

Contract to Commission Artwork
Between
City of Norman, Oklahoma
And
Skunk Control

THIS CONTRACT, made this _____ day of _____, by and between the City of Norman (hereinafter referred to as the "Owner"), and Skunk Control (hereinafter referred to as the "Artist") for a work of art incorporated herein by reference (hereinafter referred to as the "Work") to be placed in front of the Norman Senior Wellness Center, at 602 N. Findlay Ave, Norman, Oklahoma.

WHEREAS, the City Council of the City of Norman believes the beautification of the Senior Wellness Center Project will further enhance the quality of life in Norman, Oklahoma;

WHEREAS, all parties wish to promote and maintain the integrity and clarity of the Artist's ideas and statements as represented by the Work;

WHEREAS, the Selection Panel Advisory Board and the Norman Arts Council Board recommend the retention of the Artist for this Work;

WHEREAS, the parties wish to have the creation of the Work governed by the mutual obligations, covenants, and conditions herein.

THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

I. The Project: The Scope of Services

- A. The Artist will design, execute, fabricate, transport, install and document the Work. These services shall be performed by Artist, and their assistants, as independent contractors.
- B. Artist agrees that said Work will be consistent with and substantially similar to the graphic illustration presented to the Selection Panel Advisory Board and the Norman Arts Council Board.
- C. The Owner agrees to purchase the Work, under the terms and conditions of this contract upon final approval and acceptance of the Work by the Owner.
- D. The permanent location for the work shall be in in front of the Senior Wellness Center, at 602 N. Findley Ave, Norman, Oklahoma.

- E. The Artist shall perform all services and furnish all supplies, materials and equipment necessary for the design, execution, fabrication, transportation and installation of the Work.
- F. The Owner shall make known its specifications to the Artist prior to the rendering of their services.
- G. The Owner in consultation with the Artist shall determine the arrangement and placement of the final Work.
- H. The Artist shall be responsible for the delivery, installation, and securing of the Work on a concrete base prepared, by the Owner, at the site in Norman, Oklahoma.
- I. The Artist shall coordinate, with the Norman Arts Council, on outreach program design, including number, duration, form, and delivery type.

II. Execution of the Work

- A. The Artist shall complete the fabrication of the work in substantial conformity with the design as recommended by the Norman Arts Council Board and approved by the Owner
- B. Prior to implementation of any significant changes in the Work, the Artist shall present to the Owner in writing, for further review and approval, a thorough description of such proposed changes. A significant change is any change affecting the scope, intent, design, color, size, material or location of the Work not permitted by, or not in substantial conformity with, the approved design. Owner must approve the proposed changes prior to continued work by the Artist.
- C. In performance of the Work described herein, the Artist shall comply with all applicable State and local laws, rules and regulations.
- D. The Artist shall complete the Work by September 30, 2023. Should the work be ready for delivery prior to September 1, 2023, the Artist shall keep the work safely stored at its studio or other location. The installation of the the work will be at a date mutually agreeable between the Artist and the Owner, but no later than October 31, 2023. The Artist shall notify the Owner of delivery delays due to, but not limited to, materials supply delays, shipping delays, and travel delays.
- E. The Owner shall notify the Artist of construction delays resulting in delays in site preparation prior to the scheduled delivery date or installation date. A new date shall be agreed upon by the Owner and Artist for completion, delivery and installation of the Work.
- F. The Artist shall notify the Owner in writing when fabrication of the Work is completed and the Artist is ready to deliver the Work and install it on the site.

- G. Within forty-five (45) days after installation of the Work, and prior to final payment, the Artist shall make available to the Owner high quality digital images of the completed Work.
- H. The Artist shall furnish the Owner with a full written narrative description of the Work.
- I. The Artist shall provide the Owner written instructions for appropriate maintenance and preservation of the Work.
- J. Final acceptance shall be determined solely by the Owner and shall constitute the acknowledgement that the Work has been satisfactorily completed and installed according to the terms of this Agreement.
- K. Ownership of the Work shall pass to the Owner (City of Norman) upon final acceptance.

III. Warranties and Copyright

- A. The Artist represents and warrants that:
 - i. The Work is solely the result of the artistic and creative efforts of the Artist;
 - ii. The Work is unique and original and does not infringe upon any copyright;
 - iii. The Work has not been accepted for sale elsewhere; and
 - iv. The Work is free and clear of any liens from any source whatever.
- B. The Artist represents and warrants that:
 - i. The Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and
 - ii. Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist; and
 - iii. The warranties described in this section shall survive for a period of one (1) year after the final acceptance of the Work. The Owner shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the Owner, and at no cost to the Owner, reasonably and promptly cure the breach of any such warranty, which is curable by the Artist and which cure is consistent with professional conservation standards. This includes making repairs to the Work or re-fabricating the Work arising out of defects consisting of "inherent vice" or qualities accelerating deterioration of the Work which appear for a period of one (1) year after the installation and which the Artist shall correct.

- C. The Artist retains all rights under the Copyright Act of 1976 under 17 U.S.C. § 101 *et seq.*, Visual Artists Rights Act of 1990 (VARA) 17 USC §106A, and all other rights in and to the Work except ownership and possession, except as such rights may be limited by this Agreement. The Artist shall not make any additional exact duplicate reproductions of the final Work, nor shall the Artist grant permission to others to do so except with the written permission of the Owner. The Artist grants to the Client and Owner and its assigns an irrevocable license to make photographic or graphic reproductions of the Work for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity and catalogs or other similar publications, if the Artist is duly credited, except where the Work is merely an incidental feature of a photograph. A plaque provided by the Owner, identifying the title, date, and Artist, shall be placed on or near the Work. The Artist shall have the right to use photographs of the completed Work as an example of his work and in books or brochures he may publish.

IV. Fee for Services

- A. The total purchase price of creation, preparation and completion of the final Work shall be \$100,000. This fee does not include the cost to Owner for preparation of the site for installation. Owner shall not provide any additional compensation for any alterations or revisions in the final Work which substantially depart from the approved preliminary models and specifications and which cause the Artist an unusual and unanticipated expense.
- B. The Artist shall receive payments from the Client to the Artist to be paid in the amount of \$100,000 as follows:
- i. \$40,000 upon delivery of signed contract by the Owner and Artist and the issuance of Artist's invoice;
 - ii. \$30,000 upon documentation of the half-way milestone of completion of the Work;
 - iii. \$30,000 upon final acceptance of the Work by Owner.
- C. Artist's lack of performance during either of the payment stages listed above shall initiate a 30-day period to cure the deficiency and/or lack of performance upon receipt of written notice from the Owner which provides a statement addressing Owner's dissatisfaction with Artist's performance as well as what steps the Artist may take to cure the inadequate performance. The Artist must cure the deficiency or take reasonable steps towards curing the deficiency within the 30-day period. Upon failure of the Artist to do so, the Owner may pursue any remedies available to them against the Artist at law and in equity, including, but not limited to, the right to terminate this Agreement and reimbursement from Artist for all funds expended by Owner thus far including costs to remove the base or foundation.

Upon execution of this document, but prior to transfer of ownership, Artist agrees to defend, indemnify and hold harmless Owner, its agents and employees, from and against legal liability for all claims, losses, damages and expenses to the extent such claims, losses, damages or expenses are caused by Artist, its agents or employees' negligent acts, errors or omissions. Artist shall indemnify the City of Norman, Oklahoma up to one hundred thousand dollars (\$100,000.00) for any claim arising out of this Agreement. Artist further waives any rights against the City for any and all injuries or damages alleged to have arisen during the term of this Agreement.

IX. Default

If either party defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all court ordered costs and expenses, including reasonable attorney's fees, incurred by the other party in enforcing its rights arising under this Agreement,.

X. Binding

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their agents, successors, and assigns.

XI. Integration

This Agreement represents the entire and integrated Agreement between the parties. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may only be changed by a written amendment executed by all parties.

XII. Ownership of Documents and Models

Upon final acceptance, all studies, drawings, designs, maquettes and models prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist unless agreed by all parties.

XIII. Notice

Notice of any breach or other correspondence related to this contract shall be by email or regular mail to the following contacts:

Artist:

Nick Athanasiou,

Title: Creative Director

Skunk Control

Address: 254 Hyde Street Yarraville, Victoria, Australia, post code 3013.

Email: nick@skunkcontrol.com.au

City:

Jason Olsen
Title: Director of Parks and Recreation
225 N. Webster Ave.
Norman, OK 73070
Email: Jason.Olsen@normanok.gov

XIV. Modification

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by all parties hereto.

XV. Severability

Any provision of this contract which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States, State of Oklahoma or City of Norman shall be considered null and void. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent the contract is capable of execution.

ARTIST



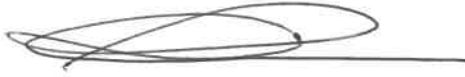
Nick Athanasiou, Creative Director
Skunk Control

Address 254 Hyde Street Yarraville, Victoria, Australia, post code 3013.
Phone number +61 04999 75865

Before me, the undersigned, a Notary Public in and for said County and State, on this 30th
day of June, 2023, personally appeared
_____ and
_____, to me known to be the identical
person(s)/(company title) Sole Director who executed the foregoing grant

of easement and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year last above written.



Notary Public



My Commission Expires: _____

LINDA PARIC
Notary Public
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

CITY OF NORMAN

APPROVED this _____ day of _____, 2023, by the Norman City Council.

Larry Heikkila, MAYOR

ATTEST:

Brenda Hall, City Clerk

APPROVED as to form and legality this 7th day of July, 2023.



CITY ATTORNEY

SCHEDULE I

[to be included]

Form A

I, _____, hereby declare that the accompanying documents truthfully and accurately depict the most current status of the Work. I further declare that I produced and created the Work pictured in the accompanying documents.

Artist/ Project Manager

Date

Address: _____

State of _____

County of _____

Sworn to and subscribed before me this _____ day of _____, 202__.

Notary Public

My commission expires: _____.

SCHEDULE I

Production to Installation Schedule. subject to change depending on availability and/or delays associated with freight, material availability and other unforeseen issues.

1. Design, Drawings and testing (through to mid-July 23)
2. Structural Engineering tick off (Australia) (3rd to final week of July 23)
3. Completion of Shop drawings (final week of July 23)
4. Glass and Steel cutting/ pole bending (through to end of July 23)
5. Glass bending/curving and internal optical filter lamination (2nd week of August through to 1st week of September 23)* this will depend on the angle of glass curvature
6. Pre-Welding set up (2nd week of August)
7. Welding (3rd through to 4th week of August)
8. Sand blasting and powder coating (4th week of Aug 23 through to 1st week of Sept 23)
9. Assembly and Packaging 2nd week of September
10. Freight to site (3rd week of September)

NOTARIAL CERTIFICATE

TO ALL TO WHOM THESE PRESENTS SHALL COME

I, **LINDA PARIC**, Notary Public, admitted and sworn and an Australian Legal Practitioner the City of Melbourne in the State of Victoria in the Commonwealth of Australia **CERTIFY** that I was present at Melbourne on the 30th day of June Two Thousand and Twenty Three and saw **NICK ATHANASIOU** the person named in the attached Contract to Commission Artwork between City of Norman, Oklahoma and Skunk Control duly sign the same and Nick Athanasou, being the Sole Director and Company Secretary of Skunk Control Pty Ltd (ACN 642980989) and duly registered as such by the Australian Securities and Investments Commission is authorised to do so and that the signature **NICK ATHANASIOU** subscribed thereto is the proper handwriting of the said **NICK ATHANASIOU** and that the signature **LINDA PARIC** thereunto subscribed as the attesting witness thereto is of the proper handwriting of myself.

IN FAITH AND TESTIMONY whereof I the said Notary Public have hereunto subscribed my name and affixed my Seal of Office this 30th day of June Two Thousand and Twenty Three.

My tenure is not limited by time.



A handwritten signature in black ink, appearing to read "Linda Paric", written over a horizontal line.

LINDA PARIC
Notary Public
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)