



City of Ketchum
City Hall

December 15th, 2021

Mayor Bradshaw and City Councilors
City of Ketchum
Ketchum, Idaho

Mayor Bradshaw and City Councilors:

Amendments to Approved Agreement #22752 with Artist Jake Balcom

Recommendation and Summary

Staff is recommending Council to approve amendments to Agreement #22752 with artist Jake Balcom for a sculpture project at the new City Hall.

“I move to approve amendments to Agreement #22752 with artist Jake Balcom.”

The reason for the recommendation is as follows:

- Upon discussion with the Artist, Staff finds it reasonable to pay the Artist’s fee of \$30,000 in increments: 1/3 upon approval, 1/3 halfway through fabrication, and 1/3 upon delivery of the final piece.
- Upon discussion with the Artist, Staff finds it reasonable to move forward the delivery date to April 15, 2022, to allow for Holiday delays and supply chain delays.

Attachments: Amended Agreement #22752 (changes are underlined)

**AMENDED AGREEMENT #22752 BETWEEN THE CITY OF KETCHUM AND JAKE BALCOM
FOR THE COMMISSION OF A SCULPTURE ART PROJECT**

This agreement is entered into as of the _____ day of _____, 2021 by and between the City of Ketchum, a municipal corporation (hereinafter "City"), and Jake Balcom, an individual (hereinafter "Artist"); (hereinafter collectively referred to as "the Parties") for the purpose of creating a sculpture at the Ketchum City Hall.

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 the Artist based upon their 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

DESCRIPTION OF SERVICES

Artist will design, fabricate and install a sculpture for the foyer at the City Hall.

PAYMENT FOR SERVICES

In exchange for the services, the City shall pay Artist a fee of Thirty Thousand Dollars (\$30,000) in three (3) installments (1/3 upon approval of the piece, 1/3 halfway through fabrication, and 1/3 upon delivery of the piece) and approval by a City Committee. This amount is inclusive of artist fee, design, materials, engineering, fabrication, shipping and installation.

TERMS

The work shall be performed by Artist or Artist Team. The work submitted by the Artist is original, solely owned by the Artist and reproduction will not violate the rights of any third party. The Artist shall not make any additional, exact duplicate reproductions of the final design and dimension, nor shall the Artist grant to a third party the right to replicate the artistic designs and dimensions of the artwork, without the written permission of the City

Artist retains all rights to the artwork pursuant to the Copyright Act of 1976. The Artist grants to the City of Ketchum an unlimited, non-exclusive and irrevocable license to make reproductions of the artwork and the final designs to be used in brochures, media, publicity, marketing, social media, and catalogs or other similar publications.

The artwork is intended to remain in place indefinitely; however, the artwork may be removed at any time without notification of the Artist to accommodate replacement or repairs.

The City of Ketchum is not responsible for any third-party infringement of Artists' copyright and not responsible for protecting the intellectual property rights of Artist.

INDEPENDENT CONTRACTOR

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.

ARTIST RESPONSIBILITIES

Artist shall coordinate commencement of design on the effective date of this Agreement and complete the Scope of Services on or before Friday, April 15, 2022.

ARTIST'S INSURANCE

The City and Artist warrant that they each carry workers' compensation, comprehensive liability, automobile, and other insurance with reasonable coverage and in reasonable amounts sufficient to insure against anticipated risks in connection with services under this Agreement

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.

NONASSIGNMENT

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.

APPLICABLE LAW

Any dispute under this Agreement or related to this Agreement shall be construed in accordance with the laws of the State of Idaho.

SEVERABILITY

If any part of this Agreement is held unenforceable, the remaining portions of the Agreement will nevertheless remain in full force and effect.

NOW THEREFORE, by executing this Agreement, each signatory affirms that they have read and understand its terms, and that each has the full power and authority to enter into this Agreement on behalf of the entity for which they have signed.

CITY OF KETCHUM

ARTIST

Neil Bradshaw, Mayor

Jake Balcom

ATTEST:

Tara Fenwick, City Clerk