

AGREEMENT FOR THE ARTIST DESIGN AND INSTALLATION OF TWO SCULPTURAL INSTALLATIONS FOR ODDIE BOULEVARD CITY OF RENO

THIS AGREEMENT is made and entered into this _____ day of _____, 2024 by and between the CITY OF RENO ("City"), a public body, corporate and politic, and John Fleming, an individual ("Artist"), for the design, fabrication, and installation of two sculptural installations at the northwest and southwest corners of Oddie and Silverada Boulevards in Reno, NV.

RECITALS

WHEREAS, the source of funds for public art is the two percent (2%) public art funds made available from the City's Art in Public Places Program, which is established by Chapter 22 of the Reno Municipal Code; and

WHEREAS, On January 8, 2024 the Public Art Committee of the Reno Arts & Culture Commission met to review proposals and recommended John Fleming; and

WHEREAS, On January 8, 2024 the Reno Arts & Culture Commission approved the Public Art Committee's recommendation; and

WHEREAS, the Room Tax allows funding for the commissioning of artwork pursuant to Chapter 22 of the Reno Municipal Code; and

WHEREAS, the \$130,000 is included in the Room Tax Fund comprised of monies for art projects in the city of Reno; and

WHEREAS, the \$20,000 is included in a grant award from the National Endowment for the Arts; and

WHEREAS, Artist is prepared to design, fabricate, and install the sculptures at the intersection of Oddie and Silverada Boulevards on the designated pads at the northwest and southwest corners; and

NOW, THEREFORE, for good and valuable consideration and subject to all terms and conditions of this Agreement, City and Artist hereby agree as follows:

SECTION 1: DEFINITIONS

For the purposes of this Agreement and the various covenants, conditions, terms and provisions which follow, the definitions and identifications set forth below are assumed to be true and correct and are agreed upon by the parties.

- 1.1 CITY:** City of Reno, P.O. Box 1900, Reno, NV 89505 (Street Address: One E. First Street, Suite 800, Reno, NV 89501). Primary Contact: Megan Berner, Arts & Culture Manager at (775) 326-6333.

- 1.2 **ARTIST:** John Fleming, 2832 NW 69th St., Seattle, WA 98117
- 1.3 **NOTICE TO PROCEED:** A written Notice to Proceed with the Project issued by the City.
- 1.4 **ART COMPONENT:** Two sculptural installations installed at the northwest and southwest corners of Oddie and Silverada Boulevards.
- 1.5 **SUBSTANTIAL COMPLETION:** The design, fabrication, installation and inspection of the installed work for the Art Component.
- 1.6 **WORK:** The artwork or artworks that result from the Art Component (Exhibit B).

SECTION 2: SCOPE OF WORK AND PHASING:

- 2.1 For services related to the Art Component, City shall pay Artist a sum not to exceed One Hundred Fifty Thousand Dollars (\$150,000).
- 2.2 The Scope of Work covers Artist's activities relating to the design, fabrication and installation of two sculptural installations at the intersection of Oddie and Silverada Boulevards.
- 2.3 The Artist shall begin work when a written Notice to Proceed has been issued.

SECTION 3: CHANGES IN SCOPE AND ADDITIONAL WORK

- 3.1 The Artist shall, whenever required during the term of this Agreement, present to the Arts & Culture Manager, or designee, in writing, drawing or other appropriate media for review and approval of any significant changes in the scope, design, color, size, material, utility, texture or location of the site of the Work. A significant change is any change which affects the installation, scheduling, appearance, site preparation or maintenance of the Work, or the concept of the Work as represented in the original approved design.
- 3.2 The Artist shall be obligated to perform services called for in Exhibit A. The Artist and the City agree the Artist shall retain artistic control in the performance of services under this Agreement.
- 3.3 Notwithstanding the provision of Section 3.2 immediately above, the City may, at any time, request the Artist in writing to: revise portions of the services previously completed in a satisfactory manner; delete portions of the Scope of Work which have yet to be performed; perform additional work beyond the Scope of Work provided in Exhibit A; or make other changes within the general Scope of Work to be performed under this Agreement. In the event of such a written request, the Artist may, but shall not be obligated, to agree to any such request.
- a. In the event the request for change is agreed to by the Artist, this Agreement shall be amended, in writing, specifying the agreed changes, including, but

not limited to, a revised description of services, additional budget, payment schedule and timetable, and presented for consideration and approval to the Arts & Culture Manager.

- b. In the event the Artist does not agree to the request, the City shall be entitled to terminate the Agreement for cause pursuant to the terms of this Agreement.

- 3.4 The Artist shall not provide any services which require additional compensation without prior written authorization of the City.

SECTION 4: RESPONSIBILITIES OF THE ARTIST

- 4.1 The Artist agrees that an essential element of this Agreement is the skill and creativity of the Artist. The Artist shall not assign the creative or artistic portions of the Work to another party without the written consent of the City. Failure to conform with this provision may be cause for termination of this Agreement, at the sole discretion of the City.
- 4.2 The Artist shall be responsible for providing services described in Exhibit A including, but not limited to, the quality and timely completion of the services. The Artist shall be responsible for designing the artwork so it can be installed without exceeding the approved overall budget for the Art Component. The Artist shall, without additional compensation, correct or revise any errors, omissions, or other deficiencies in the Work.
- 4.3 In the event the services of the Artist are integrated into, combined, or otherwise coordinated with services by third parties not within the control of the Artist, the Artist shall not be responsible for such third party services, except to such extent that said third party services may be based upon drawings and/or specifications provided by the Artist. If any part of the Artist's work depends for proper execution or results upon the work of the City or a third party responsible to the City, the Artist shall, prior to proceeding with his work, promptly report to the Arts & Culture Manager for the City any apparent discrepancies or other defects in such other work which renders it unsuitable for proper execution and results by the Artist. The Artist shall not be responsible for any liability or failure to fulfill his obligations because of such discrepancies or defects, unless same is a result of drawings and/or specifications prepared by the Artist. Failure of the Artist to report a discrepancy or defect shall not constitute an acceptance of the City's and/or third party's work as fit and proper to receive the Artist's work. Any costs caused by defective or ill-timed work shall be borne by the party responsible therefore. Nothing in this section shall limit the responsibility of the Artist to take all reasonable steps to coordinate his Work with the work of the City or of a third party on the public art for the Art Component. In the event the Artist employs subcontractors to manufacture, fabricate, or install the Work, or prepare the site for installation of the Work, said subcontractors shall be responsible to the Artist, properly licensed to perform the work.
- 4.4 Artist, shall comply with the following provisions:

- a. The Artist shall, if and when working on the City's property, supervise such cleanup as may be reasonably requested by the City. At the close out of the Artist's Work, the Artist shall remove their equipment and excess materials, promptly and as requested by the City.
 - b. The City, in regards to the Art Component, shall notify the Artist of its operation, construction and maintenance schedules in and around the area where the Artist's Work is to be performed. The Artist shall coordinate and perform their services in a manner and time so as not to cause a conflict or interfere with any of the operations, construction or maintenance of the City or third party contractor. In the event of a conflict between the schedules of the City and other third party contractors on the Art Component, the conflict will be resolved by the City. If resolution of the conflict results in a delay in the performance of the Artist, the Artist shall have the right to reasonable additional compensation for any added costs or expenses caused by the delay, unless the delay is caused by failure of the Artist to coordinate his activities with the City.
 - c. The Artist shall complete the fabrication and installation of the Work in substantial conformity with the approved final design.
- 4.5** The Artist shall provide the City with opportunities to review the Work in progress, including an initial inspection of the working drawings for the proposed Work, necessary and reasonable studio or fabrication site visits during the manufacture of the Work, review of the proposed artwork to be installed prior to the commencement of installation and final inspection of the Work following installation.

SECTION 5: RESPONSIBILITIES OF THE CITY

- 5.1** City shall assist the Artist by providing Artist access to information which it has available pertaining to the Art Component and which is needed by the Artist to execute the Work.
- 5.2** City and its representatives shall perform in a timely way each and every activity and approval needed by the Artist to fulfill the Scope of Services. If delays occur when deliverables of Artist are dependent upon the City's timeliness, the Artist's schedule of Performance shall be adjusted accordingly.
- 5.3** The City shall:
- a. Arrange for access so the Artist may enter upon public property controlled by the City as required for Artist to perform services under this Agreement.
 - b. Provide prompt written notice to Artist whenever the City observes or otherwise becomes aware of any developments that may affect the scope or timing of the Artist's services.

- c. Arrange appointments, meetings, consultations with the City and others as needed for the Artist to fulfill his obligations under this Agreement.
- d. Review materials and provide approval, as needed, in a timely manner.

SECTION 6: WARRANTIES / STANDARDS

- 6.1** The Artist warrants that (a) the design or Work being commissioned is the original product of the Artist's own creative efforts; (b) unless otherwise stipulated, the work is original, that it is an edition of one (1) and that the Artist shall not sell or reproduce the Work, or allow others to do so without prior written consent of the City.
- 6.2** The Artist shall guarantee their artwork to be free from faults of material and workmanship, and failure of installation attributable to Artist for a period of two (2) years after installation and final acceptance by the City, and shall perform any and all repairs, at their sole cost, necessary to cure any such faults of material or workmanship during the warranty term. The warranty on purchased components or elements of standard manufacture that are incorporated into the Work shall be whatever warranty provided by the manufacturer or supplier. Artist agrees to assign to the City at the time of final completion of the Work, any and all manufacturer's warranties related to materials and labor used in the Work, and further agrees to perform the Work in such a manner as to preserve any and all such manufacturer's warranties. Artist shall provide City with information and costs of any extended manufacturer's warranties available in connection with the Work.

These guarantees shall apply only to that Work that is entirely that of the Artist or persons responsible to the Artist, as installed, and shall not apply to materials or workmanship of components of the Work integrated or combined, or to materials or components purchased, acquired or installed by a person or entity not responsible to the Artist.

The Artist shall deliver the Work to the City free and clear of any liens from any source whatsoever.

- 6.3** The Artist shall faithfully perform the work required under this Agreement in accordance with standards of care, skill, training, diligence and judgment provided by highly competent professionals who perform work of a similar nature to the Work described in this agreement.
- 6.4** As may be necessary, licensed professionals shall perform installation of the Work.
- 6.5** It is the express intention of both parties to this Agreement that the Work to be created and installed will be of the highest quality.

SECTION 7: COMPENSATION AND TIME OF PERFORMANCE

- 7.1** The Artist shall be paid for services satisfactorily rendered pursuant to this Agreement in accordance with the terms herein and as applicable in Exhibit A, and

subsequent adjustments, changes or additions as specifically provided for in this Agreement. Such payment shall be full compensation for work performed and services rendered, for all supervision, labor, supplies, materials, equipment or use thereof, taxes, including sales taxes, and for all other necessary incidentals, including transportation of the work to the designated site. Artist agrees to provide City with any documentation the City may require regarding the payment of sales tax.

- 7.2** The break down for the Art Components are contained in the attached Exhibit A, provided that such payments shall not exceed a maximum amount of One Hundred Fifty Thousand Dollars (\$150,000), subject only to adjustments, changes or additions as specifically provided for in this Agreement and properly approved by the City ("Total Price").
- 7.3** In the event the Artist incurs costs in excess of the Total Price, the Artist shall pay such excess from his own funds, and the City shall not be required to pay for any part of such excess, and the Artist shall have no claim against the City on account thereof.
- 7.4** The Artist shall submit invoices to the City for payment according to the schedule in Exhibit A, such invoice to be in the form requested by the City.
- 7.5** In the event the City determines that Work for which it has been invoiced does not meet the contract specifications and it intends to withhold payment, the City shall provide detailed written notice to the Artist within ten (10) calendar days of receipt of invoice, specifying the failure of performance for which the City intends to withhold payment. The Artist shall thereafter meet contract standards to the satisfaction of the City or advise the City that they dispute the City's determination that the specifications have not been met.
- 7.6** The City shall pay all invoices that meet contract specifications within thirty (30) days of receipt of invoice. Artist requests for payment shall be made to:
- Megan Berner, Arts & Culture Manager
City of Reno
P.O. Box 1900
Reno, NV 89505
Email: bernerm@reno.gov
- 7.7** No payment to the Artist for any work performed or services rendered shall constitute a waiver or release by the City of any claims, rights or remedies it may have against the Artist under this Agreement or by law, nor shall such payment constitute a waiver, remission or discharge by the City of any failure or fault of the Artist to satisfactorily perform the work as required under this Agreement.
- 7.8** The services to be required of the Artist under this Agreement shall be completed in accordance with the schedule for completion of the Work as proposed by the Artist and approved by the City, provided that such time limits may be extended or otherwise modified by written agreement between the Artist and the City.

- 7.9** If, when the Artist completes fabrication or procurement of the Work in accordance with the approved schedule and notifies the City that the Work is ready for installation, the Artist is delayed from installing the Work within the time specified in the schedule as a result of the construction of the site not being sufficiently complete to reasonably permit installation of the Work therein, or the City otherwise does not make the site available to the Artist in accordance with the approved schedule, the City shall promptly reimburse the Artist for reasonable transportation and storage costs incurred for the period between the time provided in the schedule for commencement of installation and the date upon which the site is made available to the Artist for installation of the Work, unless delivery and installation can be arranged to avoid any extra cost to the Artist.
- 7.10** The Artist shall bear any transportation and storage costs resulting from the completion of the Work prior to the time provided in the schedule for installation of the Work.
- 7.11** The City shall always grant a reasonable extension of time to the Artist in the event the Artist's timely performance of services is made impossible or unexpectedly burdensome as a result of a delay on the part of the City in performing its obligations under this Agreement, or in completing the underlying capital project, conditions beyond the Artist's control or Acts of God. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract, provided that such obligations shall be suspended only for the duration of such conditions.

SECTION 8: ARTIST'S RIGHTS

- 8.1** The City shall, at its expense, prepare and install at appropriate locations, after consultation with the Artist, plaques or signs identifying the Artist, the title of the Work and the year of completion, and shall reasonably maintain such signs in good repair against damages due to normal wear and tear over time, vandalism, and the elements.
- 8.2** The City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The City shall reasonably assure that the Work is properly maintained and protected, taking into account the recommendations of the Artist stated in the maintenance program provided by the Artist.
- 8.3** The City agrees that it shall not intentionally damage, alter, modify, change, or substantially relocate the Work of the Artist without first conferring with the Artist and obtaining the prior written approval of the Artist, except in an instance where immediate modification or relocation may be necessary to ensure public safety. If a public safety issue does arise, City will confer with the Artist after modification or relocation to discuss how to best resolve the issue on a long-term basis without infringing on the integrity of the Work.
- 8.4** Notwithstanding the Artist's refusal to provide (or the City's failure for any reason to otherwise obtain) the Artist's written approval provided for in Section 8.3 above,

the City, in its sole discretion, shall have the right to remove any work of art providing the following terms and conditions are met:

- a. The removal proposal shall first be submitted to and considered by the City of Reno's Arts & Culture Manager, who shall advise the City Manager. The City Manager shall consider, but shall not be obligated to follow the recommendations of the Arts and Culture Commission.
- b. If the City Manager decides to remove the Work, the Artist shall have the first right of refusal to purchase the Work at fair market value, providing it stands alone and is not integrated into a larger artwork, building or structure and can be removed without expense to the City. The Artist shall also retain the right to have his name removed from the Work, as well as the plaque installed pursuant to Section 8.1 above.

8.5 The City shall have the right to determine after consultation with a professional conservator, when and if repairs and restorations to the Work will be made. During the Artist's lifetime the City shall make reasonable efforts to consult with the Artist regarding major repairs and restorations. The Artist shall not unreasonably withhold approval for any repair or restoration of the Work. If the Artist unreasonably fails to approve any repair or restoration within thirty (30) days, the City reserves the right to make or supervise such repairs and restorations. In the event that the City makes repairs or restorations not approved by the Artist, the Artist shall have the right, at his/her sole option, to have the Artist's name and association with the Work severed. To the extent practical, the Artist, during the artist's lifetime, shall be given the opportunity to make or supervise significant repairs and restorations and shall be paid a reasonable fee for any such services, provided the City and the Artist shall agree, in writing, prior to the commencement of any significant repairs or restorations, upon the Artist's fee for such services.

8.6 All repairs and restorations, whether performed by the Artist, or the City, or by third parties responsible to the Artist or the City, shall be made in accordance with professionally recognized principals of conservation of artworks.

SECTION 9: COPYRIGHTS

9.1 The Artist shall retain all copyright and all other rights in and to any artwork(s) created under this Agreement, provided the Artist grants to the City and its agents, representatives, and successors in interest an irrevocable license to graphically depict the artwork in any non-commercial manner whatsoever. For the purpose of this limitation, the graphic or photographic depiction of the artwork(s) on materials designed to market or promote the City, or any other function or property of the City, shall be deemed to be a non-commercial use. The artwork(s) created under this Agreement are intended to become a recognizable landmark or feature of Reno, and for this reason, any depiction of the artwork(s) in film or television shall also be considered a non-compensable non-commercial use, intended to provide a setting for the film or television depiction, and thereby promote the City of Reno as a result of said depiction.

- 9.2** If for any reason the installation of the Art Component is not implemented, all rights to the proposed artwork shall be retained by the Artist.
- 9.3** The Artist agrees that all work performed under this Agreement shall comply with all applicable patent, trademark and copyright laws, rules, regulations, and codes of the United States. The Artist further agrees that the Work will not utilize any protected patent, trademark or copyright unless the artist has obtained proper permission and all releases and other necessary documentation. If the Artist specifies any material, equipment, process, or procedure which is protected, the Artist shall disclose such patents, trademarks, and copyrights in the construction drawings and technical specifications.
- 9.4** The Artist agrees to release, indemnify, and hold harmless, the City, its officers, and employees from any and all claims, damages, suits, costs, expenses, liabilities, actions or proceedings of any kind resulting from the performance of work under this Agreement which infringes upon any patent, trademark or copyright that is protected by law.

SECTION 10: TIME FOR PERFORMANCE

- 10.1** The provisions of this Section 10 and the budget depicted in Exhibit A and not to exceed amounts of this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Art Component.
- 10.2** Prior to beginning the performance of Work under this Agreement, Artist must receive a written Notice to Proceed from the City.
- 10.3** In the event the Artist is unable to complete the above services because of delays resulting from the untimely issuance of a "Notice to Proceed," or from untimely review and approval by the City, and such delays are not the fault of the Artist, City shall grant a reasonable extension of time for completion.
- 10.4** Artist shall complete the services required in Exhibit A no later than November 30, 2024, unless an extension of time is granted in writing by the City.

SECTION 11: TERMINATION

- 11.1** Either party may terminate this Agreement with or without cause by providing thirty (30) days notice, in writing, to the other party. Upon the expiration date of said notice, this Agreement shall become of no further force or effect whatsoever and each of the parties shall be relieved and discharged here from.
- 11.2** In the event that the Agreement is terminated by the City without cause, the City shall pay the Artist for all work performed and services rendered up to the effective date of the termination. The City shall have no rights to the Artist's creative work, designs, or unfinished artwork(s).

- 11.3** In the event that the Agreement is terminated by the Artist without cause, the Artist shall promptly reimburse the City for all payments made under this Agreement prior to the termination by the Artist.
- 11.4** In the event that the City determines the Artist has substantially failed to fulfill his obligations as provided under this Agreement, the City shall provide the Artist with written notice detailing the specific obligations which the City claims the Artist has failed to fulfill and notify the Artist that he is deemed to be in breach of this Agreement. If the breach is not cured or if the City and the Artist cannot agree on a schedule for curing the breach, the Agreement will be deemed terminated on the date specified by the City, which will be no sooner than ten (10) business days from the date of issuance of the notice. If this Agreement is terminated by the City for a breach of the Agreement, the Artist shall promptly reimburse the City for all payments made under this Agreement prior to the termination, and the City shall have no rights to the Artist's creative work, designs or unfinished artwork(s).
- 11.5** If, because of the death, unavailability, or any other occurrence, it becomes impossible for the Artist to render services or perform work under this Agreement, the Agreement shall be deemed terminated.

SECTION 12: INSURANCE, INDEMNIFICATION, AND EQUAL OPPORTUNITY EMPLOYMENT

- 12.1** Neither the City, its officers and employees, Arts and Culture Commission members, nor Arts and Culture Commission Public Art Committee personnel shall be responsible or liable for any debt, action, obligation, negligence or liability committed or incurred by Artist, its staff or clientele, and Artist hereby agrees to indemnify, defend, and hold harmless the City, its officers and employees, Arts and Culture Commission, Arts and Culture Commission Public Art Committee, and each of them, their employees, agents and volunteers, from and against any and all claims, liabilities, and damages of any kind, including reasonable attorney's fees, experts fees and costs arising from or relating to any personal injury or property damage caused by Artist or Artist's principles, agents, employees or subcontractors. Indemnification shall survive termination of this agreement. This provision does not waive, and City intends to assert, all common law and statutory defenses available to it, including those in NRS Chapter 41.
- 12.2** Artist agrees to comply with all applicable federal, state, or local laws, ordinances, executive orders and regulations which prohibit discrimination. Artist agrees, if requested, to furnish City with a copy of its Affirmative Action Policy. Artist agrees that he will not discriminate against any employee or applicant for employment for work under this Agreement on the basis of race, color, religion, gender, age, national origin, creed, martial status or the presence of any sensory, mental or physical handicap in employment or application for employment or in the administration of this Agreement.

- 12.3** Artist shall comply with Title I and Title II of the Americans with Disabilities Act regarding nondiscrimination on the basis of disability in employment and in state and local government services in the course of providing any services funded in whole or in part by the City.
- 12.4** Artist agrees to purchase and maintain insurance, as described in Exhibit C.

SECTION 13: MISCELLANEOUS

13.1 RECORDS

Artist shall keep such records and accounts and require any and all subcontractors to keep records and accounts pertaining to the Art Component. Such books and records will be available at all times, during normal business hours, for examination and audit by City and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by City of any fees or expenses based upon such entries.

13.2 INDEPENDENT CONTRACTOR

Artist is an independent contractor under this Agreement. Personal services provided by the Artist shall be by employees of the Artist, and not as officers, employees, or agents of the City or City, excepting those employees of the City or City made available to the Artist. Personnel policies, tax responsibilities, social security and health insurance, employee benefits, purchasing policies and other similar administrative procedures applicable to the activities of the Artist under this Agreement shall be those of the Artist, except for those employees of the City or City made available to assist the Artist.

13.3 SUBCONTRACTORS

In the event Artist, during the course of the work under this Agreement, requires the service of any subcontractors or other professional associates in connection with services or activities covered by this Agreement, Artist must secure the prior written approval of the Arts & Culture Manager.

13.4 ASSIGNMENT

- a) This Agreement, or any interest herein, shall not be assigned, transferred, or otherwise encumbered under any circumstances by the Artist.
- b) City shall have the right to assign or transfer from time-to-time any and all rights acquired pursuant to this Agreement to the City of Reno, or others, if the City so desires.

13.5 ALL PRIOR AGREEMENTS SUPERCEDED

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein; and all the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

13.6 MODIFICATIONS

It is agreed that no modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

13.7 CONFORMITY WITH LAW AND SAFETY

Artist shall, at Artist's expense, observe and comply with all applicable laws, ordinances, codes, and regulations of government agencies, including all provisions of the Occupational Safety and Health Act of 1979 and all amendments thereto, and all applicable Federal, State, municipal and local safety regulations. All services performed by Artist must be in accordance with these laws, ordinances, codes, and regulations, including the City requirement to obtain a City of Reno business license prior to commencing installation of the Work. Artist shall indemnify, defend, and hold the City and City harmless from any and all liability, fines, penalties, and consequences from any noncompliance or violations of such laws, ordinances, codes and regulations.

Accidents: If death, serious personal injury or substantial property damage occurs in connection with the performance of this Agreement, Artist shall immediately notify the Arts & Culture Manager by telephone. Artist shall promptly submit to the City a written report, in such form as may be required by the City, of all accidents which occur in connection with this Agreement. This report must include the following information: (1) Name and address of the injured or deceased person(s); (2) Name and address of the Artist's subcontractors, if any; (3) Name and address of the artist's liability insurance carrier; and (4) A detailed description of the accident and whether any of the City's equipment, tools, material or staff were involved.

13.8 CONFLICT OF INTEREST

No officer, member or employee of the City and no member of their governing boards, councils or commissions shall have any pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof. Any violation of this provision shall be considered a material breach of this Agreement.

13.9 USE OF CITY OR CITY PROPERTY

Artist shall not use City or City premises, property (including equipment, instruments, and supplies) or personnel for any purpose other than the performance of obligations under this Agreement.

13.10 TIME

Both parties recognize that time is of the essence in the performance of the provisions of this Agreement.

13.11 WAIVER OF DEFAULT

Waiver of any default shall not be deemed a waiver of any substantial default. Waiver of breach of any provision of this Agreement shall not be deemed a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless contained in a written document executed with the same formality and equal dignity herewith and attached to the original Agreement.

13.12 SEVERABILITY

In the event any of the provisions, or applications thereof, of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions, or applications thereof, shall not be affected.

13.13 GOVERNING LAW / VENUE

City and Artist agree that the law governing this Agreement shall be that of the State of Nevada. Any litigation between the parties concerning or arising out of this Agreement shall be filed and maintained in a state court in the County of Washoe or, where appropriate, in the United States District Court for Northern Nevada.

13.14 NOTICES

All notices and other communications required or permitted to be provided under this Agreement shall be in writing and may be delivered by email, hand, facsimile transmission with verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To City: City of Reno
Megan Berner, Arts & Culture Manager
P.O. Box 1900
Reno, NV 89505
Email: bernerm@reno.gov

To Artist: John Fleming
2832 NW 69th Street

Seattle, WA 98117
Email: johnfleming.artist@gmail.com

Or to such other addresses as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to any claims against City or the City, or their officers or employees shall also be served in the manner specified above to the following address:

Attn:

City of Reno
Office of the City Attorney
P.O. Box 1900
Reno, NV 89505
Fax: 775-334-2420

Notice shall be deemed given on the date of personal delivery by hand, or the date of receipt of facsimile transmission (with verification of receipt), on the date delivery is refused, if applicable, or on the date of mailing if by U.S. return receipt mail.

**IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS AGREEMENT
AS OF THE DATE FIRST WRITTEN ABOVE.**

CITY:

ARTIST:

BY: _____
Hillary Schieve, Mayor

John Fleming

ATTEST:

APPROVED AS TO FORM AND CONTENT

BY: _____
Reno City Clerk

BY: _____
Deputy City Attorney

**EXHIBIT A
SCOPE OF SERVICES AND BUDGETS**

THE ARTIST SHALL:

- a. Secure written Notice to Proceed prior to commencing activities.
- b. Develop working drawings.
- c. Identify needed subcontractors and, following written approval from the Arts & Culture Manager, or designee, engage subcontractors to perform needed activities.

- d. Fabricate and install the Work.
- e. Coordinate fabrication of the Work with the City, the Arts & Culture Manager, or designee, and other parties, as needed, to ensure timely completion of the Work.
- f. Install the Work no later than November 30, 2024, and coordinate that schedule and timeline with the City, and other parties as required by the Arts & Culture Manager or designee.
- g. Promptly inform and secure the written approval of the Arts & Culture Manager, or designee, and City for any significant change in the design, scope, size, materials, or installation of the Work.
- h. Participate in a dedication of the completed Work as requested by the City.
- n. Artist shall provide the City with a maintenance program for the Work, including a list of suppliers from whom components may be purchased when necessary to allow the City to maintain, repair or restore the Work.

Budget

Supplies, Insurance, Equipment, Travel, Artist Fee, Engineering

Total \$150,000

Timeline

Start Date: February 15, 2024

Work Completed: November 30, 2024

PAYMENT SCHEDULE

The Artists sponsorship shall be paid in two installments as follows:

Payment One (1) within 30 days of receipt of signed contract and an invoice in the amount of \$75,000.

Payment Two (2) within 30 days of receipt of an invoice in the amount of \$75,000 following the completion and inspection of Art Component.

EXHIBIT B



Oddie's **O**, a beacon, a mural, a gathering place

8



Colorful powder-coated-steel letter seats. Perforated natural-finish-steel canopy for shade.

15

EXHIBIT C

INSURANCE

The Artist shall purchase and maintain throughout the term of this Agreement insurance from an insurance company acceptable to the City and authorized to do business in the State of Nevada. Such insurance shall include the following:

- a) Commercial General Liability insurance covering Bodily Injury and Property Damage with \$1,000,000 per occurrence limit, \$1,000,000 General Aggregate limit, \$1,000,000 Personal Injury and Advertising Injury limit per occurrence and \$1,000,000 Products and Completed Operations Aggregate.
- b) Automobile Liability insurance in the amount of at least \$1,000,000 combined single limit including property damage, and at least \$1,000,000 uninsured, and \$1,000,000 underinsured motorist coverages.
- c) If the Artist hires any employees for any work under this Agreement, Workers' Compensation Insurance in minimum amounts required in the states where the work will take place.

The City shall be named as additional insured on all such policies. Artist shall furnish the City with Certificates of Insurance. Any insurance or self-insurance available to the City or City shall be excess of and non-contributing with any insurance required of the Artist. Artist's policies shall apply on a primary basis.

Until such time as the insurance is no longer required by the City, Artist shall provide the City with renewal or replacement evidence of insurance no less than thirty (30) days before expiration or replacement of the required insurance. Each insurance policy shall be endorsed to specify that without thirty (30) days prior written notice to the City, the policy shall not be cancelled or refused to be renewed, nor shall coverage and/or limits be reduced or materially altered. The endorsement also shall provide that notices required by this paragraph shall be sent by certified mail to the address(es) specified in this Agreement for notices. A copy of this signed endorsement must be attached to the Certificate of Insurance.

Upon written acceptance by the City of the installation of "Silverada and Oddie", the City will assume liability and provide appropriate insurance.