



City of Ketchum

February 3, 2020

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Recommendation to Approve Contract #20444 with Steven Parker for the Commission of a Permanent Sculpture and Appropriate Funds from the Parks and Recreation Trust Fund

Recommendation and Summary

Staff is requesting Council approve contract #20444 with Steven Parker for a permanent, city-owned sculpture. Staff also requests appropriation of funds for the artwork from the Parks and Recreation Trust Fund.

“I move to approve Contract #20444 and the appropriation of \$29,000 from the Parks and Recreation Trust Fund to commission a sculpture for the city’s art collection.”

The reasons for the recommendation are as follows:

- The Ketchum Arts Commission (KAC) selected a finalist for the permanent sculpture.
- The Parks and Recreation Trust Fund contains \$51,000 of unspent funds.

Introduction and History

On December 16, 2019, City Council reviewed proposals from three semi-finalists selected from a field of 54 submissions. On January 16, KAC juried the final proposals and chose the “Tuboscope” by Steven Parker.

Analysis

The sculpture is interactive, and the artist will create a booklet of listening games to be distributed to the public free of charge. KAC plans to work with Parker on the booklet to add a historical background of the use of a like sculpture in World War I, before the invention of radar. They were first used to spot German Zeppelin airships.

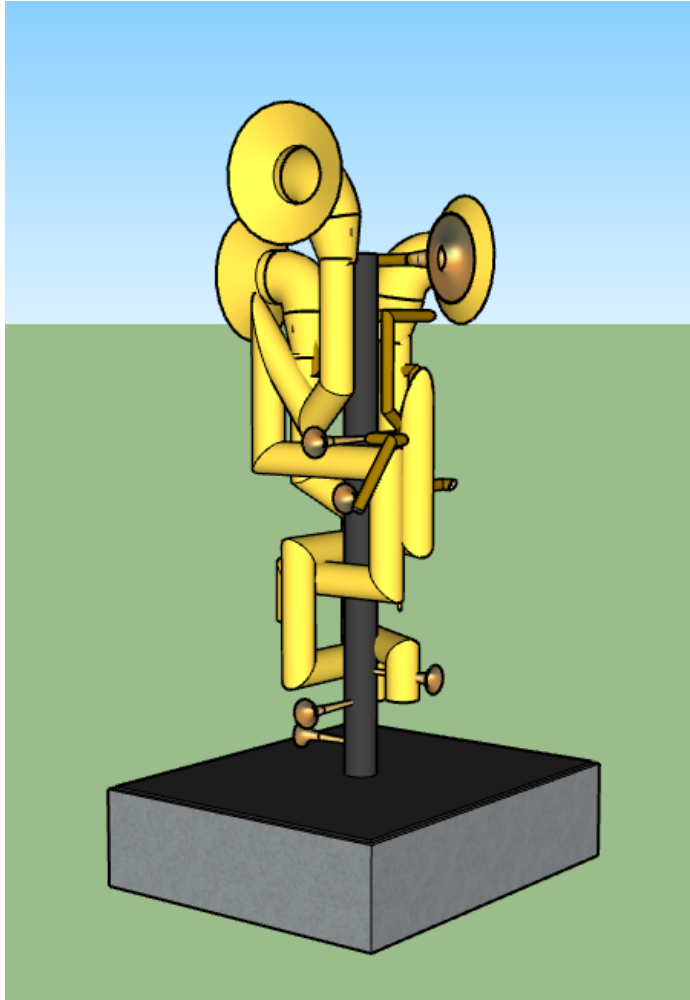
“A common configuration of the device had three horns arranged vertically plus an extra one to the side. The central one in the set of three, and the lateral one, were used to get the aircraft’s bearing, while the remaining two were used to estimate its height. The operators would listen in through the stethoscope and tilt the horns until they got the loudest sound,” (Jacopo Prisco, CNN). The sounds gave them the direction and ability to determine the height of the aircraft.

The educational element of the booklet, combined with listening games and illustrations, will benefit all ages. The sculpture could potentially draw classes from the Hemingway Steam School. Locating the booklets at The Community Library and adding them to materials at the Visitor Center will reach an even broader audience.

Financial Impact

City Council appropriated \$10,000 for KAC projects in FY20. That funding is to cover the costs associated with the 13th Annual Art on Fourth Exhibition and Sidewalk Art. There currently exists \$51,000 in the KAC fund balance. The commission would like to use \$29,000 of those funds for this project. In order to do so, Council must open the budget and appropriate \$29,000 for this project. If Council authorizes the appropriation, the project can proceed and the budget will be opened at a later date.

Attachments: Contract #20444
Parker Proposal



Tuboscope

Steve Parker, artist

steven.c.parker@gmail.com

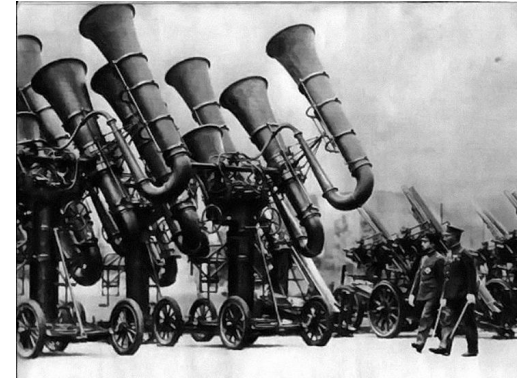
steve-parker.net

312 498 6047

Proposal: Tubascope

For the City's Fourth Street Heritage Corridor Open Call, I am proposing a sculpture called the **Tubascope**.

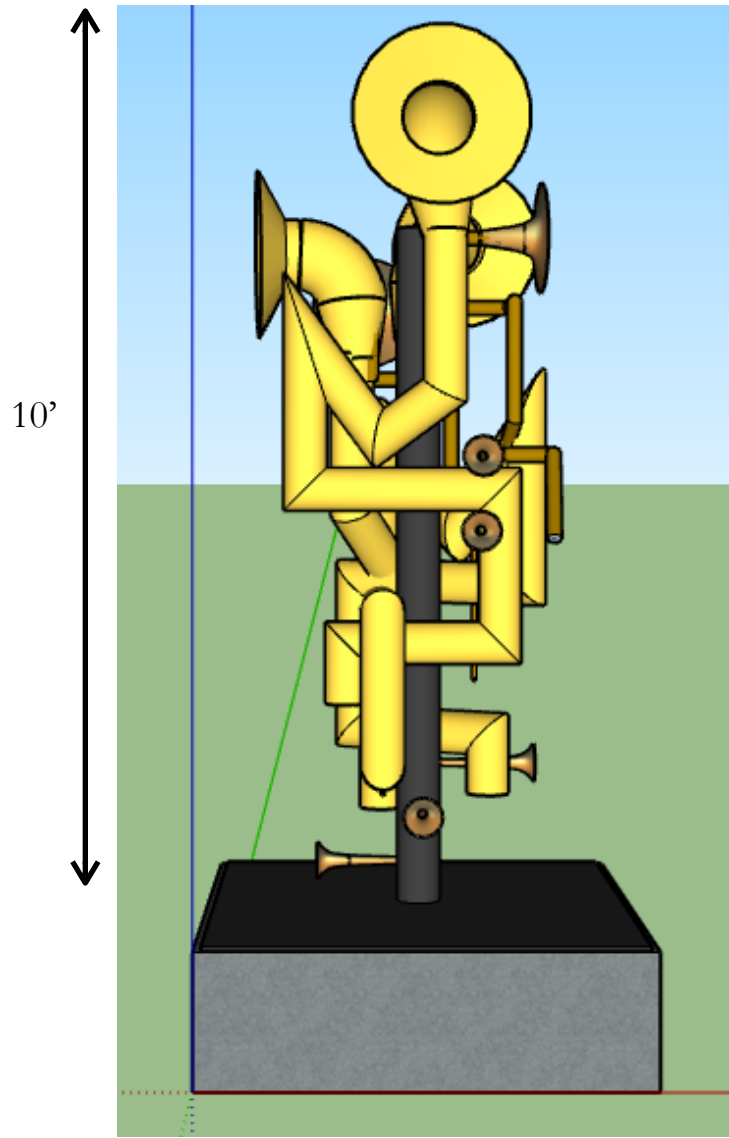
The **Tubascope** is an interactive sculpture that works like a telescope for your ears. Modeled after obsolete acoustic locators of the 1930s (pictured here in B&W photos), the Tubascope is made from reclaimed and repurposed brass instruments that have been outfitted with additional tubing and brass headphones. Rather than produce music, these sculptures highlight and amplify existing sounds that are already present. To use the sculpture, a passerby simply places their ear up to the brass headphone along the main sculpture support and listens. When used, the object helps a person focus their listening on specific, far away sounds that they may have been otherwise ignored.



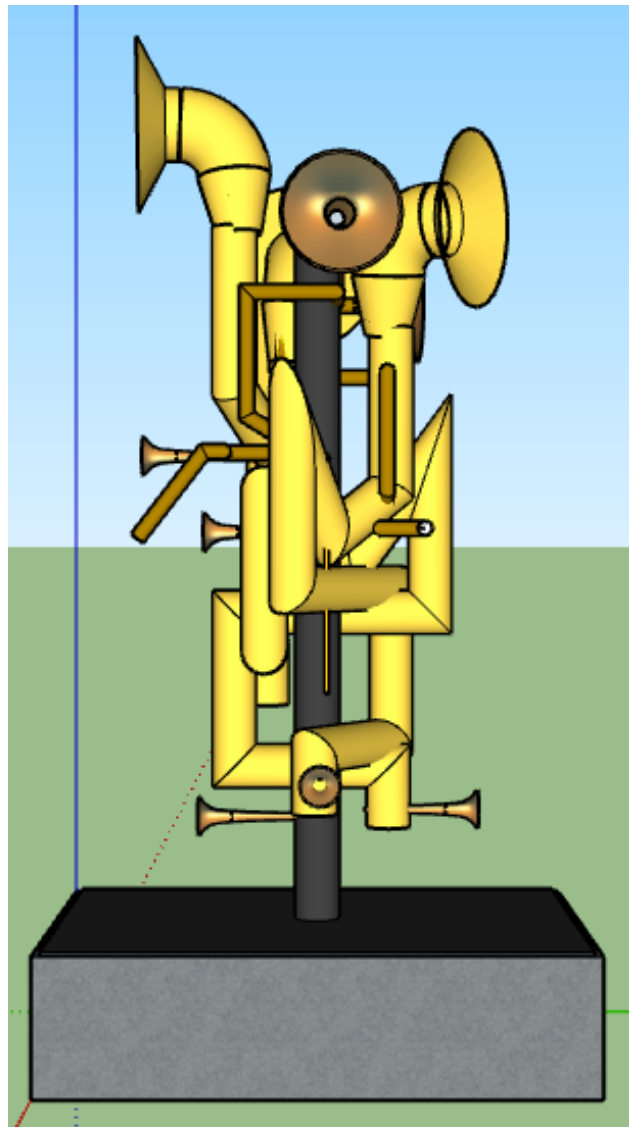
This project aims to help people engage in the simple, yet profound act of intentional listening. Additionally, it aims to heighten public awareness of the rich natural soundscape of Ketchum. Ketchum possesses a dynamic and constantly changing soundtrack: at any given moment a person can hear the songs of migrant birds, the undulations of insects, and other living creatures. Listening more attentively can bring our senses into greater focus.

To augment the physical sculptures, I will also create a booklet of listening games that will be distributed to the public free of charge. Drawing from the visual language of Shel Silverstein and Dr. Seuss, I will create and illustrate meditations that guide Ketchum residents and visitors to listen and appreciate notable aspects of Ketchum's rich soundscape.

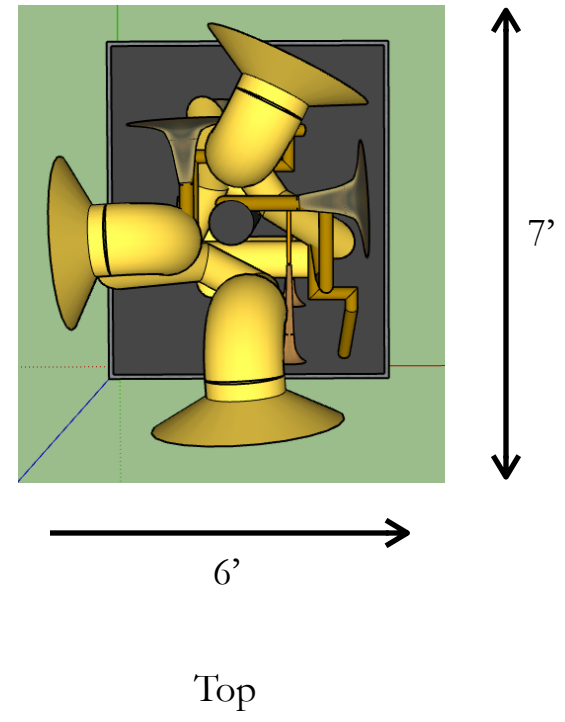
My sculptures are made from durable steel and brass, suitable for any climate. All sculptures are ADA compliant, intuitive, and suitable for people of all ages.



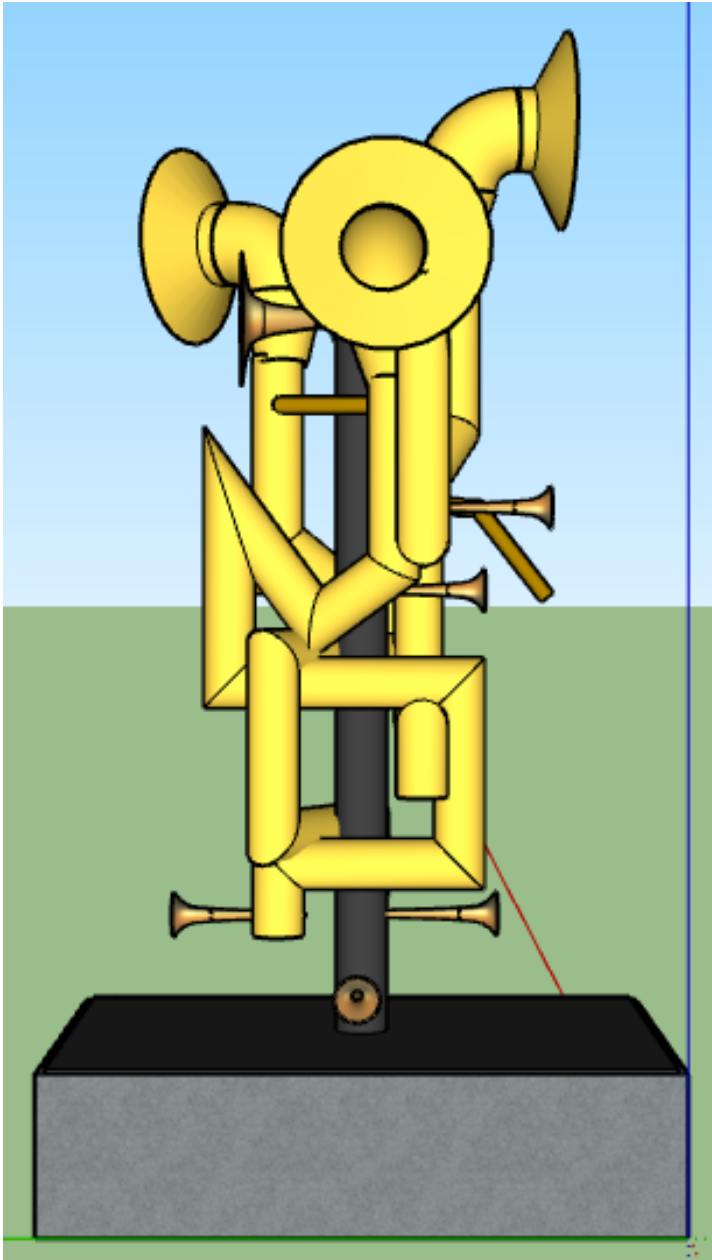
Front



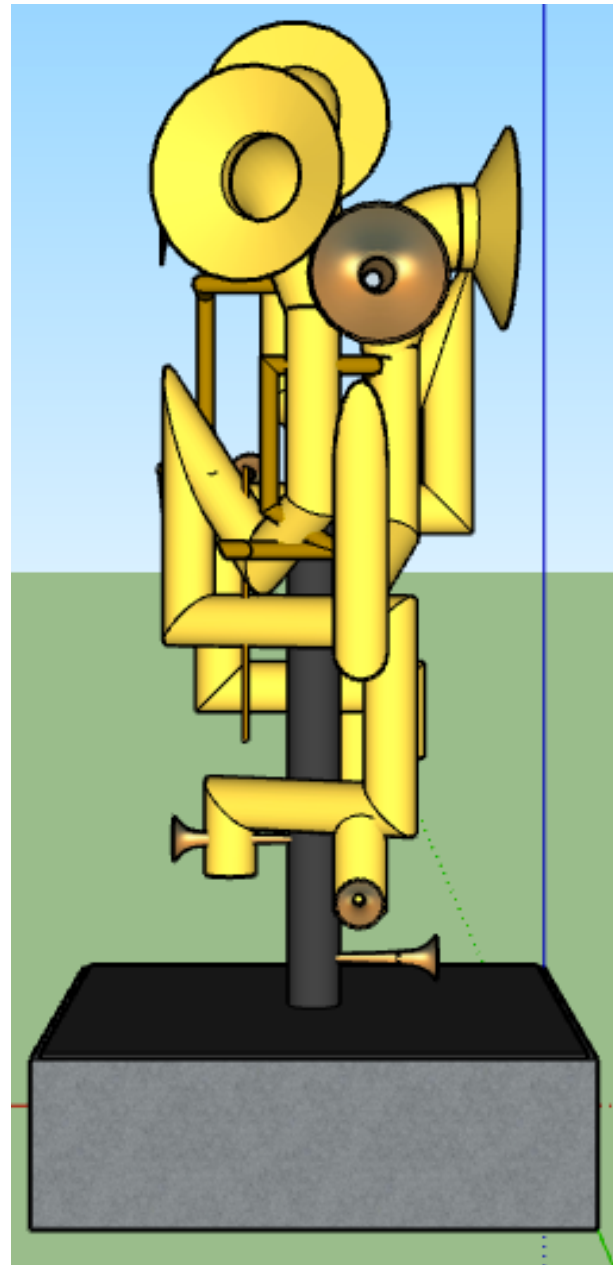
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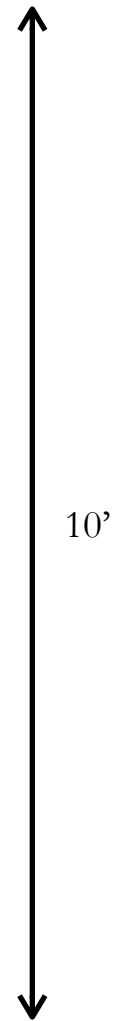
Top

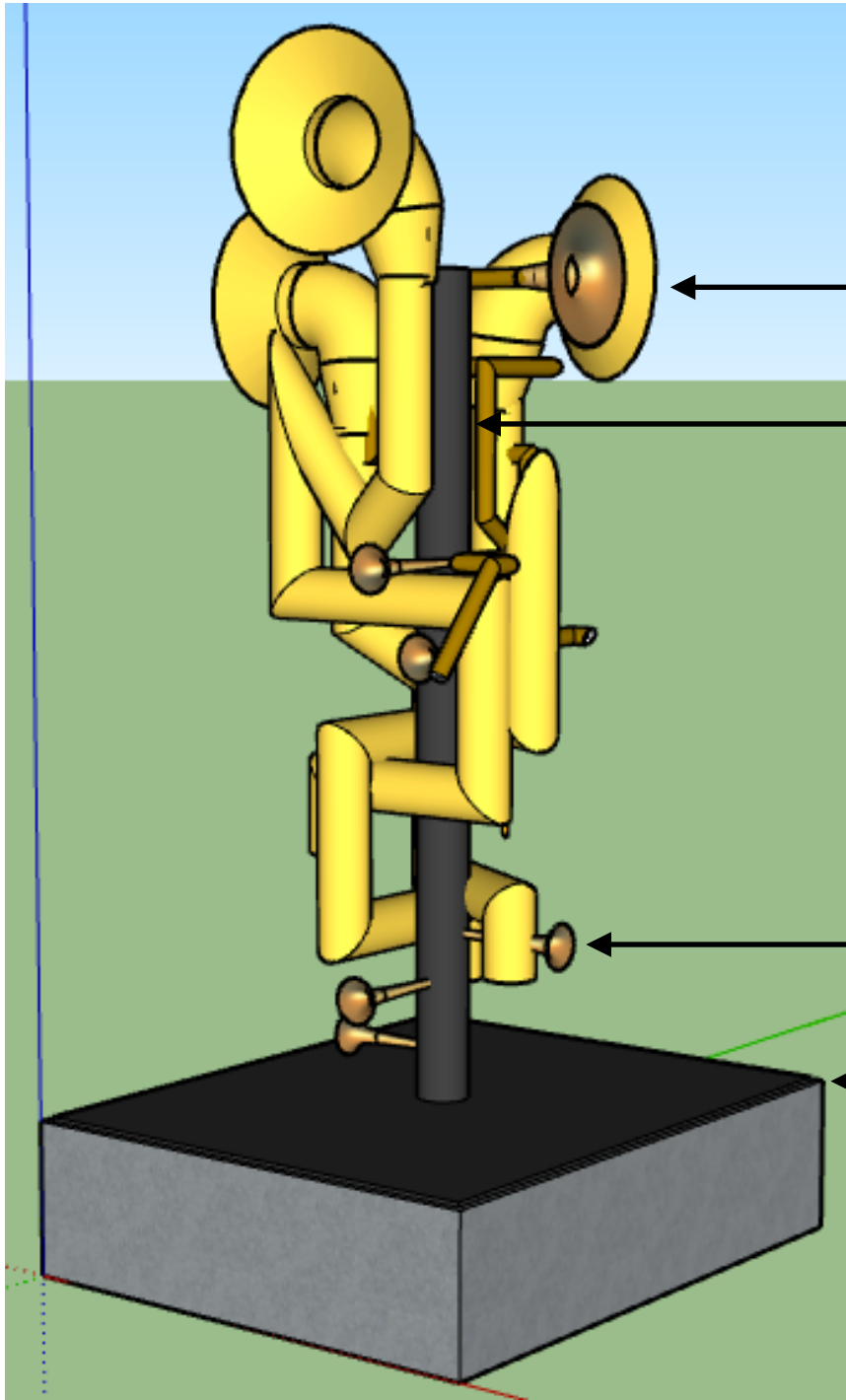


Left



Right





Salvaged brass

Steel pipe

Brass earpiece

Steel base

Budget

	amount	unit cost	total				
MATERIALS							
Salvaged brass			\$3000				
Copper tubing and fasteners			\$250				
Steel tubing			\$1000				
Steel base			\$500				
Headphones & misc fasteners			\$200				
TOTAL MATERIALS			\$4950				
FABRICATION							
Steel base Fabrication, custom steel fittings, and steel reinforcement of brass (Robert Whiterhurst, Fistera Studio)	120	\$50	\$6000				
Brass Brazing (Steve Parker)	60	\$50	\$3000				
TOTAL FABRICATION			\$9000				
INSTALLATION & DEINSTALLATION							
Install Labor & Delivery (Robert Whiterhurst, Fistera Studio)			\$3000				
Truck rental & gas			\$3000				
Roundtrip airfare, hotel			\$1500				
TOTAL LABOR			\$7500				
INSURANCE							
General Liability - Hartford Insurance			\$300				
TOTAL INSURANCE			\$300				
SUB TOTAL AMOUNT			\$21750				
CONTINGENCY:							
5% of the Subtotal			\$1450				
ARTIST'S FEE:							
20% of Total			\$5800				
GRAND TOTAL:			\$29000				

Materials

Reclaimed brass
Copper pipes & fasteners
Steel

Timeline

Final Design completed: 2 months after contract executed
Fabrication of artwork: 4 months
Artwork installed: 2 days

**AGREEMENT #20444 BETWEEN THE CITY OF KETCHUM AND STEVEN PARKER
FOR THE COMMISSION OF AN INTERACTIVE ART PROJECT**

This agreement is entered into as of the _____ day of _____, 2020 by and between the City of Ketchum, a municipal corporation (hereinafter "City"), and Steven Parker, an individual (hereinafter "Artist"); (hereinafter collectively referred to as "the Parties") for the purpose of refining the final design of the sculpture project, fabricating, and installing or supervising the installation of the art.

RECITALS

WHEREAS, the City requires the services of an artist to create a sculpture in a public space; and

WHEREAS, the Artist is a professional artist whose work and qualifications make the Artist uniquely qualified to create the Artwork; and

WHEREAS, the Ketchum Arts Commission has selected, and the Ketchum City Council approved, the Artist based upon his work and qualifications; and

WHEREAS, the Artist and City wish to perform under the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

AGREEMENT

1. **SCOPE OF WORK:** Artist has received approval for artwork designs and correlating budget from the City and is, upon execution of this Agreement, authorized to proceed with design, fabrication and installation of the following project pursuant to the terms of this Agreement and as described in Exhibit "A" attached hereto:
 - a. Artist will fabricate and install an approximately 10-foot tall "Tubascope." Artwork will be installed on the existing pedestal on the north side of Fourth Street between East and Walnut avenues.
 - b. Artist will create a booklet of listening games to be distributed to the public.
2. **INDEPENDENT CONTRACTOR RELATIONSHIP:** Artist is not an employee, servant, agent, partner or joint venture of the City. The City shall determine the work to be done by Artist, but Artist shall determine the legal means by which it accomplishes the work specified by the City. This Agreement shall not be construed to create any employer-employee relationship between the City and Artist.
3. **ARTIST RESPONSIBILITIES:** In addition to other responsibilities set forth in this Agreement, the Artist shall provide periodic progress reports to the Ketchum Arts Commission (KAC). This provision shall not prevent the Artist from subcontracting for obligations that do not require his artistic talents, including but not limited to such obligations as engineering, structural engineering or drawing architectural renderings of plans for the preparation and submittal of operations and maintenance manual for artwork.

4. **COMPENSATION:** The total fee for the Artist is \$29,000 (twenty-nine thousand dollars). This amount shall constitute full compensation for all services the Artist shall perform, necessary materials and fees, as set forth in the Scope of Services and this Agreement. Artist shall receive 50% (fifty percent) or \$14,500 (fourteen thousand five hundred dollars) of the total fee upon City approval of Contract. Upon approval and payment, Artist will commence work. See Artist budget in Exhibit A.
5. **CITY RESPONSIBILITIES:** The City agrees to timely furnish Artist all information in the City's possession concerning matters covered by this Agreement, together with timely access to personnel and data necessary to perform the work.
6. **TIME OF PERFORMANCE:** Artist shall coordinate commencement of design on the effective date of this agreement and complete the Scope of Services on or before July 1, 2020, or such other later date as may be agreed upon between the Parties in writing.
7. **APPROVALS:** The Artist shall provide the City the opportunity to review the work progress as follows:
 - a. Artist shall provide a revised Tubascope proposal for review by KAC no later than February 19, 2020.
 - b. Revisions, if required, will be provided for review by KAC no later than March 4, 2020.
 - c. Final design and plans and specifications stamped by an Idaho licensed engineer will be provided for review by City departments and engineer no later than March 18, 2020.
 - d. Review and approval of design and engineering will occur within a reasonable period prior to the commencement of fabrication.
 - e. KAC will review and approve work within seven (7) days of final completion. If, during the approval reviews, KAC concludes that the work does not conform to the designs as described in Exhibit A attached hereto or as mutually agreed by the parties in writing, notice of specific non-conformity and request for Artist to address the specific non-conformity shall be given to Artist in writing within two weeks after the review. Artist shall have thirty (30) days to address and correct any non-conformity. If, after resubmittal, the work still does not conform, this Agreement shall be subject to immediate termination for cause.
8. **PROJECT CLOSE-OUT:** Upon delivery of the work, the Artist shall furnish the City a full release and waiver of lien, together with such releases and waivers from any subcontractor who furnished goods for or performed services for the work. Artist shall comply with all applicable federal, state and local laws, statutes, rules, regulations and/or ordinances. Artist shall also submit a maintenance plan to the City including specific recommendations for ongoing maintenance and possible repairs, as well as slides and/or photo and written documentation of fabrication and installation of the work, such as to assist in maintenance, repair and public education.
9. **REPAIRS, MAINTENANCE OR ALTERATIONS:**
 - a. Artist is responsible for all parts and workmanship for a period of one (1) year after acceptance of the work and will replace any defective parts or rework any defective craftsmanship in a timely fashion at no cost except as provided in 10(b) and 10(c).
 - b. Artist is not responsible for and will not be held liable for any damage to the Work, its surfaces, or environment caused by personnel of the City, of its employees, visitors, or others, beyond the control of Artist.

- c. Artist is not responsible for, and will not be held liable for, any damages to the Work by extremely adverse weather conditions, acts of God, vandalism, or other acts abnormal to the site beyond the control of the Artist.
- d. The City may provide basic maintenance, restoration and repairs and whenever practical, Artist will be given an opportunity to perform and/or act as consultant for the repair or restoration. In the event that the Work is damaged or destroyed, the City may, in its sole discretion, restore the Work subject to availability of sufficient funds.

10. ARTIST'S INSURANCE:

- a. Artist agrees to purchase, at his own expense, general liability insurance with limits of not less than one million dollars per occurrence, combined single limit bodily injury and property damage, to cover the Artist's work in fabricating, transporting and installing the Work and shall be in force for no less than fifteen (15) days prior to the Artist commencing work until final completion. Artist shall provide proof of coverage as set forth above to the City before commencing its performance as herein provided and shall require insurer to notify the City ten (10) days prior to cancellation of said policy. Deliver certificates of insurance endorsements required by this Article to:

City of Ketchum
Attn: City Administrator
P.O. Box 2315
Ketchum, ID 83340

- b. Before commencing fabrication of the Work, the Artist shall procure and maintain until final completion, insurance on the Work in an all-risk form with limits of not less than \$29,000 (twenty-nine thousand dollars, and any deductible not to exceed \$500 (five hundred dollars) each loss, with any loss payable to the City.
- c. On all insurance policies required under the Agreement, the Artist shall name the City as an additional insured party and provide that the policy may not be cancelled or reduced in coverage except upon thirty (30) days advance written notice to all Parties. Any cancellation of insurance, without appropriate replacement in the amounts and terms set forth herein may constitute grounds for termination of the contract.
- d. Artist's insurance shall apply to the transportation and installation of the Work, or if transportation is being subcontracted, the Artist will verify that the subcontractor carries sufficient insurance coverage to match the above referenced limits and include coverage for owned, non-owned and hired vehicles as applicable.

11. INDEMNIFICATION: Artist agrees to indemnify, defend, and hold harmless the City and its officers, agents, employees and City Council from and against all claims, losses, actions or judgments for damages of injury to persons or property arising out of or resulting from the negligent performances or activities of Artist, Artist's agents, employees, or representatives under this Agreement.

12. WARRANTY: Upon final acceptance of the Work by the City, Artist warrants that it shall be free from defects in materials and workmanship, including inherent vice. Artist shall, for a period of one (1) year after acceptance by the City, correct any such defects at Artist's own expense. "Inherent vice" refers to

a quality within the materials or materials which comprise the work which either alone or in combination with other materials used in the artwork or reacting to the environment, results in the tendency of the work to destroy itself. Upon written notification of a defect in materials or workmanship, Artist shall have sixty (60) days to commence repairs and shall conclude them within a reasonable time.

13. **OWNERSHIP:** The Work will be a limited edition of one. Artist warrants that, unless otherwise stipulated, the Work is original, in that the Work owes its creation or origin to Artist and is not the product of copying another's work in any manner. Artist warrants and represents he has not previously published the Work transferred by this Agreement and that Artist is the sole owner of all rights therein. Upon final approval and acceptance of Work, delivery and installation, and final payment, City shall own the Work. Artist hereby expressly waives any right, title or interest in the artworks created for the project. Artist understands that said waiver includes waivers of the exclusive rights of reproduction, adaptation, publication, performance and display.
14. **OWNERSHIP OF DOCUMENTS AND MODELS:** All studies, drawings, designs and originals related to artwork prepared and submitted under this Agreement shall become the property of City, and shall be delivered to City within thirty (30) days of full execution of this Agreement; provided, however that the same may be delivered immediately following receipt of the final payment by Artist if Artist requires the studies, drawings, designs and originals related to the artwork for completion and installation.
15. **OWNERSHIP OF COPYRIGHT:** The City shall retain ownership of the Work and Artist shall retain all rights, title and ownership of the copyright to said Work. Artist shall continue to be identified, whenever possible, on all printed materials, signage, websites or other promotional material as the original creator of the design and the Work. Artist shall retain the right to claim authorship to design and the Work and may utilize such authorship in any of his printed materials or other promotional material.
16. **WAIVER AND RELINQUISHMENTS OF RIGHTS:** Once the Work becomes City property, the City may move the Work. Artist shall have no right to override or veto the City's plans and Artist hereby waives his right to file a claim or demand of any type against the City based upon any future decision regarding the placement of the Work.
17. **PUBLICITY, RIGHTS OF REPRODUCTION:** Artist also consents to the use, at City's discretion, of Artist's full name and Artist's own identifying photograph in any publicity or promotional materials produced for the Project, whether printed or electronic. Such consent includes placement of these items on any website City maintains. In addition, Artist shall retain his right of reproduction in the Work and Artist hereby expressly grants to the City the right to reproduce images of the Work for educational or promotional purposes.
18. **ASSIGNMENT:** It is expressly agreed and understood by the Parties hereto that Artist shall not have the right to assign, transfer, hypothecate or sell any of its rights under this Agreement except upon the prior express written consent of the City.

19. **TERMINATION OF AGREEMENT FOR CAUSE:** If Artist shall fail to fulfill its obligations in compliance with the scope of work, or if Artist shall violate any of the covenants, agreements or stipulations of this Agreement, the City shall thereupon have the right to terminate this Agreement by giving written notice to the Artist and specifying the effective date thereof at least fifteen (15) days before the effective date of such termination. If this Agreement is terminated for cause, Artist shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, Artist shall not be relieved of liability to the City by virtue of any breach of this Agreement by Artist, and the City may withhold any payments to Artist for the purpose of setoff until such time as the exact amount of damages due the City from Artist is determined. Contractor shall also provide the City all products or works of consulting generated to date of termination.
20. **TERMINATION BY THE CITY:** The City reserves the right to terminate this Agreement at any time, for any reason, by giving at least fifteen (15) days' notice in writing to Artist. If this Agreement is terminated by the City as provide herein, Artist shall be paid for the work performed prior to termination, less payment or compensation previously made. Artist shall also provide the City all products or works related to this project generated to date of termination.
21. **TERMINATION:** The obligation to provide further services under this Agreement may be terminated by Artist upon thirty (30) days written notice. Such termination shall be based upon substantial lack of performance by the City under the terms and conditions of this Agreement when said substantial lack of performance is through no fault of Artist. If this Agreement is terminated by Artist, Artist shall be paid for services rendered and for reimbursable expenses incurred to the date of such termination.
22. **NOTICES:** Any and all notices required to be given by either of the parties hereto, unless otherwise stated in this Agreement, shall be in writing and be deemed communicated when mailed in the United States mail, certified, return receipt requested, addressed as follows:
- TO CITY: City Administrator
 City of Ketchum
 POB 2315
 Ketchum, ID 83340
- TO ARTIST: Steve Parker
 12026 Wycliff Ln.
 Austin, TX 78727
23. **APPLICABLE LAW:** Any dispute under this Agreement or related to this Agreement shall be decided in accordance with the laws of the state of Idaho.
24. **SEVERABILITY:** If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.
25. **ATTORNEY FEES:** Should any litigation be commenced between the Parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to costs and reasonable attorney fees as determined by a court of competent jurisdiction. This provision

shall be deemed to be a separate contract between the parties and shall survive any default, termination or forfeiture of this Agreement.

26. **EFFECTIVE DATE:** The effective date of this Agreement shall be the date signed by the last party of this Agreement.

IN WITNESS WHEREOF, THE CITY and Artist have executed this Agreement as of the effective date specified above.

CITY OF KETCHUM

ARTIST

Neil Bradshaw, Mayor

Steven Parker

ATTEST:

Robin Crotty, City Clerk