

**FITZ HENRY LANE ONLINE CATALOGUE RAISONNÉ PROJECT  
THE CAPE ANN MUSEUM, GLOUCESTER, MASSACHUSETTS  
SUBMISSION AGREEMENT FOR PAINTINGS, DRAWINGS AND LITHOGRAPHS**

SUBMISSION AGREEMENT dated as \_\_\_\_\_, 20\_\_ (the “Agreement”), by and between the CAPE ANN MUSEUM, INC., a Massachusetts not-for-profit corporation with 501(c)(3) status (the “Museum”) and the FITZ HENRY LANE ONLINE CATALOGUE RAISONNÉ PROJECT (the “Project”; collectively, the Museum and the Project are referred to herein as the “CR Committee”), on the one hand, and \_\_\_\_\_, the owner(s) (the “Owner” or “you”) of the following work (the “Work”):

Title/Subject: \_\_\_\_\_

Medium: \_\_\_\_\_

Dimensions: \_\_\_\_\_

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

Date Acquired: \_\_\_\_\_

Name and Address of Previous Owner:

\_\_\_\_\_

Provenance before Previous Owner (attach additional sheet if necessary):

The Project was established for the purpose of preparing and publishing an online catalogue raisonné (as well as any later published hard copies thereof) of all of the known paintings, drawings and lithographs, as well as all corresponding existing scholarship, of and concerning Fitz Henry Lane (the “Catalogue Raisonné”). The Project is constituted by a group of individuals who have been designated by the Museum in its sole discretion as experts of the works of Fitz Henry Lane (“Lane”) to render opinions and to make determinations thereon of what works will be included in the Catalogue Raisonné and attributed to Fitz Henry Lane.

The Project endeavors to consolidate and present to the public through the Catalogue Raisonné, in an efficient and user-friendly manner, information about Lane and his works for the purpose of advancing education, knowledge, research, awareness, appreciation, and public discourse about Lane. The Project is scholarship-focused and has been funded by grants and by the Museum's donor base.

The Catalogue Raisonné is an interactive Internet site (as well as any published later hard copies thereof), created and managed by the Museum, comprised of three discrete yet integrated components all reviewed and approved by the Project: (i) a catalogue raisonné database; (ii) an archive of digitized images of works by, and writings about, Lane; and (iii) specifically commissioned scholarship and editorial pieces. The Catalogue Raisonné site will also include proposed educational curriculums for teachers.

The Owner is submitting the Work to the Project and requests the Project to consider the Work for inclusion in the Catalogue Raisonné.

The Project has agreed to consider the Work for inclusion in, or exclusion from, the Catalogue Raisonné, or for further study in connection therewith, only pursuant to the terms and conditions set forth herein.

The CR Committee and the Owner (*i.e.*, the parties hereto) agree as follows:

1. The Project agrees to consider the Work for purposes of rendering an opinion to the Owner concerning the possible inclusion of the Work in the Catalogue Raisonné. After such consideration and research as the Project, in its sole discretion, shall deem appropriate, the Project shall advise the Owner as to whether: (a) it will include the Work in the Catalogue Raisonné; (b) it will not include the Work in the Catalogue Raisonné; or (c) it is unable to reach a decision at this time about whether or not to include the Work in the Catalogue Raisonné.
2. The Owner represents and warrants to the CR Committee that the Owner is the actual owner of the Work and that the Owner has the sole title thereto and right to possession thereof. Submissions by representatives, dealers, agents, or any other person or entity who is not the sole owner will not be considered.
3. As part of the submission, the Owner shall provide the Project (at the Owner's sole expense) with:
  - (a) a digital image of the front and back of the Work suitable for publication;
  - (b) all information about the Work known to the Owner, including but not limited to its full provenance and exhibition history, as well as any opinion by an expert or scholar as to the attribution of the Work;
  - (c) the results of any scientific examination or testing of the Work.

The Owner represents and warrants to the CR Committee that all information provided to the Project is accurate and complete to the best of the Owner's knowledge and belief.

4. The Owner expressly understands and agrees that neither the Project nor any individual associated with the Project, including but not limited to editors, writers, researchers, advisors, contractors, scientific committee members, employees of the CR Committee, and the directors, officers and employees of the CR Committee, or, collectively, their agents or representatives (the “CR Committee Members”), warrants or guarantees the correctness of the Project’s decision, including but not limited to any oral or written statements in connection therewith, including whether the Work is authentic or not or whether the Work is correctly attributed to Lane or not.

Accordingly, the Owner hereby covenants not to sue, and further releases and discharges, the CR Committee and each of the CR Committee Members from and against any and all claims, liabilities, losses and damages, and all costs and expenses (including but not limited to reasonable attorneys’ fees) in any way relating to, arising out of, based upon, or resulting from the decision (or lack thereof) rendered by the Project concerning the Work.

5. The Owner agrees to defend, indemnify and hold harmless the CR Committee, the CR Committee Members, all individuals and entities associated with the Project, and all institutions, corporations, and individuals providing the funding for the Project, from and against any and all claims, liabilities, losses and damages, and all costs and expenses (including but not limited to reasonable attorneys’ fees) in any way relating to, arising out of, based upon, or resulting from the decision (or lack thereof) rendered by the Project concerning the Work.

6. Attached hereto as Forms A, B and C, respectively, are three forms of letters, one of which will be delivered by the Project to the Owner after the consideration by the Project of the submitted Work. The letter attached as Form A will be delivered if the Project intends to include the Work in the Catalogue Raisonné. The letter attached as Form B will be delivered if the Project does not intend to include the Work in the Catalogue Raisonné. The letter attached as Form C will be delivered if the Project is unable to reach a decision at this time about whether or not to include the Work in the Catalogue Raisonné. If information comes to the Project’s attention that causes the Project to change the decision expressed in such a letter, the Project reserves the right, in its sole discretion, to change its decision and to deliver a copy of a substitute letter, which will nullify, supersede and replace any prior letter delivered by the Project to the Owner.

7. The CR Committee shall have the right in its sole discretion to make and retain photographs or other copies of the Work and may also reproduce and disseminate copies thereof in the Catalogue Raisonné or in other scholarly publications (including but not limited to other catalogues), or authorize others to do so. The CR Committee shall have the right to retain in its files a copy of the current letter described above, and to make copies of that letter available at the request of persons whom the CR Committee, in its sole discretion, determines to have an appropriate interest in the Work.

8. The Project may request that you deliver the Work to the Project at the Museum for the Project’s physical examination, and/or that a member of the Project view the Work at your premises. The Project’s examination may include, but shall not necessarily be limited to, opening framed works to examine media and support. The Project may request, in its sole discretion, that you engage an approved third party service for the purpose of conducting

scientific testing of the Work that the Project may consider to be helpful in forming its opinion. If the Project decides that scientific testing of the Work is warranted, and/or that a physical examination of the Work other than at your premises is required, then an estimate of the expenses for such an examination to be paid by you will be ascertained by the Project and provided to you for your consideration and approval before such examination or testing is conducted. Owner will insure the Work while it is in the Project's possession or control and in transit to or from the Project and the Museum, against any loss or damage in an amount deemed solely by Owner to be sufficient, and the CR Committee shall have no liability whatsoever to Owner based upon any claim or liability arising out of any loss of or damage to the Work in the course of such transit, maintenance or examination.

Should the Work not be retrieved by Owner within one (1) year after proof of written and mailed notice, with return receipt requested, from the Project to Owner to do so, the Work will be considered to have been donated property by Owner to the Museum (and further considered to have been initially loaned by Owner to the Museum for an indefinite term), and the Museum will acquire title to and become the owner of the Work, and may sell, dispose of or retain the Work as it sees fit.

9. The Project shall have the right, in its sole discretion, to undertake such research, factual or otherwise, as it deems appropriate in its sole discretion, including but not limited to investigating the provenance of the Work by contacting prior owners of the Work. Nevertheless, the Project is under no obligation to conduct any such research whatsoever and may rely exclusively on the accuracy of the information provided to it by the Owner.

10. The Owner shall be solely responsible for the payment of all expenses associated with the testing or physical examination of the Work, including but not limited to packing, shipping and insurance. Should the Owner decline in advance to pay for the testing or physical examination, the Project may decide, in its sole discretion, not to consider the Work for inclusion in the Catalogue Raisonné.

11. The Owner expressly understands and acknowledges that forming an opinion as to the authenticity or attribution of a work purported to be by Fitz Henry Lane is often very difficult and will in many cases depend, to a large extent, upon subjective criteria that are not capable of proof or certainty, and that the conclusion, if any, reached by the Project respecting the Work is an opinion only, is in the absolute discretion of the Project, and, to the extent that the opinion is that the Work was or was not created by Lane, shall not be deemed or held out by the Owner or any other person to be a warranty of any kind (including but not limited to the authenticity, or lack thereof, of the Work).

Circumstances may arise that cause the Project to reconsider, doubt or change its decision (if any) theretofore expressed by it in a letter referred to above. Therefore, the Owner and all of the Owner's successors and assigns (*e.g.*, subsequent owners, purchasers or other transferees of the Work) understand and agree that no legal or equitable action may be taken against the CR Committee or CR Committee Members in connection with any letter, decision or opinion of the Project and that no one may reasonably rely upon any letter, decision or opinion that the Project renders in connection with the Work, including but not limited to the Work's authenticity or

inclusion in, or exclusion from, the Catalogue Raisonné. In such an event, the Project may (but it shall be under no duty to) notify the Owner that the decision has been changed and deliver to the Owner a substitute letter expressing the Project's revised decision. The Owner represents and warrants to the CR Committee and to the general public that the Owner shall not misrepresent to anyone the Project's revised decision as given or made known to the Owner.

12. This Agreement shall be binding upon the parties hereto as well as their respective successors, assigns, transferees, and heirs, including but not limited to any subsequent purchaser or owner of the Work, and each of the parties hereto agrees:

(a) This Agreement, and any and all disputes arising under or relating in any way whatsoever to this Agreement, shall be governed by and construed in accordance with the laws of the State of Massachusetts, without regard or reference to any choice of law or conflict of law rules of any jurisdiction. The parties expressly understand and agree that the CR Committee is not a "merchant" within the meaning of the Massachusetts Uniform Commercial Code or any other or similar Uniform Commercial Code. The parties further expressly understand and agree that the CR Committee has no direct or indirect pecuniary interest in the Work or in the rendering by the Project of any opinion about the Work, and that the Project's interest in rendering any opinion (or not) about the Work is purely scholarly.

(b) Any and all disputes arising under or relating in any way whatsoever to this Agreement will be resolved exclusively through a binding arbitration proceeding to be conducted under the auspices and the commercial arbitration rules of JAMS in Boston, Massachusetts, before a single arbitrator who practices or has practiced in the field of art law or else is a retired judge and who shall specifically have the power to dismiss claims as a matter of law or as a matter of conclusively demonstrated fact at the "Demand" or pleadings stage. Both the agreement of the parties to arbitrate all disputes and the results and awards rendered through the arbitration will be final and binding on the parties hereto, and may be specifically enforced by legal proceedings. Arbitration will be the sole means of resolving such disputes, and the parties waive their rights to resolve disputes by court proceedings or any other means. In addition, the prevailing party in such arbitration shall be entitled to recover all of its reasonable attorneys' fees and costs of such arbitration as well as any subsequent legal proceedings to enforce the arbitration award.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date written above:

**THE CAPE ANN MUSEUM, INC.**, a Massachusetts not-for-profit corporation with 501(c)(3) status, and **THE FITZ HENRY LANE ONLINE CATALOGUE RAISONNÉ PROJECT**:

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**THE OWNER:**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Date: \_\_\_\_\_

In the event the Project determines to include the Work in the Catalogue Raisonné, the Owner wishes the Work to be listed as follows (check one):

\_\_\_\_ The Project may use my name as the owner of the Work written as follows: \_\_\_\_\_.

\_\_\_\_ The Project should list the owner of the Work as “Private Collection”.

**FORM A**  
**FITZ HENRY LANE ONLINE CATALOGUE RAISONNÉ PROJECT**  
**THE CAPE ANN MUSEUM, GLOUCESTER, MASSACHUSETTS**  
**SUBMISSION AGREEMENT FOR PAINTINGS, DRAWINGS AND LITHOGRAPHS**

[Owner]

[Description of Work]

[Identification Number]

[Date]

You have submitted the above work (the “Work”) to the FITZ HENRY LANE ONLINE CATALOGUE RAISONNÉ PROJECT (the “Project”) and asked it to consider the Work for possible inclusion in the online catalogue raisonné of the Paintings, Drawings and Lithographs of Fitz Henry Lane (the “Catalogue Raisonné”).

It is the decision of the Project at this time that it intends to include the Work in the Catalogue Raisonné.

THE FOREGOING IS MERELY AN OPINION BASED UPON A PHYSICAL INSPECTION OF THE WORK AND CIRCUMSTANCES KNOWN TO THE PROJECT AT THIS TIME. THE FOREGOING IS NOT A WARRANTY OF ANY KIND, AND MAY NOT BE RELIED UPON BY ANY PERSON, INCLUDING BUT NOT LIMITED TO THE OWNER OR ANY THIRD PERSON, FOR ANY PURPOSE, INCLUDING BUT NOT LIMITED TO ASSERTING ANY ACTION AT LAW OR EQUITY. NEITHER THE PROJECT, NOR THE CAPE ANN MUSEUM, INC., NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EDITORS, WRITERS, RESEARCHERS, ADVISORS, CONTRACTORS, SCIENTIFIC COMMITTEE MEMBERS, EMPLOYEES, AGENTS, OR REPRESENTATIVES SHALL HAVE ANY LIABILITY WHATSOEVER TO ANYONE BY REASON OF THIS DECISION OR BY ANY SUBSEQUENT, REVISED AND SUPERSEDING DECISION(S) (IF ANY).

The foregoing decision by the Project may change in the Project’s sole discretion, including but not limited to by reason of circumstances arising or discovered by the Project after the date of this opinion. The Project may choose to respond to inquiries by individuals or entities having, in the Project’s sole discretion, sufficient basis for making such an inquiry, as to whether any change has occurred.

The non-actionable, contingent opinion letter is subject to the terms and conditions of the SUBMISSION AGREEMENT signed by the Owner and dated \_\_\_\_\_, pursuant to which this letter has been issued.

By: \_\_\_\_\_  
Director, Fitz Henry Lane Online Catalogue Raisonné Project

Date: \_\_\_\_\_

**FORM B**  
**FITZ HENRY LANE ONLINE CATALOGUE RAISONNÉ PROJECT**  
**THE CAPE ANN MUSEUM, GLOUCESTER, MASSACHUSETTS**  
**SUBMISSION AGREEMENT FOR PAINTINGS, DRAWINGS AND LITHOGRAPHS**

[Owner]

[Description of Work]

[Identification Number]

[Date]

You have submitted the above work (the “Work”) to the FITZ HENRY LANE ONLINE CATALOGUE RAISONNÉ PROJECT (the “Project”) and asked it to consider the Work for possible inclusion in the online catalogue raisonné of the Paintings, Drawings and Lithographs of Fitz Henry Lane (the “Catalogue Raisonné”).

It is the decision of the Project at this time that it does not intend to include the Work in the Catalogue Raisonné.

THE FOREGOING IS MERELY AN OPINION BASED UPON A PHYSICAL INSPECTION OF THE WORK AND CIRCUMSTANCES KNOWN TO THE PROJECT AT THIS TIME. THE FOREGOING IS NOT A WARRANTY OF ANY KIND, AND MAY NOT BE RELIED UPON BY ANY PERSON, INCLUDING BUT NOT LIMITED TO THE OWNER OR ANY THIRD PERSON, FOR ANY PURPOSE, INCLUDING BUT NOT LIMITED TO ASSERTING ANY ACTION AT LAW OR EQUITY. NEITHER THE PROJECT, NOR THE CAPE ANN MUSEUM, INC., NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EDITORS, WRITERS, RESEARCHERS, ADVISORS, CONTRACTORS, SCIENTIFIC COMMITTEE MEMBERS, EMPLOYEES, AGENTS, OR REPRESENTATIVES SHALL HAVE ANY LIABILITY WHATSOEVER TO ANYONE BY REASON OF THIS DECISION OR BY ANY SUBSEQUENT, REVISED AND SUPERSEDING DECISION(S) (IF ANY).

The foregoing decision by the Project may change in the Project’s sole discretion, including but not limited to by reason of circumstances arising or discovered by the Project after the date of this opinion. The Project may choose to respond to inquiries by individuals or entities having, in the Project’s sole discretion, sufficient basis for making such an inquiry, as to whether any change has occurred.

The non-actionable, contingent opinion letter is subject to the terms and conditions of the SUBMISSION AGREEMENT signed by the Owner and dated \_\_\_\_\_, pursuant to which this letter has been issued.

By: \_\_\_\_\_  
Director, Fitz Henry Lane Online Catalogue Raisonné Project

Date: \_\_\_\_\_

**FORM C**  
**FITZ HENRY LANE ONLINE CATALOGUE RAISONNÉ PROJECT**  
**THE CAPE ANN MUSEUM, GLOUCESTER, MASSACHUSETTS**  
**SUBMISSION AGREEMENT FOR PAINTINGS, DRAWINGS AND LITHOGRAPHS**

[Owner]

[Description of Work]

[Identification Number]

[Date]

You have submitted the above work (the “Work”) to the FITZ HENRY LANE ONLINE CATALOGUE RAISONNÉ PROJECT (the “Project”) and asked it to consider the Work for possible inclusion in the online catalogue raisonné of the Paintings, Drawings and Lithographs of Fitz Henry Lane (the “Catalogue Raisonné”).

The Project at this time is unable to reach a decision as to the inclusion of the Work in the Catalogue Raisonné.

THE FOREGOING IS MERELY AN OPINION BASED UPON A PHYSICAL INSPECTION OF THE WORK AND CIRCUMSTANCES KNOWN TO THE PROJECT AT THIS TIME. THE FOREGOING IS NOT A WARRANTY OF ANY KIND, AND MAY NOT BE RELIED UPON BY ANY PERSON, INCLUDING BUT NOT LIMITED TO THE OWNER OR ANY THIRD PERSON, FOR ANY PURPOSE, INCLUDING BUT NOT LIMITED TO ASSERTING ANY ACTION AT LAW OR EQUITY. NEITHER THE PROJECT, NOR THE CAPE ANN MUSEUM, INC., NOR ANY OF THEIR RESPECTIVE OFFICERS, DIRECTORS, EDITORS, WRITERS, RESEARCHERS, ADVISORS, CONTRACTORS, SCIENTIFIC COMMITTEE MEMBERS, EMPLOYEES, AGENTS, OR REPRESENTATIVES SHALL HAVE ANY LIABILITY WHATSOEVER TO ANYONE BY REASON OF THIS DECISION OR BY ANY SUBSEQUENT, REVISED AND SUPERSEDING DECISION(S) (IF ANY).

The foregoing decision by the Project may change in the Project’s sole discretion, including but not limited to by reason of circumstances arising or discovered by the Project after the date of this opinion. The Project may choose to respond to inquiries by individuals or entities having, in the Project’s sole discretion, sufficient basis for making such an inquiry, as to whether any change has occurred.

The non-actionable, contingent opinion letter is subject to the terms and conditions of the SUBMISSION AGREEMENT signed by the Owner and dated \_\_\_\_\_, pursuant to which this letter has been issued.

By: \_\_\_\_\_  
Director, Fitz Henry Lane Online Catalogue Raisonné Project

Date: \_\_\_\_\_