

CONTRACT FOR COMMISSION
Of The Reverend Samuel William Pond

For the City of Shakopee, Minnesota
By Denny Haskew
National Sculptors' Guild

THIS CONTRACT FOR COMMISSION is made this ____ day of December 2018, by and between the City of Shakopee, Minnesota, 485 Gorman St., Shakopee MN 55379 (hereinafter called "City"), and J. K. Designs, Inc. a Colorado Corporation, doing business as the National Sculptors' Guild, 2683 North Taft Avenue, Loveland, Colorado 80538 and Artist, Denny Haskew (hereinafter collectively called "Artist").

WHEREAS, the City solicited proposals for a life size to 110% life size museum quality bronze sculpture of The Reverend Samuel W. Pond (hereinafter called "Artwork") to be located on a preselected and completed plaza (hereinafter called "Site"); and

WHEREAS, the Artist was selected by the City to design, execute, fabricate and install the Artwork; and

WHEREAS, the City and the Artist desire to set forth the terms upon which the Artist will produce and install the Artwork for the City;

NOW, THEREFORE, the City and the Artist, for the consideration and under the conditions hereinafter set forth, agree as follows:

ARTICLE I. SCOPE OF SERVICES

A. General

1. Responsibilities of the Parties.

The Artist agrees to create, build, fabricate and install the Artwork in accordance with Exhibit "A".

- a. Design and Installation. The Artist shall create a maquette (study) of the proposed sculpture for the City approving the composition of the bronze sculpture. Upon approval by the City of the maquette, the Artist shall furnish all materials, labor, tools, equipment, apparatus, facilities and anything else necessary to complete installation of the Artwork in a workmanlike manner. The Artwork shall be permanently affixed to the Site on a stone furnished by the City in the manner to be determined by a structural engineer as described in Exhibit "A". The Artwork shall be delivered and installed by the Artist at its sole cost and expense. Design and installation of the Artwork shall comply with applicable building codes and seismic safety regulations.

- b. Permits, Licenses, and Taxes. If required, City shall obtain and maintain during the term of this Agreement, all permits (including a City building permit), licenses, and certificates and pay all taxes that may be required in connection with the performance of services under this Agreement. Notwithstanding any other provision of this Agreement, neither Artist nor Guild shall be charged a fee for issuance of a City building permit or any City license.
 - c. Size of Artwork. The completed Artwork shall be true to the estimated measurements and constructed out of the materials described in Exhibit "A".
- 2. The permanent location for the Artwork at the Site as well as other acceptable locations shall be as described on the map attached hereto as Exhibit B and incorporated herein by reference. The Artist shall design and construct the sculpture and its attachment to the stone base so that as installed it will be structurally safe and sound in compliance with all current State of Minnesota Building and Seismic Standards in accordance with the Uniform Building Code.
 - 3. Subject to review and acceptance by the City, the Artist shall determine the artistic expression, scope, design, color, size, context and texture of the Artwork.
 - 4. The City shall pay for actual, reasonable and necessary costs for transportation, meals and lodging for the Artist while traveling to, from and while residing in Shakopee as well as all other costs associated with the Artist's stay in Shakopee to commence and complete the Artwork.

B. EXECUTION OF THE ARTWORK

- 1. The Artist shall complete the installation and fabrication of the Artwork in conformity with the specifications set forth in Article I, Section A.1 of this contract and Exhibit A herein.
- 2. Prior to implementation of any changes in the Artwork, the Artist shall present to the City in writing, a detailed description of such proposed changes. The City shall have the right in its sole absolute discretion to approve or disapprove any changes suggested by the Artist. The Artist may implement changes only with the prior written approval of the City.
- 3. The City shall have the right to review the progress of the Artwork at reasonable times, and with notice, during the fabrication thereof. The Artist shall submit such reports regarding the progress of the Artwork as the City may request.
- 4. In the design, execution, fabrication, installation and documentation of the Artwork, the Artist shall comply with all applicable federal, state and local laws, rules and regulations, including those pertaining to Worker's Compensation insurance and employee liability insurance.

5. The Artist shall complete the fabrication and installation of the Artwork within twelve months of the execution of this agreement (hereinafter called 'Installation Date'). The installation date may be extended only with the written approval of the City.

C. DELIVERY AND INSTALLATION

1. The Artist shall notify the City in writing when fabrication of the Artwork is completed, and the Artist is ready to deliver the Artwork and install it at the Site.
2. The Artist shall work with the City in the development of the plan for the site.
3. The City shall be responsible for all expenses, materials, labor and equipment to prepare the Site for the timely installation of the Artwork. The Artist shall deliver and install the completed Artwork at the Site. Cost of delivery and installation shall be paid for by the City. These costs to include:
 - a) crane and related equipment
 - b) labor charges, barricades and traffic control
 - c) costs of travel as described in Article I, Section A4, but no additional fee for Artist's time and effort.
4. The Artist shall coordinate with the City to prepare the Site for installation. The City shall use its best efforts to arrange to temporarily modify and/or barricade the Site to effectively secure the Site and protect the public during installation of the Artwork.

D. POST-INSTALLATION

1. The Artist shall furnish the City with a full written narrative description of the Artwork.
2. The Artist shall provide to the City, written instructions for appropriate maintenance and preservation of the Artwork, including moving and reinstallation of the Artwork.
3. The City shall provide and install an identification plaque which shall be made of stainless steel or bronze in the approximate size of 8.5" X 11", which shall include the following information:

"The Reverend Samuel William Pond"
Denny Haskew
National Sculptors' Guild
2019

The plaque may have additional information as determined by the parties. The Artist may recommend that the sculpture be named "The Shape of Language" or another appropriate name.

E. FINAL ACCEPTANCE

1. The Artist shall notify the City in writing when all services required by the Artist under the Contract (including those described in Article I, Section D) have been completed. The Artist shall, prior to final acceptance, provide the City with such lien and/or claim releases with respect to the Artwork as the City may require.
2. The City shall notify the Artist in writing of its final acceptance of the Artwork.
3. Final acceptance shall be determined by the City in its sole and absolute discretion. Such acceptance shall constitute the City's acknowledgement that the Artwork has been completed and installed according to the terms of this Contract.
4. Title of ownership of the Artwork shall pass to the City upon final acceptance.

F. RISK OF LOSS

1. The risk of loss or damage to the Artwork shall be borne by the Artist until final acceptance, and the Artist shall take such measures as are necessary to protect the Artwork and the materials relating hereto from loss or damage and to insure the Artwork and the materials relating thereto until final acceptance.
2. The Artist shall maintain appropriate insurance on the Artwork, insuring against potential risk of loss, including but not limited to design, fabrication, transportation and installation, in an amount acceptable and approved by the City's Risk Manager. The City shall be shown as an additional insured for general liability.

ARTICLE II. COMPENSATION

A. PAYMENT SCHEDULE

1. The City shall pay the Artist a fixed fee of \$115,000.00, which shall constitute full compensation for all services and materials to be performed and furnished by the Artist under this Contract. The compensation shall be payable as set forth on the Schedule of Compensation attached to this Agreement as Exhibit "C" and incorporated by this reference.
2. For all other expenses for which the City is obligated, payment shall be made 30 days after receipt of written statement.

B. FEE STATEMENTS

To receive the payments described in clauses II. A. 1. and II. A. 2. above, the Artist shall submit a statement to the City.

ARTICLE III. TIME OF PERFORMANCE

A. CITY DELAY

If the Artist is delayed from installing the Artwork by the Installation Date as a result of action taken by the City, the City shall reimburse the Artist for actual transportation and storage costs incurred for the period between the Installation date and date on which the Site is available to permit installation of the Artwork, if and only if, the transportation and storage cost are incurred as a direct result of the delay by the City. The City shall not be responsible for any transportation and storage costs that the Artist would have been required to pay in the absence of delay caused by the City.

B. FORCE MAJEURE

Except for the City's obligations to make payments following the Payment Schedule neither party shall be considered in default in the performance of its obligations hereunder if such performance is prevented or delayed because of war, hostilities, revolution, civil commotion, strike, lock-out, epidemic, accident, fire, wind, catastrophic event or flood or because of any law, order, proclamation, regulation or ordinance of any government or of any subdivision thereof or because of any act of God or any other cause beyond the reasonable control of the party affected ("Force Majeure Event"); provided that the affected party shall have used its best efforts to avoid such condition and, provided further, that notice of such Force Majeure Event is given by the affected party to the other within five (5) days of said Force Majeure Event. Should one or both of the parties be prevented from fulfilling their contractual obligations because of a Force Majeure Event lasting continuously for a period of at least six (6) months, the parties shall consult with each other regarding the future implementation of this Agreement. The parties agree to use their best efforts to minimize any delays and/or losses, if any, resulting from such Force Majeure Event.

C. ASSIGNMENT

In the event of the serious illness or death of the Artist during the construction and/or the installation of the Artwork, his heirs, family and estate will in no way be responsible for the completion of the unfinished Artwork nor shall they be entitled to the compensation for uncompleted Artwork due under this contract. The National Sculptors' Guild shall be responsible for the completion of the Artwork, subject to the written approval of the City.

ARTICLE IV. WARRANTIES

A. WARRANTIES OF TITLE

1. The Artist represents and warrants that:
 - a. the Artwork is solely the result of the artistic and creative efforts of the Artist;
 - b. except as otherwise disclosed in writing to the City, the Artwork is unique and original and does not infringe upon any Copyright; and

- c. the Artwork is free and clear of all liens from any source whatsoever.
2. The warranties described in this Section A shall survive for so long as the City or any successor of City owns the Artwork.

B. WARRANTIES OF QUALITY AND CONDITION

1. The Artist represents and warrants that:
 - a. the Artwork, as fabricated and installed, will be free of defects in material and workmanship, including any defects of “inherent vice” or qualities which may cause or accelerate deterioration of the Artwork; and
 - b. reasonable maintenance of the Artwork will not require procedures more than those described in Article I, Section D, subsection 2.
2. The warranties described in this Section shall survive for a period of one (1) year after final acceptance of the Artwork. The City shall give notice to the Artist of any observed breach of these warranties with reasonable promptness. The Artist shall, at the request of the City, and at no cost to the City, cure reasonably and promptly the breach of any such warranties, which is curable and which cure is consistent with professional conservation standard (including, for example, cure by means of repair or refabrication of the Artwork).
3. The Artist shall not be responsible for any damage inflicted on the Artwork by third parties or outside forces, whether man-made or from natural causes, which exceed those that the design of the Artwork should reasonably tolerate.
4. After final acceptance of the Artwork by the City, the City shall hold the Artist harmless from any and all liability or personal injury to the public, except to the extent covered by the warranties of Article IV, Section B.1.

ARTICLE V. OWNERSHIP OF ARTWORK AND COPYRIGHT

A. GENERAL

The Artist retains Copyright in and to the Artwork under the Copyright Act of 1976, 17 U.S.C., Section 101, et seq. The life size to 110% life monument shall be the first in an edition of three. The Artist reserves the right to produce the Artwork at any size. Each edition will be clearly marked as a limited edition. If the City should desire to place the Artwork in a location that is not shown on Exhibit B, the City shall first notify the Artist consistent with Section D herein as to the new location. If the Artist objects to the new location, the only remedy available to the Artist is to request in writing that the City remove the identification plaque referred to in Article I, Section D, subsection 3 herein, and that the City not promote the Artwork as that of the Artist. Provided however, this provision in no way prohibits the City from truthfully responding to inquiries, oral and

written, as to the name of the Artist. The Artist shall not unreasonably object to a change of location or alteration of the site.

IDENTITY OF ARTIST

The Artist grants to the City and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity, and catalogues or other publications, provided that these rights are exercised in a tasteful and professional manner.

All two-dimensional reproductions of the Artwork by the City shall contain a credit to the Artist substantially in the following form:

Denny Haskew, National Sculptors' Guild, 2018

B. NOTICES

All notices required herein shall be in writing and served upon the parties as follows:

Denny Haskew
c/o John Kinkade
2683 North Taft Avenue
Loveland, CO 80538
(800) 606-2015

Michael Kerski
City of Shakopee
485 Gorman Street
Shakopee MN 55379
952-233-9346

All notices required herein shall be deemed served when mailed by First Class Mail, Certified Mail, postage prepaid, to each party's last known mailing address. It is the responsibility of each party to inform the other of a change in address. If notice cannot be served due to a change in address, which has not been served upon the other party, such party's failure to notify shall be deemed a waiver of notice.

ARTICLE VI. SUBSEQUENT EVENTS

A. MAINTENANCE

The City and the Artist recognize that maintenance of the Artwork on a regular basis is essential to the integrity of the Artwork. Therefore, the City shall assure regular maintenance according to the instructions supplied by the Artist as set forth herein under Article I, Section D.2. and may take action reasonably designed to protect the Artwork against vandalism.

B. REPAIRS AND RESTORATION

After final acceptance of the Artwork, the Artist may inspect the Artwork at his own expense and shall notify the City in writing as to the necessity of any repairs. The City may in its discretion consult with the Artist and make the noted repairs. All such consultations shall be without additional cost to the City.

C. ALTERATION OF THE ARTWORK

The City will not consent to the intentional alteration, modifications of change to the Artwork. The City shall retain the right to sell or donate the Artwork to a third party.

D. ALTERATION OF THE SITE

The City shall notify the Artist of any proposed significant alterations of the Site. The Artist may at his sole expense request copies of plans detailing proposed alterations to the Site. If such alterations cannot be undertaken to the reasonable satisfaction of the Artist, he may request the public notice referred to in Article I, Section D.3. be removed and otherwise proceed in accordance with Article V. Section A.

E. WAIVER OF RIGHTS

The Artist understands and agrees that the provisions of this Article VI shall control over the provisions of 17 U.S.C. – 106A (a), known as the Visual Artist Rights Act of 1990 (“VARA”), and other laws granting the Artist any “moral rights” or similar rights as to the Artwork, and shall constitute a waiver by the Artist of any rights with the exception of copyright, in the Artwork set out in or otherwise granted by 17 U.S.C. – 106A (a) or in such other laws.

ARTICLE VII. INDEPENDENT CONTRACTOR

The Artist performs this contract as an independent contractor and not as an agent or an employee of the City. The Artist shall maintain control; furnish all supervision, labor, materials, equipment, supplies, other incidentals, as well as transportation, shipping and installation of the Artwork.

ARTICLE VIII. ASSIGNMENT

The Artwork and services required of the Artist, Denny Haskew, under this Contract are personal and shall not be assigned, sublet or transferred. However, the Artist shall be allowed to employ qualified personnel who shall work under the Artist’s supervision.

ARTICLE IX. INDEMNIFICATION

The Artist shall defend, release, indemnify and save and hold harmless the City against any and all damages to property or injuries to or death of any person or persons, and shall defend, release, indemnify and hold harmless the City from any and all claims, demands, suits, liabilities, actions, causes of actions, or legal or equitable proceedings of any kind or nature, including reasonable attorney’s fees incurred by legal counsel of the City’s choice, or by anyone whomsoever, in any way resulting from or arising out of the Artist’s activities in connection with this Contract, including acts of omission of the Artist or persons acting under the Artist’s control.

ARTICLE X. TERMINATION & MEDIATION

A. TERMINATION

1. If either the Artist or the City shall willfully or negligently fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Contract, the other party shall thereupon have the right to terminate this Contract by giving written notice to the defaulting party of its intent to terminate and specifying the grounds for termination. The defaulting party shall have thirty days (30) after receipt of the notice to cure the default. If the default is not cured within such time period, this Contract shall terminate.

2. In the event of a default by the City, the City shall promptly compensate the Artist pursuant to Article II for all services performed by the Artist prior to termination, and all finished and unfinished drawings, sketches, photographs and other Artwork products prepared and submitted or prepared for submission by the Artist under this Contract shall at the City's option become its property, provided that no right to fabricate or execute the Artwork shall pass to the City.
3. In the event of a default by the Artist, Denny Haskew, shall forfeit the right to any and all remaining payments due under this contract for which Artwork has not been completed as well as any and all copyrights reserved herein and any and all limited edition rights as defined herein. Then and in that event The National Sculptors' Guild shall be responsible for completion of The Artwork, subject to the written approval of the City.

ARTICLE XI. MODIFICATION

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

ARTICLE XII. CONFLICT OF LAW

Any provision of this Contract, which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States or the States of Colorado and Minnesota shall be considered null and void. The valid provisions of this Contract shall be severed from the invalid provisions and remain in effect to the extent possible. The law of the State of Minnesota shall govern the interpretation of this contract.

ARTICLE XIII. CHOICE OF LAW

All conflicts, causes of actions, and civil disputes shall be filed in the Minnesota District Court.

ARTICLE XIV. EFFECTIVE DATE

The effective date of this Contract shall be the date first written above.

ARTICLE XV. COUNTERPARTS FOR SIGNATURE

This contract may be executed in duplicate counterparts, each of which shall be deemed an original.

Attest to: City of Shakopee

City Clerk

Mayor

National Sculptors' Guild

Attest to:

Artist

John W. Kinkade, Secretary

Denny Haskew

Alyson Kinkade, President
(Corporate Seal)

EXHIBIT "A"
SCOPE OF ARTWORK

Sculpture

The services are to be provided by Denny Haskew, sculptor, and the National Sculptors' Guild.

In the creation of the bronze sculpture, Denny Haskew and the National Sculptors' Guild will furnish all design, labor and material in the fabrication of the sculpture as described in the following areas and amounts:

- I. Design, fabricate, ship and install the sculpture:
 - A. Create a clay maquette of Reverend Samuel W. Pond for approval by the City.
 - B. Provide the material for the sculpture.
 - C. Denny Haskew will sculpt the above-described sculpture in clay at life size to 110% life size based upon a six-foot two inch (6'2") tall figure for approval by the City prior to the casting of the sculpture in museum quality bronze.
 - D. Provide appropriate packing and ship the sculpture to the site.
 - E. Install the sculpture on the concrete plaza and/or the provided stone pedestal.
 - F. Consult with the City in the placement of a stone that will stage the Artwork.

Footings The site has been created with a concrete pad that will receive the staging stone and the sculpture. The artist will consult with an engineer to determine the appropriate means to secure the sculpture to the site.

Note: The City of Shakopee is responsible to provide all landscape lighting.

Clarifications

Should there be any traffic control or pedestrian barricades required during installation it will be the City's responsibility.

Delays due to others and beyond the control of Denny Haskew and National Sculptors' Guild shall constitute additional schedule extensions and appropriate general condition costs.

All Artwork shall be performed during normal working hours.

Exclusions:

Any and all dust, waste, and sanitary requirements.

Any and all landscaping and/or landscaping repairs.

Any and all traffic control fees, licenses, fees and permits.

Any and all bonds.

Any and all testing and inspection costs.
Any and all damage to under ground services not marked.

EXHIBIT "B"

SITE



EXHIBIT "C"

SCHEDULE OF COMPENSATION

Denny Haskew – National Sculptors' Guild

Total due \$115,000 payable as follows:

- One-Half (50%) down (\$57,500) upon execution of the contract,
- Twenty Percent (20%) (\$23,000) upon completion and approval of the life size clay sculpture
- Twenty Percent (20%) (\$23,000) upon the completion of the pouring of the metal at the foundry, and
- The balance of 10% (\$11,500) upon installation.

All payments shall be made within 35 days after receipt of a written statement. All checks shall be made payable to the National Sculptors' Guild. Payments received outside of the 35 day payment period shall bear interest at the rate of 1.5% (18% per annum) and the project completion time shall be extended by the number of days the payment is delinquent.