



WINDSOR ARTS COMMISSION REGULAR MEETING

April 16, 2024 - 6:00 PM

Windsor Art & Heritage Center, 116 5th Street, Windsor, CO 80550

AGENDA

A. CALL TO ORDER

1. Roll Call
2. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration
3. Public Invited to be Heard

B. CONSENT CALENDAR

1. Approval of March Minutes
2. Acceptance of Financial Report

C. DISCUSSION ITEMS

1. Presentation by Jodie Bliss of initial concepts for Kyger Open Space Sculptures
2. First Friday discussion (Chris)
3. Ongoing Projects (Laura)

D. BOARD ACTION

1. Vote to approve allocation of \$20,000 for an additional sculpture at Police Station
Savings made to the Stagecoach Time machine resulted in over \$30,000 of savings on that project. The Police Department has increased their public art budget from \$15,000 to \$50,000 to show their support for public art and to ensure that they get the best artwork possible. I propose that we use some of our savings to contribute to their piece to show our support.

E. COMMUNICATIONS

F. ADJOURN

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.



WINDSOR ARTS COMMISSION REGULAR MEETING

March 19, 2024 - 6:00 PM

Windsor Art & Heritage Center, 116 5th Street, Windsor, CO 80550

AGENDA

A. Call to order: **Todd Vess called to order at 6:00 pm**

1. Roll Call

- Todd Vess, Tiffany Elliot, Carol Clark, Shelley Kawamura (present)
- Also present: Laura Browarny, Ken Bennett

2. Review of Agenda by the Board and Addition of Items of New Business to the Agenda for Consideration

- Motion to approve the agenda by Carol Clark, second by Tiff Elliot. Passed unanimously.

3. Public Invited to be Heard

- Windsor resident Greg Flebbe. Advocate of public art and concerned about missed WAC funding opportunities from potential developer tradeoffs per Windsor Comprehensive Plan.

B. CONSENT CALENDAR

1. Approval of February minutes

2. Acceptance of Budget Report

- Motion to approve both of above by Shelley Kawamura, second by Carol Clark. Passed unanimously.

C. BOARD ACTION

D. DISCUSSION ITEMS

1. Recap of Work Session

- CPP Mural: Laura and Todd will meet with Chelsea on 3/20 and will assess how the concrete stain responds to a power washer
- Windsor Matters: Spring magazine scheduled (first week of April). Short article piece to include WAC accomplishments, timeline of events, future developments, etc.
- Art LIVE!: No commitments yet from artists for 6/27 and 7/25 concerts or 7/13 and 8/10 farmer's markets
- Future mural location: Fire Museum south wall. Windsor-Severance Fire Rescue could help to finance project in 2025 or 2026. (Discussion item added by Todd Vess)
- CRC Signage: No updates

2. Kyger Open Space Update (Laura and Todd):

- Jodie Bliss will come to April meeting to present ideas for project. Laura meeting with her at Kyger on 3/20 with Tara Fotsch, Eric Werling, and others.

3. Mural Grant Program Update (Laura and Shelley):

- WAC will first accept applications and if approved, WDA will also approve for their partner program. Tiered approach for funding match to make affordable for most businesses. WDA wants to have a voice in the final design but WAC will make ultimate selection.

4. Windsor PD Artwork Update (Laura):

David Farquhausen

- Farquassen piece was selected. He will make seats out of same material as main piece. WPD paying for it entirely.

5. Poudre Mural Project Update (Laura et al.):

- Timeline established. Many Native Americans responded to call but appropriate tribes (Cheyenne Arapaho) live in OK. If an out of state artist is selected we will budget for 2 visits (site visit & installation/class/opening). Will try to include some kind of performance for public if appropriate. Megan Maiolo-Heath will take first step in drafting an RFP with Laura. Megan and Laura will meet again prior to our April meeting.

E. COMMUNICATIONS

1. Tour of Eastman park site for April meeting

- Meet at Eastman Park before coming to AHC for remainder of meeting

F. ADJOURN

1. Motion by Tiffany Elliot, second by Todd Vess. Passed unanimously.

MEETING ADJOURNED AT 7:44 PM

The Town of Windsor will make reasonable accommodations for access to Town services, programs, and activities and will make special communication arrangements for persons with disabilities. Please call (970) 674-2400 by noon on the Thursday prior to the meeting to make arrangements.

	CIP	General Fund
2024 Budget	\$ 100,000	\$12,475
2023 Carryover	\$ 69,312	
Halfway sculpture 1st payment	\$ 42,500	
Halfway sculpture 2nd payment (due May 1)	\$ 9,165	
Halfway sculpture 3rd payment (due upon complete)	\$ 6,110	
Poudre Mural Support (encumbered)	\$ 7,000	
Grant - 411 Mural Support (pending)	\$ 5,000	
Kyger Artwork (encumbered)	\$ 65,000	
CaFE Subscription		\$60
CaFE Call for CRC Artwork		\$250
Wood sealer		\$42
ArtLIVE! Shirts		\$160
Wet bags for CPP Ribbon Cutting		\$572
WAC Polo shirts		\$183
ArtLIVE! Hats		\$1,370
	Total Spent	
	<u><u>\$ 134,775</u></u>	<u><u>\$2,637</u></u>
	Remaining Budget	
	\$ 34,537	\$9,838

MASTER AGREEMENT FOR PROFESSIONAL SERVICES:

SCULPTURE DESIGN, INSTALLATION, AND MAINTENANCE

This MASTER AGREEMENT FOR PROFESSIONAL SERVICES: SCULPTURE DESIGN, INSTALLATION, AND MAINTENANCE ("Agreement") is made this 2 November 2023 ("Effective Date"), by and between the Town of Windsor, Colorado, a Colorado home-rule municipality ("Town"), and Joseph McGrane ("Artist").

WHEREAS, the purpose of the Windsor Arts Commission, as stated in its bylaws, is to create a legacy of public art in the Windsor community that will continue into the foreseeable future to support Windsor's identity as a modern town with historic roots.

WHEREAS, the Artist is qualified through experience and demonstrated ability to work with the Town, property owners, and other interested parties to create artwork that addresses the context of its placement, reflects community values, and meets or exceeds stakeholder expectations;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, and in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

I. PROCESS. By this Agreement, Town and Artist seek to establish the general terms of tasks undertaken by Artist with regard to consultations, design, installation, maintenance, and repair of the sculpture, and any and all other tasks related to such activities. The Town may invite Artist to provide such services pursuant to separate work orders establishing specific terms and conditions, including compensation amount, scope of work, and timelines.

II. SCOPE OF SERVICES. Upon execution of this Agreement and any associated work order, Artist shall comply in all respects and perform and furnish to Town all services and shall meet all standards enumerated in this Agreement and in the work order. Artist shall provide services and work in accordance with generally accepted industry standards and practices for the profession or professions that are used in performance of this Agreement and/or the work order. Services and work provided by Artist shall be performed in a timely manner as specified in the work order and agreed upon by the parties.

III. TERM. This Agreement shall become effective on the Effective Date first written above, and shall be effective through December 31, 2024, unless sooner terminated by the method set forth herein.

IV. COMPENSATION.

A. Total amount. The total payment to Artist for specific services provided pursuant to this Agreement shall be separately negotiated and enumerated in the respective work order(s). The amount designated in the work order shall constitute full compensation for any and all services, travel, transportation, materials, fabrication, shipping, equipment, contingency, commission, artist fee, and costs of work to be performed or furnished by Artist.

B. Method of payment. Artist shall provide to Town one (1) completed W-9 form, and invoices for services and/or materials provided pursuant to the payment schedule set forth in the work

order, which Town shall pay within thirty (30) days of receipt. Town shall not withhold any federal or state income taxes or Social Security tax from any payment made by Town to Artist under the terms and conditions of this Agreement. Payment of all taxes and other assessments on such sums shall be the sole responsibility of Artist.

V. CREATION, INTEGRITY, AND OWNERSHIP OF ARTWORK.

A. Waiver and relinquishment of rights. Artist expressly waives any and all right, title, or interest in artwork and other products created pursuant to this Agreement or work order. Artist understands that this waiver shall include waivers of the exclusive rights of reproduction, adaptation, publication, and display. Artist specifically waives the right to claim any remedy concerning the alteration of any artwork or product created pursuant to this Agreement or work order. Artist agrees to relinquish any and all rights, title, and interest to artwork or products developed in connection with this Agreement or work order, and hereby expressly waives any rights Artist has to same, including, but not limited to, the rights afforded artists under the Copyright Act of 1976 and the Visual Arts Rights Act of 1990, Title 17 U.S.C. §§ 101 et seq. Artist understands and agrees that the right of attribution and integrity, as specifically set forth in 17 U.S.C. § 106A, are hereby expressly waived. To the extent that the provisions of this Agreement differ with the Copyright Act of 1976 and Visual Arts Rights Act of 1990, the provisions of this Agreement will govern and any such differences in the rights and duties created thereunder are expressly waived. This provision shall survive the termination or expiration of this Agreement.

B. Photographs of Artwork by Artist. Artist may photographically reproduce the image of the Artwork and all preliminary studies, sketches, models and maquettes thereof, as Artist may desire for marketing, educational and public information purposes. Where practicable, Artist shall acknowledge on each such photographic reproduction the location of such Artwork, provided that reproductions of preliminary studies, sketches, models and maquettes shall not be identified as or represented to be the finished Artwork.

C. Photographs of Artwork by Town. Town may photographically reproduce the image of the Artwork and all preliminary studies, sketches, models and maquettes thereof that have been delivered to and accepted, as Town may desire for educational and public information purposes. Where practicable and to the extent of Town's authority, Artist shall be acknowledged on each such photographic reproduction to be the creator of the original subject thereof, provided that photographic reproductions of preliminary studies, sketches, models and maquettes shall not be identified as or represented to be the finished Artwork.

D. Ownership. Upon Town's final acceptance of artwork or other products created pursuant to this Agreement, such artwork or products shall be owned by Town, and Town may maintain, repair, or fully or partially remove them, at Town's sole election and discretion.

E. Subcontracting or assignment of obligations. Artist shall not subcontract or assign any of Artist's obligations under this Agreement that require or that may require Artist's artistic talent or expertise. Artist may subcontract or assign obligations that do not require Artist's artistic talent or expertise. Any and all subcontractors or assignees shall be bound by all the terms and conditions of this Agreement.

VI. INDEMNIFICATION, WAIVER, AND INSURANCE.

A. Indemnification. Artist shall, and hereby does, indemnify, save, and hold harmless the Town and any and all of its employees, agents, volunteers, and/or elected officials from any and all losses, claims, and judgments for damages or injury to persons or property, and from any and all losses and expenses caused or incurred by Artist or Artist's servants, agents, employees, guests, and/or business invitees, occurring as a result of this Agreement or work order.

B. Waiver. Artist hereby waives any and all claims and recourse against Town, including the right of contribution for loss and damage to persons or property arising from, growing out of, or in any way connected with or incident to Artist's performance of this Agreement or work order, whether such loss or damage may be attributable to known or unknown conditions, except for liability arising out of concurrent or sole negligence of Town or its officers, agents or employees

C. Insurance to be obtained by Artist. Upon execution of a work order, Artist shall obtain and shall maintain, at Artist's own expense, through completion of the work order, the following: General liability insurance. General liability insurance with a limit of not less than one million dollars (\$1,000,000.00) per each occurrence, combined single limit bodily injury and property damage, covering the actions and omissions of Artist and Artist's employees, agents, and/or workers, including coverage for owned, non-owned, and hired vehicles, as applicable.

D. Proof of insurance. Artist shall provide to Town, within seven (7) days of the effective date of a work order, written proof that Artist has obtained all insurance required hereunder. If any change is made to any insurance policy or coverage required under and/or obtained pursuant to this Agreement, Artist or Artist's insurance agent shall notify Town immediately.

E. Insurance to be obtained by Artist's subcontractors. Artist shall require any and all subcontractors employed or utilized in the course and scope of the obligations described in this Agreement to obtain and maintain general liability insurance and workers' compensation insurance in the amounts described herein. Artist shall provide to Town, within twenty-four (24) hours of hiring or engaging any subcontractor, written proof that her subcontractors have obtained all insurance required hereunder.

VII. TERMINATION.

A. Termination for cause. If Town determines that Artist has failed to comply with any term or condition of this Agreement or work order, violated any of the covenants, agreements, and/or stipulations of this Agreement or work order, falsified any record or document required to be prepared under this Agreement or work order, engaged in fraud, dishonesty, or any other act of misconduct in the performance of this Agreement or work order; or if either Party willfully or negligently defaults in, or fails to fulfill, its material obligations under this Agreement or work order; the other Party shall have the right to terminate the Agreement by giving written notice to the defaulting party of its intent to terminate, and shall specify the grounds for termination. The defaulting party shall have thirty (30) days after receipt of such notice to cure the default. If the default is not cured within such period, this Agreement and the work order shall be terminated upon mailing of written notice of same by the terminating party.

1. Default by Town. In the event of termination for non-performance or default by Town after Town's issuance of notice to proceed on a work order, Town shall compensate Artist for work actually completed by Artist prior to the date of written notice of termination and any additional services and materials actually performed or supplied prior to the date of written notice of termination, less payments of compensation previously made, not to exceed the total amount of compensation allowed hereunder.

2. Default by Artist. In the event of termination for non-performance or default by Artist after Town's issuance of notice to proceed on a work order, all finished and unfinished drawings, photographs, plans, timelines, and/or any and all other work products prepared and submitted or prepared for submission under this Agreement or work order, and all rights, title, and interest thereto, including those described in section V.A. of this Agreement, shall, at Town's option, become Town's property, and the right to fabricate and/or install the artwork or other products shall pass to Town. Notwithstanding this provision, Artist shall not be relieved of any liability for damages sustained by Town attributable to Artist's default or breach of this Agreement or work order. Town may reasonably withhold payments due until such time as the exact amount of damages due to Town from Artist is determined. Artist shall not be relieved of liability to Town for damages sustained by Town by virtue of any breach or default of this Agreement or work order by Artist. This provision shall survive the termination of this Agreement or work order and shall not relieve Artist of liability to Town for damages.

B. Termination without cause. Town may terminate this Agreement or work order for any reason, at any time, by providing fourteen (14) days' notice to Artist.

C. Non-waiver of breach. A waiver of any breach or default of any provision of this Agreement shall not be construed as a waiver of a breach of the same or any other provision hereof.

VIII. GENERAL PROVISIONS.

A. Permitting and inspection. In the provision of all services pursuant to this Agreement or any related work order, Artist shall obtain any and all necessary permits or approvals from the various departments of the Town of Windsor and other government agencies.

B. Relationship of Parties. It is the express intention of Parties that Artist is an independent contractor and neither Artist nor any officer, employee, subcontractor, assignee, or agent of Artist shall be deemed an employee, agent, joint venturer, or partner of Town in any manner or for any purpose. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between Artist and Town or between Artist and any official, agent, or employee of Town. Both parties acknowledge that Artist is not an employee of Town. Artist shall retain the right to perform services for others during the term of this Agreement. Specifically, without limitation, Artist understands, acknowledges, and agrees:

1. Artist is free from actual and potential control by Town in the provision of services under this Agreement.

2. Artist is engaged in an independently established trade, occupation, profession, or business.

3. Artist has the authority to hire subordinates.

4. Artist owns and/or will provide all major items of equipment necessary to perform services under this Agreement.

C. Compliance with law. Throughout the course of this Agreement, Artist shall comply with any and all applicable federal, state, and local laws.

D. Non-Discrimination. Throughout the course of this Agreement, Artist shall not discriminate against any person as to race, creed, religion, sex, age, national origin, sexual orientation or any physical, mental, or sensory handicap.

E. Audits and Inspections. At any time during normal business hours and as often as Town may deem necessary, there shall be made available to Town for examination all of Artist's records with respect to all matters covered by this Agreement. Artist shall permit Town to audit, examine, and copy, and to make audits of all records and data relating to all matters covered by this Agreement.

F. Entire Agreement. This Agreement constitutes the entire understanding between the Parties. This Agreement supersedes any and all statements, promises, or inducements made by either party, or agents of either party, whether oral or written, whether previous to the execution hereof or contemporaneous herewith. The terms of this Agreement may not be enlarged, modified or altered except upon written agreement signed by both parties hereto.

G. Costs and attorneys' fees. If either party brings any action or proceedings to enforce, protect or establish any right or remedy under the terms and conditions of this Agreement, the prevailing party shall be entitled to recover reasonable costs and attorneys' fees, as determined by a court of competent jurisdiction, in addition to any other relief awarded.

H. Agreement governed by Colorado law. The laws of the State of Colorado shall govern the validity, interpretation, performance and enforcement of this Agreement. Venue shall be in the courts of Weld County, Colorado.

I. Cumulative Rights and Remedies. All rights and remedies herein enumerated shall be cumulative and none shall exclude any other right or remedy allowed by law. Likewise, the exercise of any remedy provided for herein or allowed by law shall not be to the exclusion of any other remedy.

J. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remainder of this Agreement shall not be affected.

K. Successors and Assigns. All of the terms, provisions, covenants and conditions of this Agreement shall inure to the benefit of, and shall be binding upon, each party and their successors, assigns, legal representatives, heirs, executors, and administrators.

L. Notice. Any and all notice required to be provided by either of the Parties hereto, unless otherwise stated in this Agreement, shall be in writing and shall be deemed communicated upon mailing by United States Mail, addressed as follows:

M. Exhibits. All exhibits to this Agreement are incorporated by reference and made a part of hereof as if the exhibits were set forth in their entirety herein.

Exhibit A:
Work Order and Scope of Services
Pursuant to a contract between
The Town of Windsor
And
Joseph McGrane, Artist

1. Artwork Specifications:

- A. The type of artwork will be a 3-dimensional "Stagecoach Time Machine" as proposed to the Windsor Arts Commission.
- B. Location of the Sculpture is at the Historic Halfway Homestead, 33327 CR 15, Windsor, CO 80550.
- C. The sculpture will be constructed in the southwest section of the site as shown in Exhibit B.
- D. The sculpture will adhere to the conceptual design shown in Exhibit C with the understanding that minor changes could occur during planning and construction of the piece or due to artistic license.

2. Scope of Services:

- E. Artist shall purchase materials necessary for the creation of the artwork.
- F. Artist shall hire necessary subcontractors needed for construction and installation of the artwork
- G. Artist shall complete the artwork including, but not limited to, design, engineering, fabrication and installation.
- H. Any major changes that WAC requests of the artist aside from the initial designs, will result in paying the artist an additional \$70 per hour to create the change or changes.
- I. Any changes artist deemed necessary to enhance the composition or structure of the artwork, will be deemed for the good of the sculpture and at no additional charge to WAC.
- J. Although the sculpture is not intended as a piece of playground equipment it has been located within a play area to benefit from the installation of proposed playground fall surfacing and use adjacencies. User safety is a major consideration in the design of this sculpture. Guidelines for construction shall adhere to U.S. Consumer Product Safety Commission (CPSC) standards as they apply to play equipment and play areas. The WAC realizes that, as detailed design progresses, the artwork may require modification to satisfy these standards.
- K. Artist understands that he is working in a public space and is responsible for the cleanliness and orderliness of the work area.
- L. Upon completion of the artwork, Artist shall furnish specification for maintenance of the artwork to the Town including a list of materials and specifications and any known maintenance procedures.
- M. This artwork includes interpretive elements. Artist shall work closely with Museum staff to ensure accuracy of content and alignment of themes with themes addressed throughout the historical site.
- N. Town of Windsor shall provide a structural soils report,
- O. A building permit is NOT required for fabrication and placement of the sculpture as part of this contract.

3. Start and completion dates:

The Artist shall undertake the creation of the artwork _____ November 1, 2023 _____ and complete the artwork by _____ September 1, 2024 _____.

4. Additional artwork compensation:

Any additional artwork done by the artist shall be negotiated and compensated separately from this agreement.

5. Fees and schedule of payment:

Price of artwork: \$ ~~85,000~~ **\$57,775** *Jm* 4/8/2024

Artist will be responsible to invoicing the Town according to the following amounts:

- A. 50% due January 1, 2024
- B. 30% due May 1, 2024
- C. 20% due upon completion

Exhibit B:

**Proposed Design Plan
Attached as Separate Document**

ARTIST:

Signature:

Joe McGrane
Printed Name Joe McGrane

DATE: November 3, 2023

TOWN OF WINDSOR:

Signature:

Laura Browarny
Culture Supervisor

DATE: 11/4/2023

Tara Folsu, Director
(Signature)