

EXHIBIT A

AGREEMENT FOR COMMISSIONED ARTWORK/WORK MADE FOR HIRE FOR GRIFFINTOWN SCULPTURE

THIS AGREEMENT FOR COMMISSIONED ARTWORK/WORK MADE FOR HIRE is entered this ____ day of _____, 2024, by and between _____, Artist/Contractor, **and THE CITY OF FERNDALE, WASHINGTON**, a Municipal Corporation of the State of Washington, through **THE FERNDALE ARTS COMMISSION** as Grantee (the City) for the design, fabrication, and installation of a sculpture to be located on property at Griffintown Park, 5786 Second Avenue, Ferndale, WA.

NOW, IN CONSIDERATION of the mutual terms, conditions, promises, covenants and payments hereinafter set forth, CITY and ARTIST agree as follows:

ARTICLE 1. DEFINITIONS AND IDENTIFICATIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 Council: The City Council of the City of Ferndale, Washington, which is the governing body of the Ferndale Arts Commission.
- 1.2 FAC: The Ferndale Arts Commission.
- 1.2 Artist: _____, the artist selected to perform services pursuant to this Agreement.
- 1.3 Contract Administrator: The Contract Administrator shall be Susan Duncan, FAC Staff Liaison, or her designee. In the administration of this Agreement, all parties may rely upon instructions or determinations made by the Contract Administrator. The Contract Administrator has the right to appoint a new Contract Administrator at any point during the term of this Agreement.
- 1.4 The City: The City of Ferndale, a municipal corporation of the state of Washington.
- 1.5 Notice to Proceed: A written Notice to Proceed with the Project issued by the Contract Administrator.
- 1.6 Work: Design, fabrication, and installation of a sculpture to be placed in Griffintown Park, 5786 Second Avenue, Ferndale, WA.

ARTICLE 2. PROJECT DESCRIPTION/SCOPE OF WORK

- 2.1 The Artist will design, fabricate, and assist with the installation of a sculpture in Griffintown Park. The Work will be celebrated as a new public art installation.
- 2.2 For services rendered herein, FAC shall pay Artist a sum not to exceed \$15,000, for all work performed during the period beginning _____ through _____. Artist shall furnish services as described in section 2.1, herein. Terms and Conditions for Payment are as follows: a deposit of \$_____ from the City to be paid to the Artist upon commencement of Work and the remainder will be paid upon completion of Work.
- 2.3 Artist will provide FAC with drawings of the proposed sculpture, and FAC must approve the design prior to Artist's start of Work.
- 2.4 The Artist shall provide monthly progress reports and/or deliverables to the Contract Administrator in a manner acceptable to the Contract Administrator.

ARTICLE 3. CHANGES IN SCOPE AND ADDITIONAL WORK

- 3.1 If the Artist determines changes to the design to be necessary, the Artist shall, whenever required during the term of this Agreement, present to the FAC in writing, drawing or other appropriate media for further review and approval of any significant changes in the scope, design, color, size, material, utility and support requirements, texture, or location of the site or of the Work. A significant change is any change which affects the installation, scheduling, site preparation or maintenance of the Work, or the concept of the Work as represented in the original approved design.
- 3.2 The Artist shall be obligated to perform the services called for in Section 2, herein. The Artist and the City agree that the Artist shall retain Artistic control of his/her services in the performance of the services under this Agreement, subject only to the limitations imposed in Section 2.
- 3.3 Notwithstanding the provision of Section 3.2 immediately above, the City may, at any time, request the Artist in writing to: revise portions of the services that he/she has previously completed in a satisfactory manner; delete portions of the Work which has yet to be performed; perform additional Work beyond that provided in Section 2; or make other changes to the tasks to be performed under this Agreement. In the event of such a written request, the Artist may, but shall not be obligated to agree to any such request.
 - a. In the event the request for change is agreed to by the Artist, this Agreement, if necessary, shall be amended, in writing, specifying the agreed changes, including, but not limited to, a description of services, additional budget, payment schedule and timetable.
 - b. The Work to be completed by the Artist is unique and personal to the Artist, and may not be capable of completion by anyone other than the Artist. Therefore, in the event the Artist does not agree to a City request to modify the Work called for by this agreement, the City shall be entitled to terminate the Agreement for cause

pursuant to Article 11.4 hereinafter. However, if the City determines, in its sole and reasonable discretion, that the Artist's failure or refusal to modify the Work is justifiable, in good faith, and for reasons beyond the control of the Artist, the City may authorize the Artist to keep payments made under this agreement for tasks already completed. In such case, the City may, at its option, engage another Artist to complete the Work.

- 3.4 No services for which additional compensation will be charged shall be provided by the Artist without the prior written authorization by the City.

ARTICLE 4 RESPONSIBILITIES OF THE ARTIST

- 4.1 The Artist agrees that an essential element of this Agreement is the skill and creativity of the Artist. The Artist shall not assign the creative or Artistic portions of the Work to another party for the production of the Work without the written consent of the City. Failure to conform to this provision may be cause for termination of this Agreement, at the sole option of the City.
- 4.2 The Artist shall be responsible for providing services described in Section 2 including, but not limited to, the quality and timely completion of the services. The Artist shall be responsible for designing the Work so that it can be constructed without exceeding the approved overall budget for the project. The Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in his/her Work.
- 4.3 In the event the services of the Artist are integrated into, combined, or otherwise coordinated with services by third parties not within the control of the Artist, the Artist shall not be responsible for such third-party services. If any part of the Artist's Work for proper execution or results of tasks performed by the City, or a third party responsible to the City, the Artist shall, prior to proceeding with his or her Work, promptly report to the City any apparent discrepancies or other defects in such other work which renders it unsuitable for proper execution and results by the Artist. The Artist shall not be responsible for any liability or failure to fulfill his/her obligations because of such discrepancies or defects. Failure of the Artist to report a discrepancy or defect shall constitute an acceptance of the City's or third party's performance as fit and proper. Any costs caused by defective performance or ill-timed tasks shall be borne by the party responsible therefore. Nothing in this section shall limit the responsibility of the Artist to take all reasonable steps to coordinate his/her performance with the tasks and/or performance of the City or of a third party on the Work.
- 4.4 When Artist is involved in the execution, fabrication, transportation, inspection and/or installation of an artwork, the following provisions shall apply:
- a. As an agent of the City, the Artist agrees to abide by all applicable rights and obligations as they relate to Section 2., herein.

- b. The Artist agrees that when performing Work on City property, the Artist will supervise such cleanup as may be reasonably requested by the City. After completing the Work, the Artist shall remove his/her equipment, excess materials, etc., promptly and as requested by the City.
- c. The Artist shall perform his/her services in a manner and time so as not to cause interference with the City's use of the property. In the event of a conflict between the schedules of the Artist and the City, the conflict will be resolved by the City. If the resolution of the conflict results in a delay of the performance of the Artist, the Artist shall have the right to renegotiate this Agreement to compensate him or her for any additional costs or expenses caused by the delay.
- d. The Artist shall complete the design, fabrication, and installation of the Work in substantial conformity with Section 2, herein.
- e. The Artist shall meet with the Contract Administrator or FAC as necessary, on all matters connected with carrying out of Artist's services described in Section 2. Such meeting shall be held at the request of either party hereto. FAC review and approval of completed tasks shall be obtained monthly, during the course of the Work.

4.5 The Artist shall supply the City with (a) his/her current professional resume, (b) detailed information concerning the materials used in the creation of the Work, and (c) a detailed maintenance program and schedule for the Work.

ARTICLE 5 RESPONSIBILITIES OF CITY

- 5.1 FAC shall assist the Artist by placing at the Artist's disposal all public information it has available pertaining to the Project.
- 5.2 FAC shall:
 - a. Give prompt written notice to Artist whenever the City observes or otherwise becomes aware of any development that affects the scope or timing of Artist's services.
 - c. Arrange appointments, meetings, consultations (with FAC, the City, or third parties) as needed for the Artist to fulfill his/her obligations under this Agreement.
 - d. Review materials as set forth in Section 2 in a timely manner.

ARTICLE 6 WARRANTIES/STANDARDS

6.1 The Artist warrants that (a) the design or Work being commissioned is original; and (b) that the Artist shall not sell or reproduce the Work, separate from portfolio reproductions, or allow others to do so without the prior written consent of FAC.

- 6.2 The Artist shall guarantee the Work to be free from faults of material and workmanship for a period of one (1) year after installation and final acceptance by FAC. The Artist shall deliver the Work to FAC free and clear of any liens from any source whatever. These guarantees shall apply only to those aspects of the Work which is entirely that of the Artist or persons responsible to the Artist, as installed, and shall not apply to materials or workmanship of projects in which the Artist's work is integrated or combined, or to materials purchased, acquired, or installed by a person or entity not responsible to the Artist.
- 6.3 The Artist shall faithfully perform the services required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the Work described in this Agreement.

ARTICLE 7 COMPENSATION AND TIME OF PERFORMANCE

- 7.1 The Artist shall be paid for services satisfactorily rendered pursuant to this Agreement in accordance with the terms herein, and the scope of work in Section 2. and the payment schedule set forth in section 2.2, herein, and subsequent adjustments, changes or additions as specifically provided for in this Agreement. Such payment shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, and for all other necessary incidentals including transportation of the Work to the designated site.
- 7.2 The amount and schedule of payments to the Artist are contained in section 2.2 herein, provided that such payments shall not exceed a maximum amount of Fifteen Thousand Dollars (\$15,000), subject only to adjustments, changes or additions as specifically provided for in this Agreement ("Total Price").
- 7.3 In the event the Artist incurs costs in excess of the Total Price, the Artist shall pay such excess from his/her own funds, and FAC shall not be required to pay any part of such excess, and the Artist shall have no claim against the City on account thereof. This section shall not be construed to require the Artist to absorb excess costs not primarily attributable to the Artist's conduct, erroneous cost estimates or failure to perform in a timely fashion.
- 7.4 In the event that FAC determines that services for which it has been invoiced do not meet the contract specifications and that it intends to withhold payment, FAC shall provide detailed written notice to the Artist within fifteen (15) days of receipt of invoice, specifying the failure of performance for which FAC intends to withhold payment. The Artist shall thereafter meet contract standards to the satisfaction of FAC or advise FAC that he/she disputes the City's determination that the specifications have not been met.
- 7.5 FAC shall pay all invoices that meet contract specifications within thirty (30) days of receipt of invoice.

- 7.6 No payment to the Artist for any work performed or services rendered shall constitute a waiver or release by the City of any claims, rights or remedies it may have against the Artist under this Agreement or by law, nor shall such payment constitute a waiver, remission, or discharge by the City of any failure or fault of the Artist, to satisfactorily perform the Work and services as required under this Agreement.
- 7.8 The services to be required of the Artist under this Agreement shall be completed in accordance with the schedule for completion of the Work as proposed by the Artist and approved by FAC, provided that such time limits may be extended or otherwise modified by written agreement between the Artist and FAC. Upon payment and completion of services, Artist agrees to meet with the Contract Administrator to discuss success of project.
- 7.9 The City shall grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the City in performing its obligations under this Agreement, or if conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible or unduly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such conditions.

ARTICLE 8. WAIVER OF ARTIST'S RIGHTS

- 8.1 As a material part of the consideration provided by Artist under the terms of this Agreement, Artist waives any and all rights Artist may have with respect to the Work and any and all works of art produced under the terms of this Agreement or any other type of moral right protecting the integrity of works of art. Artist agrees that the City has the absolute right to change, modify, maintain, repair destroy, remove, relocate, move, replace, transport, repair or restore the Work and to use it in whatever fashion the City sees fit, including for marketing.

ARTICLE 9 COPYRIGHT

- 9.1 The Artist agrees that the Work and services performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations and codes of the United States. The Artist further agrees that the Work will not utilize any protected patent, trademark or copyright in performance of work under this Agreement unless the Artist has obtained proper permission and all releases and other necessary documents. If the Artist specifies any material, equipment, process or procedure which is protected, the Artist shall disclose such patents, trademarks and copyrights in the construction drawings and technical specifications.
- 9.2 The Artist agrees to indemnify, defend, and hold harmless the City, its officers and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind resulting from the performance of the Work or services under this Agreement which infringes upon any patent, trademark or copyright protected by law.

ARTICLE 10 TIME FOR PERFORMANCE

- 10.1 The provisions of this Agreement and the compensation for the Artist's services provided for in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Work.
- 10.2 In the event the Artist is unable to complete the above services because of delays resulting from untimely issuance of a "Notice to proceed," or from untimely review and approval by the City, and such delays are not the fault of the Artist, the City shall grant a reasonable extension of time for completion.

ARTICLE 11 TERMINATION

- 11.1 Either party may terminate this Agreement with or without cause by providing thirty (30) days notice, in writing, to the other party. Upon the expiration date of said notice, this Agreement shall become of no further force or effect whatsoever and each of the parties shall be relieved and discharged here from.
- 11.2 In the event that the Agreement is terminated by the City without cause, the City shall pay the Artist for all Work performed and services rendered up to the effective date of the termination.
- 11.3 In the event that the Agreement is terminated by the Artist without cause, the Artist shall promptly reimburse the City for all payments made under this Agreement prior to the termination by the Artist.
- 11.4 In the event that the City determines that the Artist has substantially failed to fulfill his/her obligations as provided under this Agreement, the City shall provide the Artist with written notice detailing the specific obligations which the City claims the Artist has failed to fulfill and notifying the Artist that he/she is deemed to be in breach of the Agreement. If the breach is not cured or if the City and the Artist cannot agree on a schedule for curing the breach, the Agreement will be deemed terminated on a date specified by the City which will be no sooner than ten (10) days from the date of issuance of the notice. In the event that the Agreement is so terminated by the City, the Artist shall promptly reimburse the City for all payments made under this Agreement prior to the termination by the City.
- 11.5 If, because of death, or any other occurrence, it becomes impossible for the Artist to render services or perform work under this Agreement, the Agreement shall be deemed terminated.

ARTICLE 12 INSURANCE/SELF-INSURANCE

- 12.1 The Artist shall at all times during the term of this Agreement with the City maintain in force insurance policies and bonds, as necessary to protect the Artist and the City.

ARTICLE 13 PUBLICITY/MEDIA

13.1 ACKNOWLEDGMENT OF CITY

Whenever interviewed or otherwise contacted by the media with reference to the Work which is the subject of this Agreement, Artist agrees to reference the Berghoff Art Fund of Whatcom Community Foundation, which provided the funding for the Work.

13.2 CITY PUBLICITY

In order to assist the City in publicizing the Work, upon reasonable advance notice provided by the City, the Artist shall allow the City to access his or her workspace in order to photograph or otherwise record the Work before, during and following that project's implementation and construction so as to document the Work itself as well as the visual impact of the Work on the Site. The Artist expressly permits the City to use any such visual images for its promotion of the Berghoff Art Fund of Whatcom Community Foundation, for the promotion of the City in general and for the cross-promotion of the Artist. All such visual images obtained by the City shall be, and remain, the property of the City. All such visual images shall constitute public records that are subject to disclosure pursuant to the Washington Public Records Act.

ARTICLE 14 MISCELLANEOUS

14.1 RECORDS

Artist shall maintain accurate accounting records and other written documentation pertaining to the costs incurred for this project. Such records and documentation shall be kept available at Artist's office during the period of this Agreement, and after the term of this Agreement for a period of three years from the date of the final City payment for Artist's services.

14.2 INDEPENDENT CONTRACTOR

In the performance of its work, it is expressly understood that Artist, including Artist's agents, servants, employees, and subcontractors, is an independent contractor solely responsible for its acts and omissions, and Artist shall not be considered an employee of the City for any purpose.

14.3 SUBCONTRACTORS

In the event Artist, during the course of the work under this Agreement, requires the service of any subcontractors or other professional associates in connection with services or activities covered by this Agreement, Artist must secure the prior written approval of the City.

14.4 ASSIGNMENT

This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances, by Artist, without the prior written consent of City.

14.5 ALL PRIOR AGREEMENTS SUPERSEDED

This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement or promise related to the subject matter of this Agreement which is not contained in this Agreement shall be valid or binding.

14.6 MODIFICATIONS

It is agreed that no modification, amendment or alteration in the terms or conditions contained herein and shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

14.7 CONFORMITY WITH LAW AND SAFETY

The Artist shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable Federal, State, municipal and local safety regulations. All services performed by the Artist must be in accordance with these laws, ordinances, codes and regulations. Artist shall indemnify, defend, and hold the City harmless from any and all liability, fines, penalties and consequences from any noncompliance or violations of such laws, ordinances, codes and regulations.

Accidents: If death, serious personal injury, or substantial property damage occurs in connection with the performance of this Agreement, the Artist shall immediately notify the Administrative Services Director (Risk Manager) by telephone. The Artist shall promptly submit to the City a written report, in such form as may be required by the City of all accidents which occur in connection with this contract. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of the Artist's subcontractors, if any; (3) name and address of the Artist's liability insurance carrier; and (4) a detailed description of the accident and whether any of City's equipment, tools, material or staff were involved.

14.8 CONFLICT OF INTEREST

No officer, member, or employee of the City and no member of their governing boards, councils or commissions shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this provision shall be considered a material breach of this Agreement.

14.9 USE OF CITY PROPERTY

The Artist shall not use City premises, property (including equipment, instruments and supplies) or personnel for any purpose other than the performance of his/her obligations under this Agreement.

14.10 ENTIRE CONTRACT

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded.

14.11 TIME

Both parties recognize that time is of the essence in the performance of the provisions of this Agreement.

14.12 SERVICE OF PROCESS

The Artist agrees to appoint _____ as its sole agent on whom all process may be served in any action or proceeding for any claim or action arising out of this Agreement.

14.13 INDEMNIFICATION

The Artist agrees to indemnify, defend, and hold harmless the City, its officers, agents and employees, from and against any and all claims, demands, actions, damages, or judgments, including associated costs of investigation and defense arising in any manner from the Artist's performance of the Work or services under this Agreement.

14.14 AMENDMENTS

This Agreement may not be amended in any respect except by way of a written instrument which expressly references and identifies this particular Agreement, which expressly states that its purpose is to amend this particular Agreement, and which is duly executed by the City and the Artist. The Artist acknowledges that no such amendment shall be effective until approved and authorized by the appropriate City official or legislative body. No representative of the City is authorized to obligate the City to pay the cost or value of services beyond the scope of services set forth in Section 2, herein. Such authority is retained solely by the City Council. Unless expressly authorized by the City Council, the Artist's compensation shall be limited to that set forth in Section 2.

14.15 LEGAL ACTION/ATTORNEY'S FEES

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which he or she may be entitled. The Whatcom County Superior Court shall have jurisdiction over any such action and that Court shall be authorized to determine which party is the prevailing party and what amount constitutes reasonable attorneys' fees to be awarded to the prevailing party.

14.16 SEVERABILITY

In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

14.17 Notices. All notices herein provided to be given, or which may be given by either party to the other, shall be deemed to have been fully given and fully received when made in writing and deposited in the United States mail, certified and postage prepaid, and addressed to the respective parties as follows:

Susan Duncan
City of Ferndale
P.O. Box 936

Artist Name:
Company Name:
Address:

Ferndale, WA 98248
Email:

Email: _____

CITY

ARTIST

Greg Hansen, Mayor

Name:

Date _____

Date _____

Approved As To Form:

Dannon C. Traxler, CITY Attorney

Date _____