

ARTIST AGREEMENT

between the

City of Bastrop & Robin Luck

This Artist Agreement (“Agreement”) is made and entered into by and between the **City of Bastrop, Texas** (“City”), a municipal corporation and **Robin Luck** (“Artist”). The City and the Artist may be referred to herein singularly as the Party and together as the Parties.

RECITALS

WHEREAS, the City issued a “Call to Artists” requesting proposals for original works of art depicting native or migratory birds of Central Texas in furtherance of the City’s 2023 Bastrop Bird Junction, *Birds of Bastrop* (Attachment A); and

WHEREAS, the City has determined that, once installed, the sculptures located in the City’s historic district will contribute to the vitality and attractiveness of the urban streetscape, promote art and culture, and improve the touristic appeal of the City; and

WHEREAS, the Artist submitted a proposal (Attachment B), depicting an original freestanding sculpture (“Artwork”), which was selected by the City and shall be incorporated into this Agreement; and

WHEREAS, the City Council has the authority to enter into contracts such as this Agreement pursuant to Article II, Section 2.01 of the Bastrop Home Rule Charter.

NOW THEREFORE, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Artist agree as follows:

- 1. Scope of Work.** The Artist agrees to design and create the Artwork consistent with the proposal (Attachment B). The Artist agrees to transport and install the Artwork with due care, in a good and workmanlike manner. The Artwork shall be of high-quality materials and fabrication.
- 2. Location.** The Artist agrees to install the completed work at the Bastrop Convention and Exhibit Center, located at Hwy 95 and Chestnut Street, Bastrop, Texas 78602, on the cement pad. (as shall be clearly demarcated by City staff).
- 3. Time of Completion.** The Artist agrees to commence creation of the Artwork upon receipt by the Artist of a written Notice to Proceed from the City. The Artist agrees to fully install the finished Artwork by **September 2024**. The time for completion may be extended by the City in writing if the Artist provides the City written notice that the Artist has incurred delays in the design, fabrication, and installation of the Artwork due to circumstances unforeseen by the Artist at the time of the signing of this Agreement.

4. Contract Sum. The City agrees to pay the Artist twenty-five thousand dollars (\$50,000) for the design, fabrication, transportation, and installation of the Artwork. The City shall pay the Artist fifty percent (50%), that being twenty-five thousand, (\$25,000), upon execution of this Agreement to assist Artist with supplies and fabrication of the Artwork. The City will pay the Artist the remaining fifty percent (50%), that being twenty-five thousand, (\$25,000) upon installation. Together, the two payments specified above shall be full and final compensation for all work performed and/or services rendered under this Agreement.

5. Artist's Work.

- a. The Artist agrees and acknowledges that they are an independent contractor. Nothing herein shall be construed as making the Artist an officer, employee, or agent of the City. The City has no right to supervise, direct, or control the Artist or the Artist's officers or employees in the means, methods, or details of the work to be performed by Artist.
- b. The Artist agrees and acknowledges that they are solely responsible for the design, materials, equipment, and processes necessary to complete the Artwork, including its transportation and installation.
- c. The Artist agrees to utilize materials that are safe, durable, and suitable for the outdoor exhibition of the Artwork.
- d. The Artist is solely responsible for installation of the artwork on the site and for protecting their artwork during the installation process. The Artist agrees to use best efforts to safeguard City personnel and members of the public from injury or loss in connection with the installation.
- e. The Artist must obtain City approval and coordination prior to blocking or altering pedestrian or vehicular traffic as may be necessary to install the Artwork.
- f. The Artist represents and warrants that the Artwork will be creatively unique and original. The Artist warrants and agrees that the Artwork, and its display or exhibition, will not violate any third-party rights. The Artist agrees that the City is not responsible for any third-party infringement of intellectual property rights.
- g. The Artwork may not contain advertisements; however, the Artist may discretely incorporate their signature and/or logo (trademark or service mark) into the design.

6. Ownership of Work.

- a.** The Artist agrees that upon installation of the Artwork the City will obtain ownership of the Artwork.
- b.** It is understood that the Artwork may be photographed by the public and that the City cannot and will not attempt to limit or control the public's use of those photographs or depictions. The Artist warrants and agrees that reproductions of the Artwork will not violate any third-party rights.
- c.** In the event the City requires reproductions of the Artwork for commercial purposes, a separate licensing agreement may be executed between the Artist and the City. For purposes of this Agreement, the term "commercial" shall mean a use or purpose that results in direct monetary gain to the City above and beyond the administrative costs of producing, processing, and vending the commercial images.
- d.** The City warrants and agrees that all representations of the Artwork by the City shall credit the Artist.
- e.** The City reserves the right to relocate the Artwork to another site deemed suitable by the City (in its sole discretion), including storage as may be appropriate. Nothing herein shall be construed to obligate the City to display or exhibit the Artwork at a particular location in perpetuity.

7. Guarantee of Workmanship & Maintenance.

- a.** For a period of 1 (one) year following the installation of the Artwork, the Artist agrees to replace or correct any material defects in the Artwork, whether caused by defects or failure in the design, workmanship, or materials used in the Artwork. In the event the City asks the Artist to repair damage to the art caused by vandalism, collision, or other unforeseeable environmental damage, the City shall reimburse the Artist for the reasonable material and labor costs for repairs.
- b.** The City may, at its sole option, perform care, maintenance, and repair of the Artwork as it deems necessary. In conjunction therewith, the Artist may assist with any advice relating to the care of the Artwork.
- c.** Notwithstanding the above, the City shall have no obligation to repair or maintain the Artwork whether due to normal wear and tear, gradual deterioration, reaction or contamination, acts of nature or vandalism, or any other cause, and may remove or repaint over the Artwork at any time.

8. Indemnity, Hold-Harmless & Release.

- a. **The Artist shall indemnify and hold harmless** *the City, and its officers, agents, and employees, from and against all claims, damages, losses, expenses, and legal fees including attorney's fees arising out of or related to the Artist's performance under this Agreement*, whether to person or property and whether or not the claim, damage, or loss was known, unknown, foreseeable, or unforeseeable to the Parties. This includes the design, fabrication, transportation, and installation of the Artwork.
- b. **In regards to the installation of the Artwork by the Artist, the Artist recognizes and understands** *that there is an inherent danger* in working near and around public streets, utility structures, and pedestrian pathways. The Artist further understands that while remote, there is a possibility during installation an injury or harm to the Artist could occur, the extent of which harm or injury is unknown. The Artist is specifically advised to use appropriate safety gear (e.g., gloves, hard-hats, traffic cones, etc.) when working on the installation. In the event of any injury or harm to the Artist as a result of their work on the installation, whether bodily injury or property damage, the Artist hereby releases, in full, the City, its officers, agents, affiliates, and employees from all present and future claims, causes of action, or demands that the Artist now has or may hereafter accrue in any way related to or arising out of the Agreement and the Artist's work whether known, unknown, foreseen, or unforeseen.

9. **Termination.** The parties agree that this Agreement may be terminated by the **City**, at any time prior to installation, with or without cause, upon written notice to the Artist by the City. In the event of termination by the City, unless the termination was related to misconduct or default by the Artist, the City shall compensate the Artist for all the reasonable expenses, services, and materials performed or acquired by the Artist up to the date of the termination (not to exceed the total stated compensation under this Agreement). The parties agree that this Agreement may be terminated by the **Artist**, at any time prior to installation, with or without cause, upon written notice to the City and reimbursement (in full) of any payments made to the Artist by the City.

10. **Breach.** The parties agree that it shall be a breach of this Agreement for either party to fail to fulfill its obligations as stated herein. The obligations created by this Agreement may be enforced civilly in Bastrop County Court. Prior to seeking judicial remedies, the non-breaching party shall first send the other party written notification of the act or omission constituting breach and provide thirty (30) days to cure.

11. **Severability.** If a court finds or rules that any segment of this Agreement is invalid, unlawful, or otherwise unenforceable, that segment shall be severed, and the remainder of the Agreement shall continue to be binding on the parties.

12. Conflicting Provisions. If there is a conflict between a provision in any Additional Agreement Documents and a provision in the remainder of this Agreement, the latter controls.

13. Law Governing & Venue. This Agreement is governed by the law of the *State of Texas* and a lawsuit may only be prosecuted on this Agreement in a court of competent jurisdiction located in or having jurisdiction in *Bastrop County, Texas*.

14. Integrated Agreement. This Agreement contains all of the terms, considerations, understandings, and promises of the Parties. It should read as a whole and its terms can only be modified by an instrument in writing signed by both Parties. All attachments referenced herein are hereby incorporated into this Agreement.

15. Effective Date: This Agreement shall be effective as of the date of final execution by the parties.

IN WITNESS WHEREOF, the parties have executed this Agreement.

CITY OF BASTROP, TEXAS:

ARTIST:

by: _____
Sylvia Carrillo, City Manager

by: _____
Robin Luck, Artist

Date

Date