

AGREEMENT FOR INSTALLATION AND DISPLAY OF OUTDOOR PUBLIC ART SCUPLTURES AT HOWARD PARK - SOUTH BEND, INDIANA

This Agreement For Professional Services (this "Agreement") is entered into on October 30, 2019 (the "Effective Date"), by and between the City of South Bend, acting by and through its Board of Park Commissioners (the "City"), and the South Bend Sculpture Initiative, working from Fire Arts, 305 E Colfax Ave, South Bend, IN 46617 ("Provider") (each a "Party" and collectively the "Parties").

For and in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:

1. Services. The Provider will provide to the City the services (the "Services") set forth below and in Exhibit A (the "Proposal"), which Proposal is attached and incorporated herein. In the event of any conflict between the terms of this Agreement and the terms of the Proposal, the terms of this Agreement will prevail. The Provider will execute its obligations under this Agreement in accordance with the prevailing professional standard of care for projects of similar design and complexity.

- a. Provider shall convey four sculptures, agreed upon by the Provider and City, on a loan basis for a duration of approximately 2 years from the date of installation to be placed in/on pre-agreed upon locations at Howard Park.
- b. The Provider must certify that each sculpture is in such condition as to withstand South Bend weather conditions, the ordinary stress and strain associated with display, and is child safe and public friendly (see Attachment 1).
- c. The shall provide the City with a "Condition Assessment Report" for each piece of art to be displayed. (see Attachment 1.).
- d. Sculpture loan period may be extended upon mutual agreement of the Parties.
- e. Provider will transport and install all the loaned sculptures; and will be responsible for the removal and transporting of all loaned sculptures upon expiration of the loan period.
- f. The Provider shall allow the Executive Director or his designated representative to be part of the selection process of the sculptures selected for display.

2. Compensation. The City will provide no compensation for these displayed sculpture pieces. The Provider may raise and provide compensation to the artists for the pieces displayed.

3. Liability during the period of display: During the display period of this Agreement (i.e., the period between the completion of the installation and the date of removal of the pieces by the Provider), the City will assume liability for any damage to the artwork sculptures, normal wear and tear excepted, up to the pre-agreed upon wholesale price of the each artwork provided by the Provider. The City reserves the right to reject for display any sculpture artwork. The City, in its sole discretion may secure insurance covering the artwork while in City's possession.

4. Term; Termination. Unless earlier terminated in accordance with its terms, this Agreement will commence on the Effective Date and end upon the Provider's satisfaction of all its obligations hereunder at or near November 30th, 2021. Notwithstanding the foregoing, effective immediately upon delivery of a written termination notice to the Provider, the City may terminate this Agreement, in whole or in part, for any reason, if the City determines that such termination is in the best interest of the City. In addition, in accordance with Ind. Code 6-1.1-18-4, payments are subject to annual appropriation by the City. If the City makes a written determination that funds are not appropriated or are otherwise unavailable to support the continuation of this Agreement, it shall be cancelled. A determination

by the City that funds are not appropriated or are otherwise unavailable to support the continuation of performance shall be final and conclusive. The City will not be required to pay any Contract Installment or be otherwise liable for any cost associated with the Provider's performance of any Services after the effective date of termination.

5. City Retained Rights. The City holds the right to deny initial installation or require removal of any of the selected art sculpture pieces at any time and for any reason or no reason at all. If the Provider fails to remove the art sculpture piece(s) within 10 business days from the date of notice from the City, the City reserves the right to remove the sculpture art pieces from the public grounds of the park and to store them until they are retrieved by the Provider. The Provider shall not be liable for the expense of removal after installation of the pieces until the planned scheduled removal of the pieces at the end of the display period.

6. Point of Contact. The City employee identified in Section 9 below will serve as the City's principal point of contact for purposes of this Agreement.

7. Relationship. The Provider shall at all times be an independent contractor for the performance of the Services rather than an employee of the City, and no act or omission to act by the Provider shall in any way bind or obligate the City. This Agreement is strictly for the benefit of the Parties and not for any third party or person. This Agreement was negotiated by the Parties at arm's length and each of the parties hereto has reviewed the Agreement after the opportunity to consult with independent legal counsel. Neither party shall maintain that the language in the Agreement shall be construed against any signatory hereto. The City and the Provider hereby renounce the existence of any form of agency relationship, joint venture, or partnership between the Provider and the City and agree that nothing contained herein or in any document executed in connection herewith shall be construed as creating any such relationship between the City and the Provider.

8. Notices. Any notice required or permitted to be delivered hereunder shall be deemed to be delivered, whether or not actually received, when deposited in the United States Postal Service, postage prepaid, registered or certified mail, return receipt requested, addressed to the City or the Provider, as the case may be, at the address set forth below.

Provider:
South Bend Sculpture Initiative
Fire Arts, Inc.
305 E. Colfax Ave.
South Bend, IN 46617
Attn: Ralph Lampkin Jr.

City:
City of South Bend
Venues Parks & Arts
1020 High St.
South Bend, IN 46610
Attn: Matthew Moyers

9. Equal Opportunity; Non-Discrimination; Compliance. The Provider shall comply with all applicable laws and regulations in its hiring and employment practices and policies for any activity covered by this Agreement. The Provider shall comply with all state, federal, and municipal laws, regulations, and standards applicable to its activities pursuant to this Agreement including, but not limited to, the requirements imposed by Ind. Code 22-9-1-10 (non-discrimination), the provisions of Ind. Code 5-22-16.5 (disqualification for dealings with the government of Iran), and the provisions of Ind. Code 22-5-1.7 (requiring E-Verify for new employees and prohibiting employment of unauthorized aliens). Each of the foregoing provisions is incorporated herein as if set forth in full, and the Provider certifies that it is in compliance with each such provision and shall remain in compliance throughout the term of this Agreement.

10. Indemnification of City. The Provider hereby agrees to defend, indemnify, and hold harmless the City, its officials, employees, and agents from liability and any and all claims of any nature which arise from the performance by the Provider under this Agreement or the City's use, possession, or display of the sculptures throughout the loan period; and from all costs and attorney fees in

connection therewith, excepting for claims arising solely out of the negligence of the City, its officials, directors, employees, and agents. The obligations of the Provider under this section shall survive the termination of this Agreement.

11. Assignment. The Provider shall not assign or subcontract the whole or any part of this Agreement or its obligations hereunder without the prior written consent of the City.

12. Drug-Free Workplace. The Provider hereby agrees to make a good faith effort to provide and maintain a drug-free workplace. The Provider will give written notice to the City within ten (10) days after receiving actual notice that the Provider or an employee of the Provider within the State of Indiana has been convicted of a criminal drug violation occurring in the workplace.

13. Entire Agreement; Amendment; Applicable Law. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements, and understanding of any and every nature between them. This Agreement may be amended only by separate writing, signed by authorized representatives of both the Provider and the City. This Agreement will be construed and interpreted according to the laws of the State of Indiana, and any dispute arising out of this Agreement or otherwise concerning the Provider's rendering of the Services will be resolved in the courts located in St. Joseph County, Indiana, unless the Parties mutually agree to a different method of dispute resolution.

14. Severability. All provisions of this Agreement shall be considered as separate terms and conditions, and in the event any one shall be held illegal, invalid or unenforceable, all the other provisions hereof shall remain in full force and effect as if the illegal, invalid, or unenforceable provision were not a part hereof, unless the provision held illegal, invalid or unenforceable is a material provision of this Agreement, in which case the Provider and the City agree to amend this Agreement with replacement provisions containing mutually acceptable terms and conditions.

15. Force Majeure. The Provider shall not be responsible for any failure or delay in the performance of any obligation hereunder, if such failure or delay is due to a cause beyond the Provider's reasonable control, including, but not limited to acts of God, flood, fire, volcano, war, third-party suppliers, labor disputes or governmental acts.

16. Counterparts. This Agreement may be executed in two or more counterparts, which together shall constitute one and the same agreement among the Parties.

[Signature page follows.]

IN WITNESS WHEREOF, the Parties hereto have caused this Artist Agreement for Services to be effective as of the Effective Date stated above.

SOUTH BEND SCULPTURE INIATIVE

**CITY OF SOUTH BEND, INDIANA
BOARD OF PARK COMMISSIONERS**

Signature

Printed Name and Title

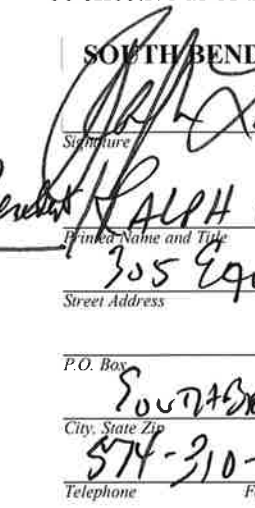
Street Address

P.O. Box

City, State Zip

Telephone

Fax


Ralph Kimpf Jr.
305 East Colfax St
South Bend, IN 46617
574-310-4047

Mark Neal, President

Consuela Hopkins, Vice President

Aimee Buccellato, Member

Dan Farrell, Member

ATTEST

, Clerk







SOUTH BEND SCUPLTURE INITIATIVE FALL 2019 – 2021

The South Bend Sculpture Initiative team at Fire Arts, Inc.; is excited to be working with the team of the South Bend V.P.A organization, on our second outdoor sculpture competition exhibit in South Bend 2019 – 2021. With this second two - year call, we would be selecting/installing four (4) sculptures. (As the initiative grows, we would be looking at expanding said sculpture through the beautiful parks in all of South Bend, Indiana.) This is an outline of the Initiative (to be read and edited by Matthew Moyer and his team.) The financial part of the Initiative is handled by my business associate Fred Ferlic, and yours truly. The monies raised are deposited into a separate bank account of Fire Arts, Inc; in the name of South Bend Sculpture Initiative. Account is at First Source Bank.

The Announcement (Call for Art):

There would be a Call for Art sent out by email from Fire Arts, Inc.; to the State of Indiana list of Artists in the Sculpture world. We would utilize the "Indiana Arts Commission," our local email lists including the "Community Foundation of South Bend," the College lists, and also utilize the Curate South Bend Fb page, Fire Arts, Inc.; FB page and others we find to get the word out.

Logistics of the Call for Art:

*This is the information that goes out with the press release: It has artistic needs, deadline for entry, the location where sculptures would be; the date the sculptures would be selected, when the artist would be informed if they were accepted or not; and when to deliver the sculpture. ****(Date of Installation.)*

- *Work has to be durable enough to withstand the harsh South Bend, Indiana winters and suitable for public viewing. The height limit of each sculpture is 20 feet high. Three of the four sculptures have 4' circular pads. The 4th sculpture pad is in front of the new building at Jefferson and St. Louis streets, and is 3' circular.*
- *JPEG digital images are to be sent on a CD including: 1 or 2 views of each work, filenames must include: corresponding number to the image list, artist's last name, title (03_Rodin_Thinker). Images must be at least 72 dpi; please do not use all caps*
- *image list is needed to include image number, artist name, title, material(s), dimensions in feet, weight, retail price; (30% commission charged on sales) and installation requirements;*
- *current professional resume;*
- *one paragraph artist's statement.*
- *resume, artist's statement, and image list must be in PDF format on the CD. All this information is sent electronically to Fire Arts, Inc.*

Selecting the Art:

*Aaron Perri, ED of the Parks Department, and our judges: Professor Emeritus Harold "Tuck" Langland, Professor Austin Collins and Professor, Ron Monsma (IUSB) would choose the four public Sculptures for Howard Park. Ralph Lampkin, Jr; would be overseeing manager of this Initiative. The judging of the Initiative is done electronically between everyone involved. There is usually one meeting of everyone after submissions are received, then the judges vote. We would be working in conjunction with the Parks team of Matthew Moyers and Patrick Sherman for scheduling of selected sculpture. ****We have picked 11/22 or 11/25 or 11/26 as dates of installation.*

SBSI benefits to the selected exhibiting sculptors:

- stipends of \$1500. (Paid to sculptor at time of installation);
- We will provide a 4-5 man crew (from the Union workers of Theatrical Union; Contact : Deborah Mayers: DeborahMayers@Comcast.net) for installation of selected sculptures and the plan of action for the day of installation. We will have a crane (if needed: separately rented) to install the sculptures day of. We will have a photographer to document the installation. We will have signage that sates Sculpture creator, name of Sculpture, and the underwriter of said sculptures name. (Sean Denison of North American Signs. sfd@NorthAmericansigns.com .) Those in blue ink are the organizations I have hired before.
- year-round coordinated media promotions for the 2 - year time frame (SBVPA, DTSB, TV and Tribune and FB/Twitter/Instagram announcements);
- We will offer guided tours;
- Sculptures will be posted on the Fire Arts Inc.; and South Bend VPA websites with links to and from the host websites;
- strongly encouraged sales by use of Fire Arts email blasts in the year of 2021. This is a separate PR campaign.
- will provide liability insurance (sculptor supplies damage and loss insurance to and from the Park). There is discussion about the insurance inclusion to this agreement being done by Aaron and Matthew Moyer of the Parks Department)
- Exhibit begins approximately November 29, 2019 and conclude October 31, 2021. (Installation on Friday, November 22 or Monday/Tuesday, November 25-26th. One of these dates to be cleared by Ralph, Mathew and Patrick, as lead manager.)

The promotions/marketing campaign:

- 1) brochures and posters: designed/written by Fire Arts staff, edited and approved by SB VPA marketing head, printed by Fire Arts print sponsor, Duly Press, and distributed through Downtown South Bend, and a grass roots campaign consisting of the 50-mile radius of South Bend. They will be available on site at Howard Park and also at the office of SBVPA.
- 2) media coverage in newspapers, radio and TV stations throughout the region during the two year period (would like to come up with experiences for the sculptures during this time frame.);
- 3) press releases to Art online magazines and Artistic groups in the Midwest. The Promotions team of Ralph Lampkin, Jr; and Jackie Carlson, editor/writer at Fire Arts Inc.; will facilitate this with assistance from the SBVPA Marketing team.
- 4) Possible schedule Billboards through Burkhardt: would like assistance with this from the SBBVPA team (underwritten by grants?);
- 5) Co-op marketing through Visit South Bend/Mishawaka, DTSB and SBVPA.

The campaign will be run yours truly, Ralph Lampkin, Jr; of Fire Arts, Inc. with the team of Secretary Jackie Carlson and Vice President, Yvonne Desrosiers from Fire Arts, Inc.

Submissions:

Ralph Lampkin, Jr.
South Bend Sculpture Initiative
Fire Arts Inc.
305 East Colfax Street

South Bend, Indiana 46613
Questions: Ralphimg@aol.com

Condition Assessment Report
Outdoor Sculptures

GENERAL DATA

Report Author: _____

Report Date: _____

Artist Name: _____

Title of Work: _____

Date Created: _____

Medium(s): _____

Size Dimensions: _____

Business: _____

Address: _____

Phone and Email: _____

OTHER THAN THE PROBLEMS NOTED BELOW, I, _____,
the Provider of the artwork, certifies that the artwork is in such a condition as to withstand
South Bend, Indiana weather conditions, the ordinary stress and strain associated with outdoor
display, and is child safe and public friendly.

Signature

Printed Name

Date: _____

Structural Problems			
Broken/Missing Parts		Cracks	
Disjoined		Dent/Deformation	
Previous Repairs		Vandalism	
Erosion		Insect Invasion	

ATTACHMENT # 1.

Other Problems:			

Surface Problems			
Dent/Deformation		Chips/Cracks	
Scratches/Abrasions		Discoloration	
Biological Growth		Graffiti	
Soil/Grime/Salts		Gum/Bird Droppings	
Corrosion		Insect Invasion	
Pitting/Etching		Spalling	
Other Problems:			

Summary of Condition: _____

Front Diagram

Use the grid below to indicate where there is a condition issue on the work.

	1	2	3
A.			
B.			
C.			

Back Diagram

Use the grid below to indicate where there is a condition issue on the work.

	1	2	3
A.			
B.			
C.			

CONDITION REPORT REFERENCE TERMINOLOGY

Abrasion/Scratches – an alteration of the surface of a work caused by friction with another object.

Biological Growth – the growth of biological organisms.

Corrosion – loss to a portion of the work where a foreign agent has caused a chemical reaction.

Crack – a linear or planar fault in a surface. This can also be a break in the surface of the work that does not involve loss of material.

Crackle – an area of perpendicular cracks.

Crevice – a narrow but deep type of crackle.

Dent – a concave distortion in the surface that does not include loss.

Dig – a dent that includes loss or displacement.

Discoloration – any change in color.

Erosion – a loss of material, usually due to abrasion or embrittlement.

Fading – discoloration resulting in the loss of saturation or value of pigment.

Gouge – an area where material has been lost due to a scooping abrasion.

Graffiti – writing or drawings scribbled or sprayed illicitly on the work.

Soil/Grime – where dust or other foreign powdery matter sticks to the surface of the work, usually bonding with an oily medium.

Spatter – dried foreign matter splattered on the surface of a work.

Split – a check that runs the entire length of a wood's grain.

Stain – discoloration resulting in both fading and darkening of the surface of a work.

