

**CITY COUNCIL MEETING**  
**AGENDA ITEM IV**



**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**

*City Council Meeting of April, 2016*

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**Subject: City council to consider agreement with Joe Kildune for art sculpture display at Marceau park.**

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**CITY OF FRANKLIN  
COUNCIL AGENDA REPORT**

*City Council Meeting April 2016*

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**From:** Elizabeth Dragon – City Manager

**Subject:** License Agreement for Art Display at Marceau Park

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***Recommended Motion:***

Councilor moves:

“I move that the Franklin City Council Authorize the City Manager to execute the proposed lease agreement for Marceau Park with Joseph Kildune”

Mayor calls for a second, discussion, and vote.

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**Discussion:** At the March City Council meeting, Mr. Kildune presented a request to the city council for a six month exclusive sculpture display at Marceau Park. The City council was generally supportive of the request and directed the city manager to work out the details with Mr. Kildune. The proposed License agreement was drafted by the city attorney and found to be acceptable by Mr. Kildune.

**Attachments/Exhibits:** 1. Lease Agreement drafted by City Attorney

PETER V. MILLHAM\*  
RODNEY N. DYER  
ROBERT L. HEMMON  
EDMUND S. HIBBARD  
PAUL T. FITZGERALD  
JOHN P. GIERE  
DORCAS J. GORDON\*\*  
ALLISON M. AMBROSE  
KATHRINE V. LACEY



**WESCOTT LAW P.A.**  
SOUND COUNSEL SINCE 1927

HAROLD E. WESCOTT  
(1903 - 1991)

\*Retired  
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LACONIA, NEW HAMPSHIRE 03246-3761  
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[www.WescottLawNH.com](http://www.WescottLawNH.com)

March 25, 2016

*(Via e-mail only)*

Elizabeth Dragon, City Manager  
City of Franklin  
316 Central Street  
Franklin, NH 03235

**RE: Joseph Kildune**

Dear Elizabeth:

In response to your e-mail request of March 22<sup>nd</sup>, I am enclosing a draft License Agreement for consideration by the City Council. I have based this agreement on the one that I previously drafted last year for the ice cream truck that was temporarily allowed at 425 Central Street but have modified it to include the subject matter and comments included with your e-mail, as well as additional material that I thought was appropriate for the proposed display.

Please let me know if you have any questions, comments or suggestions for additional material to be included.

Thank you for your attention to this matter.

Sincerely,

Paul T. Fitzgerald

PTF/src  
Enclosure

**CONFIDENTIALITY STATEMENT**

*This is a **confidential** communication between attorney and client and is not to be considered part of any public record; nor is it to be divulged to the public without the prior written consent of the client.*

**CITY OF FRANKLIN, NEW HAMPSHIRE  
316 Central Street  
Franklin, NH 03235**

**and**

**JOSEPH KILDUNE**

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**LICENSE TO ENTER AND UTILIZE REAL ESTATE**

**NOW COMES** the **CITY OF FRANKLIN, NEW HAMPSHIRE**, a New Hampshire municipal corporation with a place of business at 316 Central Street, Franklin, New Hampshire, 03235, hereinafter referred to as "Franklin" and **JOSEPH KILDUNE**, a private individual with an address of \_\_\_\_\_, hereinafter referred to as the "Artist", and hereby mutually agree as follows:

1. **License.** Franklin hereby grants to the Artist an exclusive, revocable license to enter upon real estate owned by Franklin and located at \_\_\_\_\_ Central Street, Franklin, New Hampshire, commonly known as Marceau Park and to temporarily utilize that location as an outdoor sculpture display area.
2. **Nature of Relationship.** The legal relationship between Franklin and the Artist will be one of licensor/licensee. This license shall be temporary in nature in keeping with the terms herein and shall be revokable at any time by Franklin upon twenty-four (24) hours notice to the Artist.
3. **Purpose.** The Artist shall use the license location solely for the purpose of sculpture display. No other use shall be made by the Artist of the referenced location without the specific written approval of Franklin.
4. **Term.** This license shall become effective on April 5, 2016 and shall terminate unless extended in writing on October 5, 2016.

5. **License Fee.** The Artist shall pay to Franklin a license fee in the amount of One Dollar (\$1.00) payable in advance.
6. **Terms and Conditions.** This license is granted on the following terms and conditions:
  - A. **Plan.** The display shall be located as shown on the attached plan. No alterations shall occur without the approval of the Franklin Planning Department and Franklin Recreation Department. Access to the premises shall be as approved by the Franklin Recreation Department.
  - B. **Site Modifications.** The Artist shall make no permanent site modifications without the written consent of Franklin. The Artist may make temporary landscaping improvements such as the installation of flowers, ornamental plantings and the like which shall be in the immediate vicinity of a specific sculpture which shall be removed at the conclusion of the license period unless otherwise agreed to by the City.
  - C. **Maintenance.** The Artist will keep the premises clean of all litter and debris and will maintain the property in an appropriate and attractive manner, including mowing in the immediate vicinity of any display area as may be directed or approved by the City.
  - D. The display permitted pursuant to this agreement shall create no excessive or bothersome noise, odor, vibration or other objectionable event.
  - E. **Artistic Content.** No display shall contain any depiction which, in whole or in part, may be considered offensive, obscene, overtly sexual or which promotes, detracts or otherwise comments upon any religious or political idea, concept or personage, in the sole discretion of the City. The City may, in its sole discretion, remove any display which is not in compliance with this section.

7. **Conclusion and Removal of Display.** On or before October 5, 2016, or such other date as may be agreed to between the Artist and the City, the display shall be removed and the park shall be returned to its pre-display condition. Failure on the part of the Artist to remove the display in whole or in part as scheduled, or for other good cause, will be cause for the City to remove the display and such removal will not give rise to any claim on the part of the Artist even in the event that portions or all of the display are damaged or destroyed as a result of such removal actions.
8. **Legal Compliance.** The Artist shall at all times comply with all local, state and any other applicable ordinances, laws or regulations including the land use regulations of the City of Franklin.
9. **Insurance and Indemnification.** During the term of this license the Artist shall maintain personal liability insurance in a form acceptable to Franklin with minimum liability limits of Two Million Dollars (\$2,000,000). The City shall be named as an additional insured on all such policies of insurance and shall be provided with certificates of insurance.
10. **Notification.** The Artist will supply Franklin, and its Police Department, with updated contact information including a primary contact, mailing address, telephone number, e-mail address and cell phone number (if applicable).
11. **Amendment.** No term or provision of this agreement shall be altered, amended or changed in any way except in writing, with such amendment being executed by the parties hereto.
12. **Entire Agreement.** It is agreed that all understandings and representations heretofore between the parties are merged into this agreement, which alone fully and completely

expresses their agreement and that the same is entered into after full investigation, neither party relying upon any statement or representation not embodied in this agreement.

13. **Agreement Binding.** This agreement shall be binding upon and be to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties.
14. **Assignment.** No party shall assign any obligation under this agreement without the written consent of the other party.
15. **Governing Law.** This contract shall be governed by, and interpreted in accordance with, the laws of the State of New Hampshire. It is specifically agreed that the courts of the State of New Hampshire shall have jurisdiction over any dispute arising herefrom.
16. **Counterparts.** This agreement may be executed in any number of counterparts, each of which shall be deemed an original for all purposes but all of which shall constitute one in the same agreement.
17. This agreement is granted pursuant to action of the Franklin City Council having been taken on April 4, 2016.

**IN WITNESS WHEREOF**, we have hereunto set our hands and executed this agreement on the day and year first above written.

**City of Franklin, New Hampshire**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Elizabeth Dragon, City Manager  
Duly Authorized**

\_\_\_\_\_  
**Witness**

\_\_\_\_\_  
**Joseph Kildune**





JOSEKIL-01

LCOONEY

**CERTIFICATE OF LIABILITY INSURANCE**DATE (MM/DD/YYYY)  
3/24/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

<b>PRODUCER</b> A W Frost Agency, Inc. 354 Central Street Franklin, NH 03235	<b>CONTACT NAME:</b> PHONE (A/C, No, Ext): (603) 934-3319	FAX (A/C, No): (603) 934-7227
	<b>E-MAIL ADDRESS:</b>	
<b>INSURED</b>  Joseph Kildune 361 Central St Franklin, NH 03235	<b>INSURER(S) AFFORDING COVERAGE</b>	
	<b>INSURER A: MMG Insurance Company</b>	
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
		<b>NAIC #</b> 15997

**COVERAGES****CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	<input checked="" type="checkbox"/> <b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER:			2490023	04/15/2016	04/15/2017	EACH OCCURRENCE	\$ 1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	\$ 250,000
							MED EXP (Any one person)	\$ 5,000
							PERSONAL & ADV INJURY	\$ 1,000,000
							GENERAL AGGREGATE	\$ 2,000,000
							PRODUCTS - COMP/OP AGG	\$ 2,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						COMBINED SINGLE LIMIT (Ea accident)	\$
							BODILY INJURY (Per person)	\$
							BODILY INJURY (Per accident)	\$
							PROPERTY DAMAGE (Per accident)	\$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$						EACH OCCURRENCE	\$
							AGGREGATE	\$
								\$
	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE	OTH-ER
							E.L. EACH ACCIDENT	\$
							E.L. DISEASE - EA EMPLOYEE	\$
							E.L. DISEASE - POLICY LIMIT	\$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Operations usual to the insured.

Displaying Art on Town Common

**CERTIFICATE HOLDER****CANCELLATION**
 City of Franklin  
 316 Central St  
 Franklin, NH 03235

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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FRANKLIN  
SCULPTURE PARK

W. J. ...