



MONROE CITY COUNCIL

Agenda Bill No. 19-154

SUBJECT:	Authorize Mayor to Sign Outdoor Sculpture Services Agreement
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DATE:	DEPT:	CONTACT:	PRESENTER:	ITEM:
07/23/2019	Parks & Recreation	Mike Farrell	Mike Farrell	Consent Agenda #7

Discussion: 05/15/2018; 07/23/2019 [P4 Committee: 07/24/2018, 05/14/2019]
Attachments: 1. Sculpture Agreement (*reviewed by the City Attorney*)

REQUESTED ACTION: Move to authorize the Mayor to sign the Sculpture Services Agreement with Artist Milo White; and expressly authorize further minor revisions to the extent deemed necessary or appropriate.

POLICY CONSIDERATIONS

Execution of agreement is supported by Council's 2019 funding for and outdoor sculpture to be installed within the Downtown Plaza Area.

DESCRIPTION/BACKGROUND

The City Council approved 2019 funding in the amount of \$20,000 for an outdoor sculpture to be installed within the Downtown Plaza Area. A Call for Sculptors was advertised early-March with a deadline of April 5, 2019.

The City received eight proposals from four different artists, and the proposals were then reviewed by an Art Selection Committee that met on April 24, and April 30, 2019. The Art Selection Committee was comprised of individuals representing the following organizations:

- Monroe Arts Council (Robert Fairfax).
- Monroe Chamber of Commerce (Yvonne Gallardo-Van Ornam).
- Downtown Monroe Association (Teresa Willard).
- Monroe Planning Commission (Steve Jensen).
- Monroe Park Board (Ron Petrick).
- Monroe City Council (Jeff Rasmussen).
- Monroe City Staff (Mike Farrell, Katie Darrow, Kim Klinkers, Anita Marrero).

A recommendation to the City Council was unanimously agreed upon to select the proposal brought forth by the artist team of Milo White and Jay Bowen titled 'Guardian of the Mountain Pass'.

The Monroe City Council passed a motion on May 14, 2019, to direct the Mayor and Staff to negotiate a draft agreement for services with the Artist for a downtown art sculpture (attached). The agreement lays out the terms and scope for the artist to design, create, and deliver a metal sculpture representing Monroe's setting amidst beautiful mountains, rivers and forests, to be installed at a site in Monroe's newly-renovated downtown.

SCOPE OF SERVICES

The Artist agrees to design, create, and deliver a metal sculpture titled 'Guardian of the Mountain Pass', to be installed in Monroe, Washington at a location designated by the City.

1. *Design Approval*

The signing of the Agreement shall indicate approval of the conceptual design based on the maquette (pictured) provided by the Artist and previously reviewed by the City. The City and

the Artist both recognize that such maquettes are an approximation of the Artwork and do not constitute exact renderings of the finished Artwork. The City will participate in reviewing and proofing all phases of the design and production process.

2. Execution

A. The Artist shall provide all materials and labor for the creation of the Artwork and will begin upon the signing of the contract and the receipt of the initial payment. The Artist shall complete and deliver the Artwork by December 20, 2019.

B. The City is responsible for the preparation of the installation site and any procuring any additional elements necessary below the ground for said installation. The Artist is responsible for physically securing the Artwork upon the site and is exclusively responsible for delivery of the damage free Artwork to the installation site designated by the City. If the City determines that an engineering review of the proposed Artwork and site is necessary, then the City shall obtain such review at no cost to the Artist.

C. The Artist warrants and guarantees the Artwork against any faulty material or workmanship at the time of delivery and for one (1) year after installation.

ARTISTIC RIGHTS AND COPYRIGHTS

A. The completed Artwork shall bear the date, signature, and copyright mark in a non-distracting portion of the Artwork.

B. All sketches, studies, and maquettes developed by the Artist in the process of creating the Artwork shall remain the property of the Artist.

C. Except as expressly provided herein (subsection D below), the exclusive right of reproduction of the Artwork shall remain with the Artist. The Artist reserves every right available under the Federal Copyright Act to control the making and disseminating of further copies or reproductions of the Artwork.

D. Notwithstanding subsection (C) above, the City is granted an irrevocable license to graphically reproduce (through photography or otherwise) the image of the Artwork, including but not limited to, the Artwork proposal and all preliminary studies, models and maquettes that have come into possession by the City, and to authorize third parties to graphically reproduce (through photography or otherwise) any and all of the same, as are desired by the City, for municipal (e.g., education, public information, etc.) purposes. On each such reproduction that is made by the City itself, the Artist shall be acknowledged as the creator of the original Artwork; provided, that reproductions of any preliminary studies, models and maquettes need not be identified as or represented as the final, finished Artwork. Provided further, that the City shall have no responsibility and/or liability whatsoever with respect to any unauthorized reproduction of the image of the Artwork, including any preliminary studies, models or maquettes by any third parties.

FISCAL IMPACTS

The attached agreement would compensate the artist \$20,000, which is the budgeted amount for the downtown art sculpture. The unique previous sidewalk system, coupled with the uncertainty of a final art sculpture product's installation requirements (*as it may vary*), may produce a need for additional funding of up to \$2,500 for a structural base support/foundation, which would be paid from the existing maintenance and operations budget within the Parks Department cost center.

PAYMENT SCHEDULE

The City shall pay the Artist for the Artwork a total fixed amount of twenty thousand dollars (\$20,000.00), sales tax included.

Phase 1: Disbursement: \$6,099.42

A payment of \$6,099.42 for the design of the Artwork. Production will commence upon the

signing of the contract and with the Artist's receipt of the first payment of \$6,099.42.

Phase 2: Progress: \$6,099.42

Work will commence on the fabrication of the Artwork upon approved by the City's representative(s) and the Artist's receipt of \$6,099.42.

Phase 3: Final \$6,099.42

A final payment of \$6,099.42 to the Artist will be made upon the Artist's delivery of the Artwork to the installation site and its physical acceptance by the City.

TIME CONSTRAINTS

The City has announced in the Call for Sculptors a deadline for the work to be installed no later than December 20, 2019.

ALTERNATIVES TO REQUESTED ACTION

- Discuss Agreement and direct staff to bring back additional information prior to taking action.
- Discuss Agreement, take no action and direct staff not to bring back.

**CITY OF MONROE
SCULPTURE SERVICES AGREEMENT**

This Agreement, made and entered into this 23rd day of July 2019, by and between the City of Monroe, Washington, a municipal corporation, hereinafter referred to as the "City," and sculptor Myloart, hereinafter referred to as the "Artist", WITNESSETH:

WHEREAS, the City requires those services set forth in Exhibit A, Scope of Work, attached hereto to be performed as part of that certain city project identified as;

The Artist's design, creation, and delivery of a metal sculpture titled 'Guardian of the Mountain Pass', as detailed in "Exhibit A", hereinafter referred to as the "Artwork" to be installed at a site designed by the City in Monroe, Washington.

WHEREAS, the Artist is qualified and possess the expertise, training and skills necessary to perform such designated services.

NOW, THEREFORE, it is hereby agreed between the parties as follows:

1. **Scope of Services.** The Artist shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as Artist responsibilities throughout this Agreement and as detailed in Exhibit A.
2. **Legal Compliance.** In performing the services under and related to this Agreement, Artist shall comply fully with all applicable state, federal and local laws and regulations.
3. **Compensation and method of payment.**

A. The City shall pay the Artist for the completion of the work designated in Exhibit A, a total fixed amount of twenty thousand dollars (\$20,000.00). Such payment shall constitute full compensation for all work performed and/or services rendered, for all applicable taxes, supervision, design fees, consultant's fees such as structural engineering or testing, labor, supplies, materials, fabrication, installation, including any site modification required, applicable City permit(s), travel expenses, per diem expenses, insurance, business licenses, equipment, or use thereof, and for all other incidentals required by the Artist to complete the Artwork as specified in the design and as identified in Exhibit A, Scope of Work. If additional services outside the Scope of Work may be requested by the City, said additional services will be paid by the City at a rate to be determined and mutually agreed upon by the parties however, any such additional services will only be performed by the Artist and compensated by the City where the City has directed such performance in writing.

B. The Artist shall complete and return to the City Exhibit B, Taxpayer Identification Number, prior to or along with the first invoice submittal.

C. Payment by the City for services will only be made after a voucher or invoice is submitted in the form specified by the City, and the same is approved by the City. Payment shall be made on a periodic installment basis as specified in Exhibit A.

4. Duration of Agreement. This Agreement shall be in full force and effect commencing upon mutual execution and ending December 31, 2019, unless sooner terminated under the provisions of the Agreement. Time is of the essence of this Agreement in each and all of its provisions in which performance is required.

5. Artistic Rights and Copyrights.

A. The completed Artwork shall bear the date, signature, and copyright mark in a non-distracting portion of the Artwork.

B. All sketches, studies, and maquettes developed by the Artist in the process of creating the Artwork shall remain the property of the Artist.

C. Except as expressly provided herein, the exclusive right of reproduction of the Artwork shall remain with the Artist. The Artist reserves every right available under the Federal Copyright Act to control the making and disseminating of further copies or reproductions of the Artwork.

D. Notwithstanding subsection (C) above, the City is hereby granted an irrevocable license to graphically reproduce (through photography or otherwise) the image of the Artwork, including but not limited to, the Artwork proposal and all preliminary studies, models and maquettes thereof that have come into possession by the City, and to authorize third parties to graphically reproduce (through photography or otherwise) any and all of the same, as are desired by the City, for municipal (e.g., education, public information, etc.) purposes. On each such reproduction that is made by the City itself, the Artist shall be acknowledged as the creator of the original Artwork thereof; provided, that reproductions of any preliminary studies, models and maquettes need not be identified as or represented as the final, finished Artwork. Provided further, that the City shall have no responsibility and/or liability whatsoever with respect to any unauthorized reproduction of the image of the Artwork, including any preliminary studies, models or maquettes thereof, by any third parties. The provisions of this subsection (D) under this subsection shall survive the expiration or earlier termination of this Agreement.

6. Independent Contractor Relationship. The Artist and the City agree that the Artist is an independent contractor with respect to the services provided pursuant to this Agreement. The City is interested primarily in the results to be achieved; the implementation of services will lie solely with the Artist. The Artist will solely be responsible for its acts and for the acts of its agents, employees, subconsultants, or representatives during the performance of this Agreement. Nothing in this Agreement shall be considered to create the relationship of employer and employee between the parties hereto.

7. Indemnification. The Artist shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Artist, in performance of this Agreement, except for injuries and damage caused by the sole negligence of the City. It is further specifically and expressly understood that the indemnification provided herein constitutes Artist's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. The provisions of this section shall survive the expiration or termination of this Agreement.

8. Termination.

A. If the Artist fails to perform in the manner called for in this Agreement, or if the Artist fails to comply with any other provisions of the Agreement, the City may terminate this Agreement. Termination shall be affected by serving a notice of termination on the Artist. In the event of such termination, the Artist will only be entitled to payment only for services performed up to the effective date of the termination notice in accordance with payment schedule set forth in Exhibit A.

B. If it becomes impossible or impracticable for the Artist to render services under this Agreement for causes beyond reasonable control, such as, but not limited to acts of nature, permanent injury, death, war or warlike operations, civil commotion, riot or governmental regulation and control, this Agreement shall be deemed terminated.

C. This provision shall not prevent the City from seeking any legal remedies it may otherwise have for the violation or nonperformance of any provisions of this Agreement. Without prejudice to the forgoing, the City shall be entitled to a full refund of all prior payments made under this Agreement if the Artist fails to complete and deliver the Artwork for any reason other than as provided in subsection (B) above.

9. Discrimination Prohibited. In performing the services under and/or in relation to this Agreement, the Artist shall not discriminate on the basis of race, color, religion, creed, sex, sexual orientation, age, national origin, marital status, or presence of any sensory, mental, or physical handicap.

10. Assignment and Subcontract. The Artist shall not assign or subcontract any portion of the services contemplated by this Agreement without the prior written consent of the City.

11. Conflict of Interest. The Artist represents to the City that it has no conflict of interest in performing any of the services set forth in Exhibit A. In the event that the Artist is asked to perform services for a project with which it may have a conflict, Artist will immediately disclose such conflict to the City.

12. Confidentiality. All information regarding the City obtained by the Artist in performance of this Agreement shall be considered confidential. Breach of confidentiality by the Artist shall be grounds for immediate termination.

13. **Entire Agreement.** This Agreement contains the entire agreement between the parties, and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind either of the parties. Either party may request changes to the Agreement. Changes which are mutually agreed upon shall be incorporated by written amendments to this Agreement.

14. **Notices.** Notices to the City of Monroe shall be sent to the following address:

City of Monroe
806 W. Main Street
Monroe, Washington 98272
Phone number: (360) 794-7400

Notices to the Artist shall be sent to the following address:

Name: Myloart - Milo White
Address: 809 Easter Ave. Sedro-Woolley, WA 98284
Phone number: 360-391-0505

15. **Applicable Law; Venue; Attorneys' Fees.** This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The exclusive venue for any litigation arising out of this Agreement shall be the courts of Snohomish County, Washington. The substantially prevailing party in any such action shall be entitled to its attorneys' fees and costs of suit.

16. **Severability.** Any provision or part of this Agreement held to be void or unenforceable under any law or regulation shall be deemed stricken and all remaining provisions shall continue to be valid and binding upon the City and the Artist, who agree that the Agreement shall be reformed to replace such stricken provision or part with a valid and enforceable provision that comes as close as reasonably possible to expressing the intent of the stricken provision.

17. **Risk of Loss.** The Artist shall bear all risk of damage or loss with respect to the Artwork until the same is physically delivered to the designated installation site and accepted by the City.

CITY OF MONROE, WASHINGTON

ARTIST

By: _____
Title: Mayor
Date: _____

By: _____
Title: Artist
Date: _____

Attest/Authenticated:

Approved As To Form:

Elizabeth M. Adkisson, MMC, City Clerk

J. Zachary Lell, City Attorney

EXHIBIT A SCOPE OF SERVICES

The Artist agrees to design, create, and deliver a metal sculpture titled 'Guardian of the Mountain Pass', hereinafter referred to as the "Artwork" to be installed in Monroe, Washington at a location designated by the City.

1. DESIGN APPROVAL

The signing of this Agreement shall indicate approval of the conceptual design based on the maquette (pictured) provided by the Artist and previously reviewed by the City.

The City and the Artist both recognize that such maquettes are an approximation of the Artwork and do not constitute exact renderings of the finished Artwork. The City will participate in reviewing and proofing all phases of the design and production process.

2. EXECUTION

A. The Artist shall provide all materials and labor for the creation of the Artwork and will begin upon the signing of this contract and the receipt of the initial payment, as referred to below under PAYMENT SCHEDULE Phase 1. The Artist shall complete and deliver the Artwork by December 20, 2019.

B. The City is responsible for the preparation of the installation site and any procuring any additional elements necessary below the ground for said installation. The Artist is responsible for physically securing the Artwork upon the site and is exclusively responsible for delivery of the damage free Artwork to the installation site designated by the City. If the City determines that an engineering review of the proposed Artwork and site is necessary, then the City shall obtain such review at no cost to the Artist.

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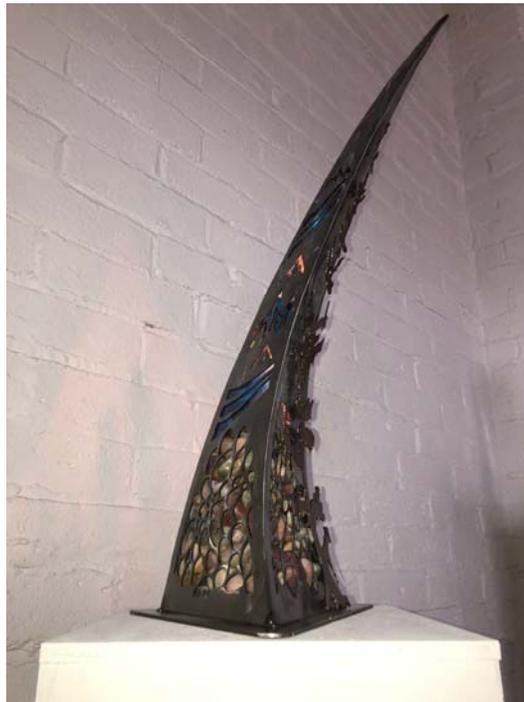


EXHIBIT B

CITY OF MONROE
806 W. Main Street
Monroe, WA 98272
Phone: (360) 794-7400
FAX: (360) 794-4007

TAX IDENTIFICATION NUMBER

In order for you to receive payment from the City of Monroe, you must have either a Tax Identification Number or a Social Security Number. The Internal Revenue Service Code requires a Form 1099 for payments to every person or organization other than a corporation for services performed in the course of trade or business. Further, the law requires the City to withhold twenty percent (20%) on reportable amounts paid to unincorporated persons who have not supplied us with their correct Tax Identification Number or Social Security Number.

Please complete the following information request form and return it to the City of Monroe prior to or along with the submittal of the first billing invoice.

Please check the appropriate category:

- Corporation Partnership Government
Consultant
- Individual/
Proprietor Other (explain)

TIN No.: _____

Social Security No.: _____

Print Name: _____

Title: _____

Business Name: _____

Business Address: _____

Business Phone: _____

Date

Authorized Signature (Required)