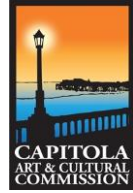




**PROFESSIONAL SERVICES AGREEMENT
BEGONIA COMMEMORATIVE ART AGREEMENT
ARTIST: GEOFFREY NELSON**



This Agreement (“Agreement”) is entered into this 26th day of September, 2024 by and between the City of Capitola, California, a municipal corporation (“City”), and Geoffrey Nelson (“Artist”), collectively the “Parties”.

SCOPE OF SERVICES. The Artist agrees to design and install Artwork constructed out of aluminum and shaped to form three (3) begonia flowers set on a cast concrete base (“Artwork”) located in the landscape area on the north corner of Wharf Road and Cliff Drive pursuant to the terms of this Agreement. The Artwork shall not exceed dimensions of (6) feet high and (40) forty inches wide by (40) forty inches deep. The Artwork shall be consistent with the design approved by the City of Capitola Art and Cultural Commission on April 9, 2024, and the Capitola City Council on September 26, 2024.

The City will provide the Artist with a four (4) foot by four (4) foot wide and (4) four-inch-high concrete foundation equipped with a 110v electrical outlet in a location, at the project site, that minimizes right-of-way impacts. Additionally, the City will provide traffic control for the unloading of the sculpture at the project site. Once the foundation is installed, it is anticipated that artwork installation will take two (2) weeks unless an extension is mutually agreed upon by both parties.

TIME FOR PERFORMANCE. Artist agrees to complete and install the Artwork before January 31, 2025, unless mutually agreed upon by the Parties.

COMPENSATION. City shall pay Artist compensation in the amount of Forty Thousand Dollars (\$40,000.00), upon receipt of a donation of Twenty Thousand Dollars (\$20,000.00) from the Capitola Beach Festival 501c3 non-profit, and will be disbursed to the Artist as follows:

- (a) Ten Thousand (\$10,000.00) upon execution of this agreement.
- (b) Thirty Thousand (\$30,000.00) upon completion of installation.

COPYRIGHT. Except as provided herein, the Artist retains all reproduction rights under the Copyright Act of 1976, 17 U.S.C., Sections 101, et.seq. The Artist hereby grants to the City and its assigns an irrevocable license to make photographs, drawings, or other two dimensional reproductions of the Artwork without prior consent of the Artist, including but not limited to reproductions used in advertising, brochures, media publicity, promotional and tourist publications, noncommercial reproductions, in the City’s portfolio of public art, and catalogues or other similar publications, provided that these rights are exercised in a reasonable manner.

Artist agrees to indemnify, defend, and hold harmless the City, and its respective officials, officers, employees, and agents from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind resulting from any services under this Agreement that infringe upon any patent, trademark or copyright protected by law.

GUARANTEE. The Artist does hereby guarantee that the Artwork workmanship and fabrication shall be completed with Artist’s best efforts, and the Artist shall provide the necessary

materials and labor for and shall bear any expenses in connection with repair of any related defects of which the Artist is given written notice by the City within two years from the date of installation. The Artist will not be responsible for damage resulting from fire, vandalism, acts of God or normal wear and tear attributable to weather.

ORIGINAL WORK. The Artist warrants that the Artwork designed for City's purchase under this Agreement is a unique and original project of the Artist's creative efforts; and that it has not been nor will be accepted for sale or installed elsewhere.

INDEMNIFICATION. The Artist agrees to defend, indemnify, and hold harmless the City of Capitola, its officials, officers, employees, volunteers, and agents to the fullest extent permitted by law, from any and all claims, liability, demands, damages, losses, expenses, attorneys' fees or costs arising out of or in any way related to Artist's or Artist's employees', subcontractors', volunteers', officers' or agents' acts, errors, omissions or willful misconduct while performing the work hereunder or any failure to comply with any of their obligations pursuant to this Agreement, except for any liability arising from the sole negligence or willful misconduct by the City.

INSURANCE. The Artist shall always during the term of this Agreement maintain in force the insurance policies and will comply with all those requirements as stated herein.

COMPLIANCE WITH LAWS. The Artist shall comply with all applicable laws and ordinances of the United States, State of California and the City of Capitola.

SUBCONTRACTING & ASSIGNMENT. If any part of the Artwork is to be created using subcontractors or volunteers, the City must first approve the use of any such third party in writing. The City shall not unreasonably withhold the approval of any qualified subcontractor. The Artist shall not assign this Agreement without the prior written consent of the City.

If Artist, during performing work under this Agreement, requires the service of any third party, Artist agrees to have such volunteers or other third party execute a waiver.

CHANGES. All changes to this Agreement shall require a written agreement signed by all parties prior to any change.

TERMINATION. The City may, by written notice to the Artist, terminate this Agreement in whole or in part at any time, either for the City's convenience or because of the failure of the Artist to fulfill his contractual obligations. If termination is for the convenience of the City, the Artist shall be entitled to the full Forty Thousand Dollars (\$40,000.00) less an amount equal to expenses anticipated to be incurred by the Artist at the time of execution of this Agreement but not yet incurred at the time of such termination.

If termination of the Agreement is due to failure of the Artist to fulfill the Artist's contract obligations, the Artist shall remit to the City a sum equal to all payments made by City pursuant to this Agreement prior to termination.

If the Artist terminates this Agreement due to death or an incapacity which prevents the Artist from completing the project, all materials purchased for the Artwork shall become the property of the City. The Artist or her representative shall provide the City with comprehensive models and plans which will enable the City to complete the Artwork. The Artist shall not be entitled to further compensation but shall not be required to refund to the City funds previously

paid to the Artist.

REMOVAL OR DISASSEMBLAGE. The Artist understands and agrees that the Artwork will be owned by the City. As such, at any time in the future the City in its sole and absolute discretion, may move the Artwork to another location or disassemble it. Should the City so elect, the City assumes full responsibility for the moving and reserves the right to reinstall the Artwork at a different site, or to dispose of the Artwork as the City deems appropriate. Such a determination is the sole right of the City. However, the City will attempt to contact the Artist to obtain the Artist's views regarding relocation or disposition of the Artwork.

WAIVER OF ARTIST'S RIGHTS TO WORK OF ART. 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 Artwork and any and all works of art produced under the terms of this Agreement pursuant to the federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 106A and 113(d)), the California Art Preservation Act (Cal. Civil Code § 987 *et seq.*), and any other local, state, federal or international laws that convey rights of the same nature as those conveyed under 17 U.S.C. section 106A, Cal. Civil Code section 987 *et seq.*, or any other type of moral right protecting the integrity of works of art. Artist expressly agrees that the work performed hereunder is "Work Made for Hire" under the provisions of 17 U.S.C. section 101. The provisions of this paragraph shall apply to modify Artist's rights of attribution and integrity as set out in the Visual Artists Rights Act, 17 U.S.C §§ 106A and 113(d) ("VARA"), the California Art Preservation Act, Cal. Civil Code §§ 987 and 989 ("CAPA"), and any rights arising under United States federal or state law or under the laws of another country that convey rights of the same nature as those conveyed under VARA and CAPA, as against the City of Capitola and its agents. The City has the absolute and exclusive right to change, modify, destroy, remove, relocate, move, replace, transport, repair or restore the artwork that is the subject of this Agreement.

NOTICES. Notices, requests for payment, and other communications are to be hand delivered or mailed to the respective parties as follows, or to such other address as any party may designate by written notice in accordance with this Section.

CITY

City of Capitola
Attn: Nikki Bryant
4400 Jade St.
Capitola, CA 95010

ARTIST

Geoffrey Nelson
1040 River Street #322
Santa Cruz, CA 95060

DISPUTES. This Agreement is governed by the laws of the State of California and all actions shall be brought in court in Santa Cruz County, California.

ENTIRE AGREEMENT. This Agreement contains the entire agreement between the parties hereto, and they shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not herein stated.

SEVERABILITY. In the event that 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.

COUNTERPARTS. This Agreement may be executed on one or more copies and each

counterpart will be considered an original and binding to the party executing it. A scanned, electronic, facsimile or other copy of a party’s signature shall be treated the same as an original.

Dated: _____ CITY OF CAPITOLA, a municipal corporation

By: _____
Jamie Goldstein, City Manager

Dated: _____ ARTIST

By: _____
Geoffrey Nelson, Artist