

TOWN OF SUPERIOR
RESOLUTION NO. R-81
SERIES 2022

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF
SUPERIOR APPROVING THE PURCHASE OF "LET YOUR HEART SOAR"
BY ARTIST MITCH LEVIN

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF
THE TOWN OF SUPERIOR, COLORADO, as follows:

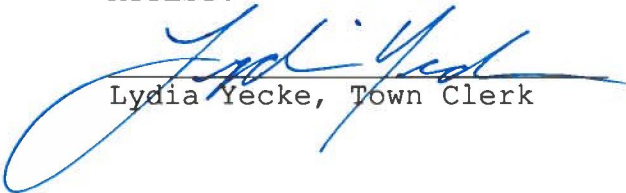
Section 1. The Art Purchase Agreement between the Town of
Superior and High Voltage is hereby approved in substantially the
same for attached hereto, subject to final approval by the Town
Attorney.

ADOPTED this 12th day of December, 2022.



Mark Lacis, Mayor

ATTEST:



Lydia Yecke, Town Clerk



ART PURCHASE AGREEMENT

THIS ART PURCHASE AGREEMENT (the "Agreement") is made and entered into this 12 day of December, 2022 (the "Effective Date"), by and between the Town of Superior, a Colorado municipal corporation with an address of 124 East Coal Creek Drive, Superior, CO 80027 (the "Town"), and Mitch Levin, d/b/a High Voltage, an independent contractor with an address 3254 Palo Parkway, Boulder, CO 80301 (the "Artist") (each a "Party" and collectively the "Parties").

WHEREAS, the Town engaged Artist to create and to place an art installation on real property owned located within the Town;

WHEREAS, the agreement with Artist loans the Artist's artwork until October 25, 2023 (the "Loan Period"); and

WHEREAS, the Town now wishes to purchase Artist's artwork.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. ARTWORK

The Town agrees to purchase the artwork titled "Let Your Heart Soar" (the "Art") from Artist, which is currently installed in front of the Sport Stable, as depicted on Exhibit A.

II. COMPENSATION

The Town shall pay Artist a total fee of \$18,000 for the purchase of the Art in compliance with this Agreement. The fee shall constitute full compensation for the purchase of the Art.

III. INDEPENDENT CONTRACTOR

Artist, for all purposes arising out of this Agreement, is an independent contractor and not an employee of the Town. It is expressly understood and agreed that Artist shall not be entitled to any benefits to which the Town's employees are entitled, such as overtime, retirement benefits, worker's compensation, injury leave or other leave benefits.

IV. ARTIST'S REPRESENTATIONS AND WARRANTIES

A. *Warranties of Title.* The Artist and Town both intend that the Artwork is and shall remain unique to the Town. Artist represents and warrants to the Town that:

1. The Artwork is solely the result of Artist's artistic effort;
2. The Artwork is unique and original and does not infringe upon any copyright or the rights of any person;

3. The Artwork has not been sold, assigned, transferred to a third party, licensed, granted, encumbered, or accepted for sale elsewhere;
4. The Artwork shall not be reproduced in the future for display elsewhere;
5. The Artwork is free and clear of liens from any source whatsoever; and
6. Artist has not utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair this Agreement or infringe upon or violate the rights of any third party.

B. *Warranties of Quality and Condition.* Artist represents and warrants to the Town that:

1. All materials used in creating the Artwork and made a part of the Artwork are of good quality, free of defects (including qualities that cause or accelerate deterioration of the Artwork).
2. The Artwork and any materials used in creating the Artwork, and made a part of the Artwork, or placed permanently in the Artwork, are not currently known to be harmful to public health and safety and are durable to withstand swings in temperature from 20 degrees below zero to 100 degrees Fahrenheit.
3. The Artwork will not fall below an acceptable standard of public display or experience irreparable conditions, beyond general wear and tear, that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling, for a period of 3 years from the date of final acceptance of the Artwork by the Town.

V. OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS

A. The Artwork shall be exclusively owned by the Town. Artist expressly acknowledges and agrees that the Artwork constitutes a "work made for hire." To the extent, if at all, it shall be determined that the Artwork does not constitute a "work made for hire," Artist hereby transfers, sells, and assigns to the Town all of its worldwide right, title, and interest in and to the Artwork, including without limitation, all rights of copyright, patent, trade secret, trademark, service mark, trade dress, artistic and moral rights, mask rights, character rights, publicity rights, and any and all other proprietary rights of any kind whatsoever relating to the Artwork, together with any and all applications, registrations, renewal and extension rights, and rights to sue for any past, present, or future infringement (collectively, the "Rights").

B. Artist shall execute such documents and take such actions as may be requested by the Town which may, in the sole discretion of the Town, be required to perfect, protect, enforce, register, or transfer the Town's interest in the Artwork and the Rights. Artist hereby irrevocably authorizes and empowers the Town to make, constitute, and appoint, in its sole discretion, any officer or agent of the Town as Artist's true and lawful attorney-in-fact, with the power to endorse Artist's name on, and file of record, all documents, instruments, and agreements of any kind

whatsoever which the Town may, in its sole discretion, require for the Town or its transferees, successors, or assigns to perfect, protect, enforce, register, or transfer its interest in the Artwork and the Rights.

C. The Town may, with respect to all or any portion of the Artwork, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, use in a performance, or change the Artwork without providing notice to or receiving consent from Artist. Artist expressly waives any and all artistic and moral rights associated with the Artwork.

D. Artist may use the Artwork for Artist's portfolio purposes and in Artist's marketing materials, provided that Artist shall include an attribution with any such use as follows: "Commissioned and owned by the Town of Superior, Colorado."

VI. INDEMNIFICATION

Artist hereby indemnifies and holds harmless the Town, its officers, insurers, volunteers, agents, representatives, and employees from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by, the act, omission, error, professional error, mistake, negligence, or other fault of Artist, any subcontractor of Artist, or any officer, employee, representative, or agent of Artist, or which arise out of a worker's compensation claim of any employee of Artist or of any employee of any subcontractor of Artist.

VII. MISCELLANEOUS

A. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado.

B. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

E. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the party at the address set forth on the first page of this Agreement.

F. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

H. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

I. *Governmental Immunity.* The Town and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

J. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

TOWN OF SUPERIOR, COLORADO



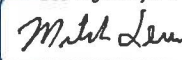
Mark Lacis, Mayor

ATTEST:



Lydia Yecke, Town Clerk

HIGH VOLTAGE



12/20/2022

Mitch Levin

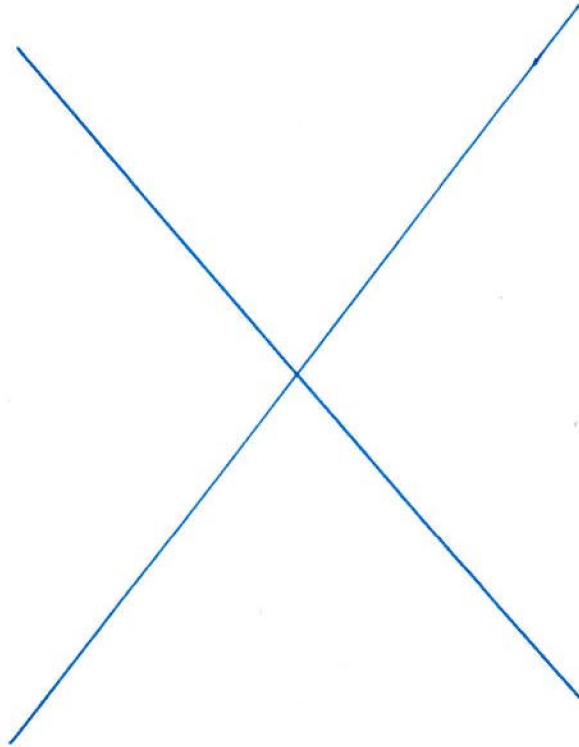
STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed to and affirmed before me by Mitch Levin, as _____ of High Voltage this ____ day of _____, 2022.

My commission expires: _____

(Seal)

Notary Public



**EXHIBIT A
ARTWORK**

MITCH LEVIN – LET YOUR HEART SOAR

