Releasees.

14. CANCELLATION OF FESTIVAL In the event that the Festival is cancelled or not held by reasons of acts of God, strikes, lockouts or other labour or individual disturbances, interruptions by government or court order, future valid orders of any regulatory body having jurisdiction, acts of public enemy, wars, riots, strike, fire, lightning, tempest, flood, governmental regulation or advisory, recognized health threats as determined by the World Health Organization, the Centres for Disease Control, or local government authority or health agencies (including but not limited to the health threats of COVID-19, H1N1, or similar infectious diseases) curtailment of transportation facilities, or other similar ones prevent, dissuade, or unreasonably delay at least 25 percent of prospective Event attendees from appearing at the event, or where any of them make it illegal, impossible, inadvisable, or commercially impracticable to hold the Event or to fully perform the terms of the agreement, the Organizers and Management shall in no way whatsoever be liable to the vendor by reason of its failure to deliver the booth space. For greater certainty, there shall be no refunds in the event of a cancellation of the festival. Festival Staff reserves the right to change Festival dates, shorten the duration of the Festival or relocate the Festival as circumstances warrant.

15. AMENDMENT Festival staff reserves the right to amend or interpret these terms and conditions as necessary in the specific and general interest of the Festival.

16. DAMAGE TO TOWN PROPERTY Vendors agree that nothing shall be posted on, tacked, nailed, screwed or otherwise attached to the street, sidewalk, planters, garbage receptacles, light standards or buildings, or any other structure, within the street where the Festival market occurs. Any costs incurred in protecting the street and any of the aforementioned structures within will be at the expense of the Vendor. Vendors are liable for any and all damage caused to the downtown or to other vendor's property which occur through acts or omissions of the vendor, its employees, agents or sub-contractors, and vendor shall indemnify and hold the Releasees, and each of them, harmless from any and all claims, damages, losses, costs and expenses arising therefrom.

17. APPROVAL of vendor applications is at the sole and unfettered discretion of the Town of Midland Culture and Community staff.

I understand and agree to all outlined terms and conditions for application, acceptance and participation as a vendor at the Midland Mural Festival 2024.