

AUGUSTA, GEORGIA

AND

CAROL FINCH

SERVICE AGREEMENT AND TRANSFER OF OWNERSHIP

THIS SERVICE AGREEMENT AND TRANSFER OF OWNERSHIP ("AGREEMENT") is made and entered into this 9 day of 28, 2022, (the "Effective Date") between Augusta, Georgia ("Augusta"), a political subdivision of the State of Georgia, and Carol Finch ("Donor"), known collectively as the "Parties," for the transfer of ownership of a piece of publicly installed artwork (the "sculpture") from the Donor to Augusta, as well as services and maintenance of those sculpture.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES DESCRIBED IN THIS AGREEMENT, THE ADEQUACY AND SUFFICIENCY OF WHICH EACH PARTY ACKNOWLEDGES, EACH OF THE PARTIES AGREE AS FOLLOWS:

1. Scope. This Agreement shall involve a publically installed piece of artwork, its ownership, maintenance, and intellectual property:
 - a. "Tropical Dream", by Roger Finch, currently owned by Carol Finch. (2017). In steel.
2. Ownership and Rights Related to the Sculpture.
 - a. Ownership of the sculpture shall pass to Augusta upon execution of this Agreement. The Donor hereby irrevocably assign, convey, and otherwise transfer to Augusta and its respective successors and assigns title to the sculpture.
 - b. Augusta may reproduce images for non-commercial, educational, government, and promotional purposes, with credit given to the original Artists of the sculpture when such sculpture is highlighted, to the extent practical. The reproduction shall be royalty-free and irrevocable and able to be used across multiple medias, including digital and electronic media and printed media. These reproductions may be used in, but not limited to, the following manner:
 - i. The display of the sculpture on Augusta's website(s), social media pages, informational brochures, and other promotional materials in print and over the internet.

- ii. Sublicensing the rights granted herein to third parties in furtherance of non-commercial, educational, government, or promotional purposes.

3. Responsibilities of Augusta.

- a. Augusta shall receive ownership of the sculpture. Augusta shall be solely responsible for all matters involving the ownership of the sculpture, including installation, upkeep, maintenance, insurance, and repair.
- b. Augusta shall notify the Donor in any case of removal or relocation of any of the sculpture. Such notification shall occur at the earliest reasonable time. Augusta shall permit the Donor to submit guidance regarding removal, relocation, and re-installation. Such guidance may include, but is not limited to, proper transportation of the sculpture or preferential locations for re-installation. Augusta shall consult with the Donor during activities under this sub-paragraph.
- c. Augusta shall maintain the sculpture in a manner appropriate for their use as public art, in the sole discretion of Augusta's appropriate department. Augusta shall provide such staff time, expertise, and equipment for the maintenance, protection, and cleaning of the sculpture, as is appropriate for the sculpture in the sole discretion of Augusta.
- d. Augusta shall produce, within one (1) calendar year of this Agreement, a plaque or other indicator identifying information regarding the sculpture, in accordance with the stipulations of the purchasers/donors of the artwork, and permanently affix said plaque to their respective sculpture.
- e. Augusta shall develop a maintenance, repair, and upkeep plan.
- f. Augusta may create and operate a maintenance fund for public art upkeep. Augusta may, in their discretion, use the aforementioned fund in the maintenance of the sculpture.

4. Notices.

- a. Notices shall be in writing and dated to the postmarks of the notices, to the addresses as specified on the signature page.

5. Indemnification

- a. Nothing in this Agreement shall constitute a waiver of Augusta's sovereign immunity, by contract or otherwise.
- b. Augusta nor the Donor shall be liable to the other or shall make any claim for any incident, indirect, or consequential damages arising out of, or connected in any way to the this Agreement.

6. Valuations

- a. Augusta agrees that the following shall be the agreed-upon appraised value and insurance value for the sculpture:
 - i. Tropical Dream, by Roger Finch
 - 1. Purchase Price: \$4,500.00
 - 2. Insurance value: \$4,500.00.

7. Warranties by the Donor

- a. The sculpture is professionally constructed of durable materials appropriate for outdoor public display.
- b. The sculpture can be structurally secured to an appropriate sized concrete pad with anchor bolts or similar devices.
- c. Installation of the sculpture will not irreparably damage, destroy, or materially alter the sculpture.
- d. The sculpture was solely the result of the artistic effort of the original Artists, they are unique and original and do not infringe upon any copyright or the rights of any person, that no person has sold, assigned, transferred, licensed, granted, encumbered or utilized the sculpture or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement, and that the sculpture is free and clear of any liens from any source whatsoever.

8. Right of First Refusal.

- a. Should Augusta decide to sell or donate the sculpture, the Commission will vote to allow for the sale and/or donation of the sculpture. The Donor shall have the right of first refusal to any sale or donation of the sculpture. Such right of first refusal shall be exercised by written notice to Augusta within thirty days of written notification by Augusta. If Augusta decides to donate or sell the sculpture, the donee or buyer of the sculpture will assume all of Augusta's duties toward the Donor stated herein, will be obligated to defend and indemnify Augusta with respect to such duties, and will take the sculpture subject to all of the Donor's rights as stated herein. The donee or buyer shall be given a copy of this executed Agreement at the time of the donation or sale. In the event the Donor does not exercise their right of first refusal, Augusta may proceed to sell or donate the sculpture.

9. General Terms.

- a. The laws of the State of Georgia shall govern the Agreement between Augusta and the Donor with regard to its interpretation and performance,

and any other claims related to this Agreement. All claims, disputes, and other matters in question between Augusta and the Donor arising out of relating to the Agreement, or the breach thereof, shall be decided in the Superior Court of Richmond County, Georgia. Donor, by executing this Agreement, specifically consent to jurisdiction and venue in Richmond County and waive any right to contest the jurisdiction and venue in the Superior Court of Richmond County, Georgia.

- b. Neither Augusta nor the Donor shall assign, sublet, or transfer their interest in this Agreement without the written consent of the other.
- c. The Donor shall not be required to sign any document, no matter by whom requested, that would result in the Donor having to certify, guaranty, or warrant the existence of conditions that the Donor cannot ascertain.
- d. Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against Augusta.
- e. Georgia Prompt Pay Act. The terms of this Agreement superseded any and all provisions of the Georgia Prompt Pay Act.
- f. The Donor acknowledge that this contract and any changes to it by amendment, modification, change order, or other similar document may have required or may require the legislative authorization of the Board of Commissioners and approval of the Mayor. Under Georgia law, the Donor are deemed to possess knowledge concerning Augusta, Georgia's ability to assume contractual obligations and the consequences of the Donor's provision of goods or services to Augusta, Georgia under an unauthorized contract, amendment, modification, change order, or other similar document, including the possibility that the Donor may be precluded from recovering payment for such unauthorized goods or services. Accordingly, the Donor agree that if it provides goods or services to Augusta, Georgia under a contract that has not received proper legislative authorization or if the Donor provide goods or services to Augusta, Georgia in excess of the any contractually authorized goods or services, as required by Augusta, Georgia's Charter and Code, Augusta, Georgia may withhold payment for any unauthorized goods or services provided by the Donor. The Donor assume all risk of non-payment for the provision of any unauthorized goods or services to Augusta, Georgia, and waive all claims to payment or to other remedies for the provision of any unauthorized goods or services to Augusta, Georgia, however characterized, including, without limitation, all remedies at law or equity.
- g. Augusta, Georgia may unilaterally, upon written notice, demand that a temporary and immediate stopping of the work under this Agreement be done.

- h. Force Majeure. "Force Majeure Event" means any act or event that (a) prevents a party (the "Nonperforming Party") from performing its obligations or satisfying a condition to the other party's (the "Performing Party") obligations under this Agreement, (b) is beyond the reasonable control of and not the fault of the Nonperforming Party, and (c) the Nonperforming Party has not, through commercially reasonable efforts, been able to avoid or overcome. If a Force Majeure Event occurs, the Nonperforming Party is excused from the performance thereby prevented and from satisfying any conditions precedent to the other party's performance that cannot be satisfied, in each case to the extent limited or prevented by the Force Majeure Event. When the Nonperforming Party is able to resume its performance or satisfy the conditions precedent to the other party's obligations, the Nonperforming Party shall immediately resume performance under this Agreement. The relief offered by this paragraph is the exclusive remedy available to the Performing Party with respect to a Force Majeure Event. A Force Majeure Event includes, but is not limited to: epidemics, pandemics, declared national, state, and local states of emergency, hurricanes, tornadoes, floods, severe and unexpected acts of nature, or the availability of funds in the budget of Augusta.
- i. All contractors and subcontractors entering into contracts with Augusta, Georgia for the physical performance of services shall be required to execute an Affidavit verifying its compliance with O.C.G.A. § 13-10-91, stating affirmatively that the individual, firm, or corporation that is contracting with Augusta, Georgia has registered with and is participating in a federal work authorization program. All contractors and subcontractors must provide their E-Verify number and must be in compliance with the electronic verification of work authorized programs operated by the United States Department of Homeland Security or any equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, pursuant to the Immigration Reform and Control Act of 1986 (IRCA), P.L. 99-603, in accordance with the applicability provisions and deadlines established in O.C.G.A. § 13-10-91 and shall continue to use the federal authorization program throughout the contract term. All contractors shall further agree that, should it employ or contract with any subcontractor(s) in connection with the physical performance of services pursuant to its contract with Augusta, Georgia the contractor will secure from such subcontractor(s) each subcontractor's E-Verify number as evidence of verification of compliance with O.C.G.A. § 13-10-91 on the subcontractor affidavit provided in Rule 300-10-01-.08 or a substantially similar form. All contractors shall further agree to maintain records of such compliance and provide a copy of each such verification to Augusta, Georgia at the time the subcontractor(s) is retained to perform such physical services.

- j. Entire Agreement. This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. The provisions of this Agreement cannot be explained, supplemented or qualified through evidence of trade usage or a prior course of dealings. In entering into this Agreement, neither party has relied upon any statement, representation, warranty or agreement of any other party except for those expressly contained in this Agreement. There are no conditions precedent to the effectiveness of this Agreement, other than any that are expressly stated in this Agreement. This Agreement may be amended only by written instrument signed both by Augusta and the Donor.
- k. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the Parties state and affirm that they are duly authorized to bind the respected entities designated below as of the day and year indicated.

[SIGNATURES ON THE FOLLOWING PAGE]

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Artist

Augusta, Georgia

By: Carol M. Finck

By: _____

Name: Carol M. Finck

Name: Hardie Davis, Jr.

Title: Artist

Title: Mayor

Date: 9-28-22

Date: _____

Attest: _____

Lena J. Bonner, Clerk of Commission

Address for Notices:

Attention: _____

Address for Notices:

Augusta, Georgia
535 Telfair Street, Suite 200
Augusta, GA 30901
Attention: Mayor Hardie Davis, Jr.

With copies to:

Maurice McDowell, Director
Augusta PRD
2027 Lumpkin Rd
Augusta GA 30906

General Counsel

Augusta Law Department
535 Telfair Street, Bldg 3000
Augusta, GA 30901