

EXHIBIT

"A"

AGREEMENT FOR THE COMMISSIONING OF ARTWORK

This Agreement for Commissioning of Artwork ("Agreement") is made by and between the City of Round Rock (hereinafter referred to as the "City") and Antonio Muñoz (hereinafter referred to as the "Artist") to be effective as of the last date of due execution by all parties (the "Effective Date"). The City and the Artist may each be referred to as "party" or "parties" as the context may require.

RECITALS

WHEREAS, the City desire to purchase sculptures from the Artist for the Heritage Trail in Round Rock, Texas (the "Location"); and

WHEREAS, the approximately ten (10) sculptures will be bronze and depict scenes from the early 1800s Round Rock Settlement (the "Sculpture" or "Sculptures"); and

WHEREAS, the City desires to commission the creation of the Art from the Artist and the Artist desires to create said Sculptures; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective duties and obligations hereunder;

NOW THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed by and between the parties as follows:

ARTICLE I TERM

- 1.1** The term of this Agreement shall be from the Effective Date until the full and satisfactory completion of the work as specified in Article III and in accordance with the terms of this Agreement.

ARTICLE II RETENTION OF ARTIST

- 2.1** **Retention.** The City does hereby retain the Artist to perform the work and services described herein.

2.2 **Independent Contractor.** The Artist is an independent contractor and will furnish all supervision, labor, materials, supplies, equipment, costs and all other incidentals, except as specifically provided in this Agreement. This Agreement does not create a partnership, employer-employee, or joint venture relationship between the parties.

2.3 **Nonassignability.** The Artist may not assign any rights, benefits, or claims arising under the Agreement without the prior written consent of the City.

ARTICLE III ARTIST'S OBLIGATIONS

3.1 **General.** The Artist will create the Sculptures within the term of this Agreement in a competent and professional manner. The Artist will pay all costs associated with the creation of the Sculptures, including but not limited to labor, materials, travel expenses and other incidentals.

3.2 **The Art.** The work performed under this Agreement shall consist of creation of ten (10) Sculptures in three (3) phases as described in Exhibit "A," attached hereto and incorporated herein by reference for all purposes.

3.3 **Time Schedule.** The Artist shall produce the Sculptures in Phase 1 in approximately fifteen (15) months, the Sculptures in Phase 2 in approximately the next twenty (20) months, and the Sculptures in Phase three (3) in approximately the next twenty-five (25) months.

3.5 **Risk of Loss.** The Artist has the sole responsibility, and bears all risk, for damage or loss of the Sculptures during fabrication. The Artist shall take such measures as are reasonably necessary to protect the Sculptures from loss or damage during the creation, storage, transportation, and delivery of the Sculptures.

3.6 **Artist's Warranties.** The Artist warrants and represents the following:

(A) **Ownership.** The Artist is the sole owner of the Sculptures and has full power and authority to make this Agreement. The Sculptures do not infringe any copyright, violate any property rights, or contain any scandalous, libelous, or unlawful matter.

(B) **Title.** Immediately upon installation of the Sculptures and receipt of payment in full by the Artist, the City shall acquire good title to the Sculptures and the Sculptures shall be free from any and all claims, liens, and charges by any person

or entity, including but not limited to, any employee, supplier, or subcontractor of the Artist.

- (C) **Defects.** The Sculptures shall be constructed in a workmanlike manner and shall be free from any and all defective materials or workmanship. Upon request from the City, the Artist shall remedy, or pay to remedy, any loss or damage resulting from defective materials or workmanship.

- 3.7 Indemnification.** The Artist shall defend, indemnify, and hold harmless the City and their licensees, agents, and employees against all claims, suits, costs, damages, and expenses that the City or its licensees, agents and employees may sustain by reason of any scandalous, libelous, or unlawful matter contained or alleged to be contained in the Sculptures or any infringement or violation by the Sculptures of any copyright or property right. If any such claim shall arise during the term of this Agreement, the City may withhold any sums due to the Artist under this Agreement until such claim or suit has been settled or withdrawn. The Artist further agrees to defend, indemnify, and hold harmless the City and its licensees, agents and employees against all claims, suits, costs, damages, and expenses that the City or its licensees, agents or employees may sustain by reason of any negligent action of the Artist.

ARTICLE IV PAYMENT OBLIGATIONS

- 4.1 Payments.** Payments shall be made to the Artist for each Sculpture as each Sculpture is created as follows:

- (A) A non-refundable deposit of one-half of the cost of a Sculpture (the "Deposit") prior to the commencement of work on a Sculpture.
- (B) A progress payment of one-fourth of the cost of a Sculpture (the "Progress Payment") shall be due upon approval of completion of the original clay Sculpture.
- (C) Upon delivery and installation of a Sculpture at the Location, the City shall remit the balance of the cost of the Sculpture (the "Final Payment") to the Artist.

The intention of the parties is for the Artist to create at least ten (10) Sculptures for the total not-to-exceed amount of **Four Hundred Ninety-Two Thousand and No/100 Dollars (\$492,000.00)** as set forth in Exhibit "A." In the event the Artist is unable to complete ten (10) Sculptures for the not-to-exceed amount of \$492,000.00, through no

fault of the Artist, the Artist must immediately provide the City documentation regarding changes in the cost of materials or circumstances, and the parties may adjust the Scope of Work accordingly, including the number of Sculptures required. Regardless, of any change in the Scope of Work, the City shall not be liable for payment to the Artist for any more than \$492,000.00 without a written Supplemental Agreement approved by the City Manager or the governing body of the City.

- 4.2 **Approvals.** Within ten (10) days of any request for approval contemplated by this Agreement, the City shall respond to such request in writing, either approving or disapproving. If the City disapproves of any stage of the Sculptures, the City shall provide written comments reflecting the reasons for such disapproval.

ARTICLE V COPYRIGHT AND REPRODUCTION RIGHTS

- 5.1 **Copyrights.** The Artist reserves the common-law copyright to all works commissioned by the City that are created by the Artist, including all reproduction rights and the right to claim statutory copyright. No work may be reproduced by anyone without the prior approval of the Artist, with the exception of graphic reproductions as set forth in Section 5.2. The City is not responsible for any third-party infringement of the Artist's copyright and is not responsible for protecting the intellectual property rights of the Artist. The Artist expressly acknowledges and agrees that the Sculptures may be photographed by the public and media.
- 5.2 **Graphic Reproductions.** The Artist grants the City and its assigns an irrevocable license to make and use graphic reproductions of the Sculptures, including Artist-provided two-dimensional graphic reproductions, for any and all purposes, including but not limited to brochures, media publicity, fundraising media and all other graphic media, digital or otherwise. The rights granted under this paragraph are royalty-free, unrestricted and permanent. All reproductions by the City will contain a credit line that includes the Artist's name and the title of the Sculptures depicted.

ARTICLE VI TERMINATION

- 6.1 **Termination for Cause.** If the City determines that the Artist has failed to comply with the terms of this Agreement, the City may suspend or terminate this Agreement. Prior to suspension or termination, the City shall notify the Artist of the need to take corrective action. If the corrective action is not taken within thirty (30) days of the date of the notice, the City may terminate or suspend the Agreement. The City reserves the right to

withhold further payments and prohibit the Artist from incurring additional obligations of funds during the investigation of the alleged compliance breach and pending corrective action by the Artist or a decision by the City to terminate the Agreement. If the Agreement is terminated under this paragraph, the Artist shall provide an accounting of all expenses incurred by the Artist under this Agreement prior to the date of termination. Within ten (10) days of approval of the accounting by the City, the Artist shall remit to the City all funds paid to the Artist under this Agreement in excess of the expenses incurred. The rights and remedies provided in this paragraph are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

6.2 Termination for Convenience. The City of Round Rock may, by fifteen (15) days written notice, terminate this Agreement, in whole or in part, with or without cause. If funds pledged to the City for the creation of the Sculptures, whether public or private, are withdrawn, reduced, or limited in any way after the Effective Date of this Agreement and prior to completion of the Sculptures, the City may terminate the Agreement without the fifteen (15) day notice requirement, subject to re-negotiation at the City's discretion under any new funding limitations and conditions. If the Agreement is terminated under this paragraph, the Artist may retain all funds paid to the Artist under this Agreement prior to the date of the termination. Retention of amounts previously paid is the Artist's sole and exclusive remedy in the event of termination under this Agreement.

6.3 Death or Incapacity. If the Artist becomes unable to comply with the terms of this Agreement due to death or incapacitation, such death or incapacity shall not be deemed a breach of this Agreement. However, nothing in this Section obligates the City to accept the Sculptures. If the Artist dies or becomes incapacitated during the term of this Agreement, the Agreement shall continue or terminate as follows:

(A) In the event of incapacity, the City may assign the Artist's obligations and services under this Agreement to another artist in its sole discretion. Alternatively, the City may elect to terminate this Agreement. A termination under this paragraph shall be treated as a termination for convenience under paragraph 6.2.

(B) In the event of the death of the Artist, this Agreement shall terminate effective as the date of death. The executor, administrator, or heirs of the Artist's estate shall all the Work completed by the Artist under this Agreement in whatever form it may be in at the time of death. The City shall not be obligated to make any additional payments under this Agreement following the death of the Artist. The City may not represent the Sculptures, or other work, to be the completed work of the Artist unless agreed upon by the Artist's executor, administrator or heirs.

- 6.4 **Right of Refusal.** The City has the right to refuse the Sculptures. Such refusal shall be made in writing and signed by the City. If the City refuse the Sculptures, the Artist shall retain the Sculptures and all funds paid prior to the refusal. After the date of the refusal under this paragraph, the City shall not be obligated to pay any additional funds to the Artist.
- 6.5 **Termination by Artist.** The Artist may terminate this Agreement only due to breach of this Agreement by the City. Before the Artist may terminate this Agreement under this paragraph, the Artist must provide written notice of alleged breach by City and request adequate assurance of the City's intent to remedy the alleged breach. The City shall have thirty (30) days to remedy the breach or to provide assurance acceptable to the Artist that the alleged breach will be remedied. If the City fails to remedy the alleged breach, or to provide assurance acceptable to the Artist that the breach will be remedied, the Artist may terminate this Agreement under this Section.

ARTICLE VII GENERAL

- 7.1 **Notices.** All notices and other communications in connection with this Agreement must be in writing and shall be considered given as follows:
- (A) When delivered personally to recipient's address as stated in this Agreement; or
 - (B) Three (3) days after being deposited in the United States mail, postage prepaid, to the recipient's address stated in this Agreement.
 - (C) The parties' addresses are as follows:

City of Round Rock:
City Manager
City of Round Rock
221 East Main
Round Rock, Texas 78664

Artist:
Antonio Muñoz
901 East Liberty Road
Round Rock, Texas 78664

(D) Nothing contained herein restricts the transmission of routine communications between the parties.

- 7.2 **Applicable Law; Enforcement and Venue.** This Agreement is performable and enforceable in the City of Round Rock, Williamson County, Texas. If legal action is necessary by any party with respect to the enforcement of any or all of the terms of conditions of this Agreement, exclusive venue for same lies in the courts of Williamson County, Texas. This Agreement is governed by and construed in accordance with the laws and court decisions of the State of Texas. The parties expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement shall be submitted to or decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14).
- 7.3 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties. No representation, warranty, covenant, agreement, or condition not expressed in this Agreement will be binding upon the parties hereto or will affect or be effective to interpret, change or restriction the provisions of this Agreement. This Agreement may only be amended or supplemented by a written agreement executed by all parties.
- 7.4 **Counterparts.** This Agreement may be executed in as many counterparts as may be convenient or required. It is not necessary that the signature of all persons required to bind any party appear on each counterpart. All counterparts will collectively constitute a single instrument.
- 7.5 **Force majeure.** None of the parties shall be deemed in violation of this Agreement if a party is prevented from performing any of its obligations hereunder by reasons of force majeure. For purposes of this Agreement, "*force majeure*" means an act of terror committed within the United States of America that materially impairs business operations; a prolonged and unforeseen strike, riot, or occurrence of civil disobedience that materially impairs business operations; a prolonged and unforeseen shortage of fuel, labor, or material; delay related to or caused by a severe weather event, such as a tornado, a hurricane, or flooding; interruption of utilities; fire or other casualty; or any other act of God beyond a party's reasonable control, which could not be avoided by the exercise of due care.
- 7.6 **Time is of the Essence.** The parties agree that time is of the essence of this Agreement and that any failure by a party to fulfill its obligations within the timeframes in this Agreement will constitute a material breach of this Agreement.

7.7 **Severability.** The provisions of this Agreement are severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

IN WITNESS WHEREOF, the City and the Artist have executed this Agreement on the dates indicated below.

CITY OF ROUND ROCK, TEXAS

ARTIST

By: _____
Craig Morgan, Mayor

By:  _____
Antonio Muñoz, Artist

Date: _____

Date: FRI AUG 13, 2021

ATTEST:

By: _____
Sara L. White, City Clerk

FOR CITY, APPROVED AS TO FORM:

By: _____
Stephan L. Sheets, City Attorney

Exhibit "A"

City Of Round Rock Parks Department Heritage Trail Bronze Statues Proposal

The following proposal is for a set of ten sculptures depicting scenes from early 1800's Round Rock settlement.

The Project.

Ten slightly larger than life (115%) bronze statues:

Horse and rider (about 9' tall) roping

Tonkawa Native approaching (about 7' tall)

Young steer being pulled by rider (45" at shoulder)

Grazing Longhorn Cow (4.5' at shoulder)

Standing Calf (3.5' shoulder)

Standing Longhorn (5.5' at shoulder)

Sitting cowboy #1 by a camp site fire (about 5' tall)

Standing cowboy #2 by camp fire (about 7' tall)

Sitting cowboy #3 by camp fire (about 5' tall)

Fire Pit with all the period cookware

The project is to be set at the west side of the Round Rock at the new Heritage Trail Park and will consist of ten somewhat realistic larger than life scenes that relate to each other.

The first one consists of a horse and rider in full motion roping a young steer with a lariat.

The rider is about to change direction after lassoing the steer that after feeling the pull changes direction in full motion.

Not far from there Longhorn family is standing by: A full grown Steer watches, with head turned to its left, intently at the noise caused by the roped steer. Next to him a cow calmly grazes unaffected by the commotion while her calf nurses by her side.

From there we see a camp fire scene composed of three rugged cowboys on a coffee brake. Two of them are sitting facing each other by the fire while another one stands behind them. The one on the left holds a coffee pot on his right hand and carefully and paying attention pours unto a mug held by the extended arm of the other sitting man who with turned head and body looks to the opposite side. The third cowboy stands closer to the guy that pours and with his right hand on that man's shoulder also looks to the other side while he waves with his left hand. At a distance a figure is approaching distracting two of the men. A Tonkawa brave that was in the area on a rabbit hunt had seen the smoke and decides to come towards the three men offering his catch.

Exhibit "A"

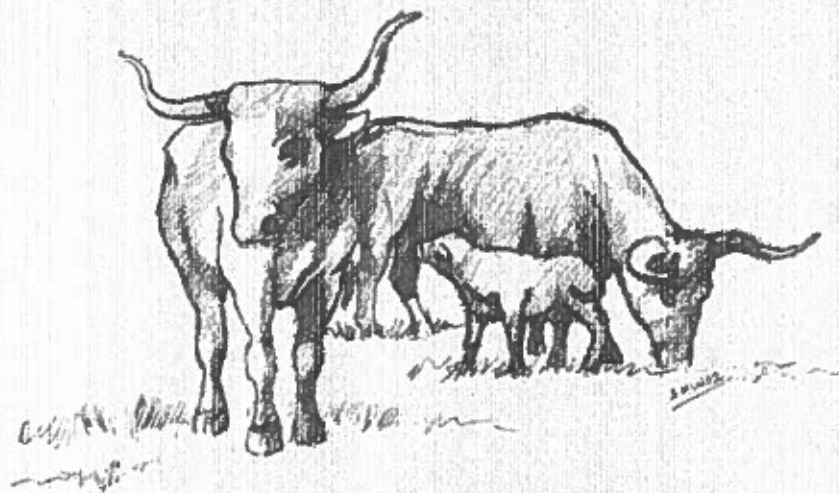


Exhibit "A"

Time line.

Whole project of original artwork in clay, rubber/fiberglass molds and castings should take more or less 60 months depending on foundry schedules. Project will be divided in three phases

Phase	Completion time
Phase 1 Horse/rider Roped steer Tonkawa Native	15 months
Phase 2 Standing Steer Grazing Steer Calf	20 months
Phase 3 Cowboy #1 Cowboy #2 Cowboy #3 Fire pit	25 months

The Materials.

The statues will consist of a rigid metal armature surrounded by carved Styrofoam. The finished layer will be sculpted on medium to hard oil based clay to provide a good amount of detail. After the clay originals are finished polyurethane rubber molds and fiberglass shells will be pulled to aid in the bronze casting. The bronze foundry will then use the molds to produce wax patterns and do the reproduction in bronze of the original art. Bronze should be finished with a dark brown, slightly bluish patina to match all the pieces from these scenes.

Original Artwork.

All artwork except for the horse and rider will be original material specific to this project. A pencil sketch will be provided at the beginning to establish a proper direction to the project. Before full size statues may be started a refined and detailed model or maquette at more or less 1:8 scale will be presented for discussion and approval.

Exhibit "A"

Approximate Cost - The numbers.

Piece	Modeling	Casting	Total
Scene 1			
Horse/ Rider	*\$30,000	\$43,000	\$73,000
Roped Steer	*\$18,000	\$22,000	\$40,000
Tonkawa Native	\$26,000	\$22,000	\$48,000
Scene 2			
Standing Steer	\$32,000	\$30,000	\$62,000
Grazing Steer	\$32,000	\$30,000	\$62,000
Calf	\$28,000	\$16,000	\$44,000
Scene 3			
Cowboy Cook #1	\$26,000	\$22,000	\$48,000
Cowboy Cook #1	\$26,000	\$22,000	\$48,000
Cowboy Cook #1	\$26,000	\$22,000	\$48,000
Fire Pit	\$12,000	\$7,000	\$19,000
TOTAL FOR THE PROJECT			\$492,000

Critique and Changes.

Client or clients are allowed and encouraged to provide some input to the artwork. Once the model has been approved there will be two other times that will allow for more input or critique of the pieces: Half way through the sculpting process (intermediate phase of clay modeling) and at the end of the detail phase and before the mold making phase.

Reasonable changes could be made during those times that are within the initial scope of the project.

Significant and unforeseen changes will be subject to price increases and deadline reviews. Artist will not be liable for other major changes discussed later and not integrated to the initial proposal and contract unless properly addressed.

The Opportunity.

I thank you for your consideration of my talent and dedication to aid with this project. Thank you for the opportunity of the submission of this proposal and possibly represent my community in such an honorable undertaking. I look forward to get this project on its way and help the Round Rock Parks in anyway I can to make this a successful venture.

Exhibit "A"

This agreement is made the 13 day of AUGUST, 2021 (year) by and between:

Name: ANTONIO MUÑOZ (Artist)
Address: 901 E LIBERTY ROUND ROCK 78664
Phone: 512 699 4358 E-mail: moonhawk62@gmail.com
and

Name: _____ (City of Round Rock)
Address: _____
Phone: _____ E-mail: _____

The parties agree as follows:

The Project: Round Rock Parks Department commission of a set of ten bronze statues for the new development of the Heritage Trail Park in the City of Round Rock.

Copyright: Artist reserves the common-law copyright to all works commissioned by the City Of Round Rock that are created by the Artist, including all reproduction rights and the right to claim statutory copyright. No work may be reproduced by anyone without the prior written approval of Artist.

Project price: Parties will agree on price in writing prior to the commencement of artwork.

Payment Terms: A nonrefundable **deposit of one half** of the agreed price per piece (ten total) is required before work commences. A **progress payment of one quarter** will be due upon approval of completion of original clay sculpture (prior to molding and casting). **Final quarter** payment is due upon delivery or installation of artwork(s).

Cancellation: In the event of cancellation of this assignment, ownership of all copyrights and the original artwork is retained by the artist and a cancellation fee consisting of all production costs to date, plus one-third of the original production fee shall be paid to the artist.

Credit lines. The artist shall receive a credit line with any editorial usage.

Modifications. Modifications of the agreement must be written, except those which the contract may include, and the client shall be obligated to pay, fees or expenses that were orally authorized in order to progress work promptly.

Attorney's Fees: In any proceeding to enforce any part of this contract, the aggrieved party shall be entitled to reasonable attorneys' fees in addition to any available remedy.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the day and year written above.



Artist

City Of Round Rock Parks representative