

Contract to Commission Artwork
Between
City of Norman, Oklahoma
And
Tyler FuQua Creations

THIS CONTRACT, made this _____ day of _____, by and between the City of Norman (hereinafter referred to as the "Owner"), and Tyler FuQua Creations (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 Reaves Park, at 2501 Jenkins Ave, Norman, Oklahoma.

WHEREAS, the City Council of the City of Norman believes the beautification of Reaves Park 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 design concept presented to the Selection Panel Advisory Board and the Norman Arts Council Board. As design details are finalized, Artist will update the Owner.
- 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 Reaves Park, at 2501 Jenkins 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. The Owner will make equipment for installation available.
- 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 October 15, 2023. Should the work be ready for delivery prior to October 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.

- 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 \$62,000. 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 \$62,000 as follows:
 - i. \$25,000 upon delivery of signed contract by the Owner and Artist and the issuance of Artist's invoice;
 - ii. \$18,500 upon documentation of the half-way milestone of completion of the Work;
 - iii. \$18,500 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.
- D. Artist shall provide proof of completion of the Work by submitting at least ten pictures of the Work from various angles which tend to clearly show the Artist's progression during the stages of fabrication to completion. Additionally, Artist shall submit Form A along with these documents.

V. Funding

- A. Owner guarantees and warrants that it will produce funds in the amount of \$62,000 as required for completion of the Work.

VI. Alteration and De-accession Right

- A. The Owner agrees that it will not consent to intentional alteration, modification, change, destruction of or damage to the Work by the Owner without attempting to consult the Artist.
- B. The Artist shall notify the Owner of changes in their address. The failure to do so, if such failure prevents the Owner from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce that which requires the express approval of the Artist. The Owner shall make

reasonable efforts to locate the Artist when matters arise relating to the Artist's rights.

- C. The Owner may remove the Work from the City of Norman collection if it determines that the Work represents a safety hazard in its present condition or cannot reasonably be restored to its original structural or aesthetic integrity due to technical difficulties or expense disproportionate to the value of the Work. The Owner shall notify the Artist of such a decision to de-access the Work. Such notification shall be made before the de-accession, whenever possible. The Owner has no responsibility to relocate, restore, or replace the Work if it is misplaced, damaged or stolen.

VII. Insurance

The Artist, as independent contractor, is responsible for any requirements pertaining to Workers' Compensation insurance and employee liability insurance, and shall obtain and maintain insurance satisfactory to covering comprehensive general liability, and all risks of loss, damage to, or theft of the Work while it is being made, transported, or installed by the Artist. The Artist shall deliver to the Owner a copy of this insurance prior to beginning work. In addition, the City of Norman will provide insurance to cover loss, damage to, or theft of the Work once installed under the City of Norman's current policy covering the construction of Reaves Park.

VIII. Indemnity

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:

Tyler FuQua
Title: Creative Director
Tyler FuQua Creations
Address: 503-708-9956
Email: tyfu@me.com

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


Tyler FuQua, Creative Director
Tyler FuQua Creations
24645 SE Brevi Lane, Eagle Creek, OR 97022
Phone number 503-708-9956

Before me, the undersigned, a Notary Public in and for said County and State, on this 15th day of June, 2023, personally appeared Tyler FuQua and N/A, to me known to be the identical person(s)/(company title) person who executed the foregoing and acknowledged to me that he executed the same as a 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.



Kristyn Jo Anderson

Notary Public

My Commission Expires: August 5, 2023

County of Multnomah, State of Oregon

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 10th day of July, 2023.

Mr Paole
CITY ATTORNEY

SCHEDULE I

[to be included]

OFFICIAL STAMP
KRYSTYN JO ANDERSON
NOTARY PUBLIC - OREGON
COMMISSION NO: 990268
EXPIRES AUGUST 05, 2023

Witnessing or Attesting a Signature

State of OREGON

County of Multnomah

Signed (or attested) before me on (date) 15th of June, 20 23

by (name(s) of individual(s)) Tyler Fricqua

Kristyn Jo Anderson

Notary Public - State of Oregon

Official Stamp



Document Description

This certificate is attached to page 89 of a contract (title or type of document), dated June 15, 20 23, consisting of 10 pages.

Proposed schedule for Reaves Park Robot Sculpture:

July - Receive first round of funding and order main structure materials after getting approval from engineer. Begin to fabricate key components (elbows, knees, shoulders, hips, etc.) Once those are done, begin to attach them to the larger parts (arms, legs, pelvis, etc).

August - Continue to assemble main body part and begin work on head, and hand and head accessories.

September - Get in contact with the local schools and begin heart chamber design process. Finish body details and order the base plate. Hopefully by the end of September we will have the heart chamber design selected and can begin fabrication of that piece. Continue with details of the accessories, etc.

October - finish construction of the robot. Reach out to community to select the numbering of the robot. Complete all fabrication by 10/15. Ship robot out around 10/27 for a 10/31 delivery and installation.

Form A

I, Tyler Fuqua, 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

6/15/23

Address: 24645 SE Brex Ln
Eagle Creek, OR
97022

State of Oregon
County of Multnomah



Sworn to and subscribed before me this 15th day of June, 2023.

Kristyn Jo Anderson
Notary Public

My commission expires: August 5, 2023