



TREE STUMP ART AGREEMENT



This Agreement (“Agreement”) is entered into this ____ day of May, 2023 by and between the City of Capitola, California, a municipal corporation (“City”), and Anthony May (“Artist”), collectively the “Parties”.

SCOPE OF SERVICES. The Artist agrees to design and install Artwork from an existing tree stump (“Artwork”) located at the lower Beach and Village parking lot on Monterey Avenue behind City Hall (“Parking Lot”), pursuant to the terms of this Agreement. The tree stump is the remains of a Cypress tree that fell due to heavy rain in 2019 and will remain in its current location from the slide. The Artwork shall be consistent with the design approved by the City of Capitola Art and Cultural Commission on April 11, 2023 and the Capitola City Council on May 25, 2023.

The City will provide the Artist access to a portion of the Parking Lot and access to a power outlet, located near the tree stump, from which to perform the installation. It is anticipated that installation will take two (2) weeks unless an extension is mutually agreed upon by both parties. The City will also provide unmilled wood for use in the Artwork, and place the wood in the Parking Lot, to be used for installation.

The City will attempt to identify sponsored housing, at no cost to the City or Artist, for the Artist use during the two (2) week installation period to offset cost. If the City is unable to do so, the Artist agrees to arrange for their own housing.

2. TIME FOR PERFORMANCE. Artist agrees to complete and install the Artwork before December 31, 2023, unless mutually agreed upon by the Parties.

3. COMPENSATION. City shall pay Artist compensation in the amount of Five Thousand Five Hundred Dollars (\$5,500.00), follows:

- (a) Two Thousand, Seven Hundred and Fifty Dollars (\$2,750.00) upon execution of this Agreement.
- (b) Two Thousand, Seven Hundred and Fifty Dollars (\$2,750.00) upon completion of installation.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. 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 Five Thousand Five Hundred Dollars (\$5,500.00) 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.

13. 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.

14. 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.

15. 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 LeBlond
4400 Jade St.
Capitola, CA 95010

ARTIST

Anthony Heinz May
8260 N Chautauqua Blvd
Portland, OR 97217

16. 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.

17. 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.

18. 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.

19. 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: _____
Nikki Bryant LeBlond, Recreation Division Manager

Dated: _____ ARTIST

By: _____
Anthony Heinz May