

Contract to Commission Artwork
Between
City of Norman, OK
And
Valerie Theberge

THIS CONTRACT, made this 7th day of May, 2020, by and between the City of Norman (hereinafter referred to as the "Owner"), and Valerie Theberge (hereinafter referred to as the "Artist") for a work of art (hereinafter referred to as the "Work") to be placed on the north side of the park near the Ruby Grant Memorial Pavilion, Ruby Grant Park in Norman, Oklahoma.

WHEREAS, the City Council of the City of Norman believes the beautification of the Ruby Grant Park 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, the Public Arts 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 maquette and graphic illustration presented to the Selection Panel Advisory Board, the Public Arts 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 the north side of the park near the Ruby Grant Memorial Pavilion, Ruby Grant Park in 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 at the prepared site in Norman, Oklahoma. The Artist shall be responsible for ensuring the base design is engineered appropriately to support the completed Work in a safe and secure manner and shall provide the Owner with documentation confirming approval by an engineer registered in the State of Oklahoma. ~~A building permit from the City of Norman will be obtained by the Artist or by a contractor on his behalf, and the Owner will assist in the permitting process as needed.~~ VT

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 Public Arts Board and 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 and the installation thereof by no later than December 31, 2020.
- 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, completion of landscaping, 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 two (2) years 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.

- 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 \$40,000. 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 \$40,000 as follows:
- i. \$20,000 upon delivery of signed contract by the Client, Owner and Artist;
 - ii. \$20,000 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.
- 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 \$40,000 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 the Ruby Grant Park improvements.

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 twenty-five thousand dollars (\$125,000.00) 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 costs and expenses, including reasonable attorney's fees, incurred by the other party in enforcing its rights arising under this Agreement, whether through legal action or otherwise.

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. Modification

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

XIV. 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



Valerie Theberge

CITY OF NORMAN

APPROVED this _____ day of _____, 2020, by the Norman City Council.

Brea Clark, MAYOR

ATTEST:

Brenda Hall, City Clerk

APPROVED as to form and legality this 21 day of May, 2020.



CITY ATTORNEY

Form A

I, VALERIE THEBERGE 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

VALERIE THEBERGE

7 May 2020

Address: 3816 26th St NE
Wash DC
20013

State of

County of

DC
Washington

Sworn to and subscribed before me this 7th day of May 2020.

Notary Public

My commission expires: 01/14/2023



LONGINUS NDUKUBA
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires January 14, 2023