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Arts Alaska, Inc.

619 Warehouse Avenue • Suite 220
Anchorage, Alaska 99501 • (907)279-1558

SERVICE CONTRACT

This contract, effective as of the 23rd day of December, 1976, between Arts Alaska, Inc. (hereinafter called the "Corporation"), and Robert Murry (hereinafter called the "Artist").

WITNESSETH THAT: Whereas the Corporation is entering into this contract for professional services; and Whereas, the Corporation has the authority to enter into this contract by the approval of the Board of Directors of Arts Alaska, Inc.;

NOW THEREFORE, the parties hereto agree as follows:

Article I. The Services to be Performed.

The Artist is hereby commissioned to undertake and complete a metal sculpture for the Juneau courthouse plaza per the design to be submitted to the Alaska State Council on the Arts and reviewed by the judging panel. The work of art will be delivered and installed at the site at the expense of the Artist.

All materials used shall be selected, applied and treated in order to be reasonably protected against damage. Full instructions will be provided for the continued maintenance of the work of art.

The Artist will view the site of the planned space for the work of art at his own expense, prior to beginning the project.

The artist will be invited to participate in the unveiling ceremony. All

costs for such participation will be the responsibility of the Artist should he choose to participate.

Article II. The Period of Performance.

The period of performance under this contract shall commence on January 1, 1977, and expire on September 1, 1978. Performance may be extended for additional periods by the mutual written agreement of the parties.

Article III. Consideration.

In full consideration of the Artist's performance hereunder, the Corporation shall pay the Artist a total amount for the completed and accepted Work of Art of FORTY THOUSAND AND NO/100 DOLLARS (\$40,000), and not more.

From the above amount, the Artist shall arrange and pay, or otherwise provide for all services, supplies and equipment for services, labor, materials, travel, hotel and subsistence, transportation, storage, fees, rentals, insurances, taxes, and all other cost and expenses required to complete the Project to the satisfaction of the Corporation.

Payment on account of the Cost of the Project shall be made as follows:

\$4,000 at the signing of the contract.

\$16,000 when the proposal submitted by the Artist is approved by the selected panel.

\$16,000 when notified that the piece is fabricated and ready for shipment.

\$4,000 upon final installation and acceptance by the State of Alaska.

Article IV. Additional Contract Provisions.

Appendix A attached hereto and made a part hereof sets forth special

conditions for the project.

Appendix B attached hereto and made a part hereof sets forth additional general provisions of this contract.

Article V. Changes.

Appendix C attached hereto and made a part hereof, sets forth any changes or additions that were made in this contract prior to its execution. (If appendix C is not attached hereto, there have been no such changes or additions).

Article VI. Special and General Conditions for the Project.

All articles of the attached General Conditions for the project shall be part of this agreement as if written herein in full.

By signing, the Artist declares that he has read and is in accord with the agreement and the terms identified in the General Conditions. If countersigned, this contract shall serve as an instrument of agreement.

IN WITNESS WHEREOF, the parties have executed this contract.

ARTIST

By: Robert Murry

DATE: 18 Jan. 77

Permanent address of Artist

First floor
66 Grand St.
New York, N.Y. 10013

Social Security # 092-42-3051

ARTS ALASKA, INC.

By: R. H. Helmer
Executive Director

DATE: 12/23/76

APPENDIX A

Special Conditions for the Project

- A. The Artist will visit the project site to survey and evaluate its visual, environmental and background characteristics.
- B. After consideration of the desires, views and expectations of the selection committee a written outline description of the work-of-art as you envision it along with drawings and/or maquettes showing the intended form, shall be prepared and submitted with a site plan noting the proposed location of the sculpture.
- x C. Site preparation specifications will be provided at such time as the proposal is accepted by the committee.
- D. The Selection Committee will review the proposal and recommend acceptance and/or modifications. Upon their acceptance the project will proceed as outlined. Should agreement not be accomplished this contract can be terminated by the Board of Directors of Arts Alaska, Inc. In such event the total compensation to the Artist will be the initial payment of \$4,000.
- E. The Artist is required to meet with the Selection Committee at the time of the review of the proposal. All expenses for travel and per diem related to this meeting will be paid by the Corporation or the Alaska State Court System.
- F. The Artist will obtain and pay, or otherwise provide for the services of professional consultants to assist in the preparation and documentation of data related to stress, climatic and organic damage, and firm and secure mounting.
- G. The Artist will provide all required facilities, equipment and labor to transport and to install the sculpture. After the installation all debris shall be removed from the site and all damage to the surrounding areas shall be repaired and rendered invisible.

APPENDIX B

General Conditions for the Project

- A. In the performance of the Project, the Artist shall be obligated to observe and conform to all applicable codes, ordinances, regulations, statutes and laws. *The Corporation will provide the Artist with copies of any such restrictive codes, etc.*
- B. Portions of the Project may be sublet by the Artist at his expense, subject to prior written approval by the Corporation. Approval shall not be unreasonably withheld. All work shall be undertaken by the Artist personally or under his personal supervision.
- C. The Work on the Project shall commence immediately after signing of the agreement by all parties concerned and shall be pursued with reasonable dispatch and without interruptions, except when caused by forces beyond the Artist's control. It shall be so organized as to assure completion of the Project on or before the date stated in the agreement.
- D. All payments on account of the Project shall be subject to the receipt of a signed request for payment from the Artist, certifying that the work under this agreement is progressing as planned and in accordance with the agreement.
- E. Final payment will be made only when the completed work of art has been accepted by the Corporation with the concurrence of the Project Selection Committee.
- F. Actual payment process may take up to two weeks before transmittal of payment to the Artist.
- G. The Corporation reserves the right to suspend at any time and for any reason for any given or indefinite time the services to be rendered under this agreement upon written notice to the Artist. *The Corporation will be responsible for storage charges incurred during such delay.*
- H. The work under this agreement may be terminated by either party, subject to a written notice submitted fourteen (14) days before termination, provided that attempts to reconcile the reason for cancellation have been undertaken but have failed. Upon termination, payment on account of the Project shall be made in proportion to the work completed, ~~provided the Artist will submit to the Corporation all work performed up to the effective date of cancellation in an orderly manner, and every effort will be considered for completing the work per the original design.~~
- I. The Corporation shall not be liable for payment for any additional services, unless such services and the cost thereof have been previously approved in writing. Any term of this agreement may be amended by a written Amendment to the Agreement, signed by both parties; subject to the authorization of the Board of Directors where required.

J. All drawings, models or maquettes shall remain the Artist's property. The copyright in the Work of Art, however, belongs to the Corporation, and no more copies than are required in the Project may be made or caused to be made by anyone without prior written approval from the Corporation.

K. All aspects of the Project shall be guaranteed by the Artist against faulty execution or defective or inferior materials, equipment or workmanship for one (1) calendar year after completion and acceptance of the Project by the Corporation, during which period the Work of Art shall be repaired, restored or replaced at the Artist's expense, with the exception of the painted surface.

L. It is understood that under the terms of the Contract, the Artist is an "Independent Contractor" who shall indemnify and save harmless the Corporation and the State of Alaska from and against any and all manner of actions, liabilities, and claims of any person arising out of or in connection with the performance of the services to be performed by the Artist under this Contract. Any work under this Agreement shall not be construed as employment with the State of Alaska or Arts Alaska, Inc. The Artist will be required to obtain and pay for his gross income license and be responsible for payment of income, social security, and other taxes.

M. The artist shall not assign or transfer any interest in this Agreement without the prior written consent of the Corporation; provided, however, that claims for money due or to become due from The Corporation under this agreement may be assigned to a bank, trust company, or other financial institution without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Corporation.

N. In the event that the Artist dies before the date fixed for completion or becomes permanently incapacitated and/or unable to complete the work on the Project, the Corporation may within thirty (30) days after notice thereof, elect in writing to pay a proportionate share of the agreed price for work completed to the satisfaction of the Corporation, and acquire the unfinished work. This Agreement shall then be cancelled and the Corporation be entitled to the return of such part of the price above the proportionate share, as the Artist has already been paid.

The heirs or executors will make every effort to complete the project per the original design.

O. A program of regular maintenance will be planned by the Corporation for the State of Alaska that is acceptable to the artist.

D.1.

WASHINGTON
DC 20506



A Federal Agency advised by the
National Council on the Arts

October 10, 1978

John B. Chenoweth
Legislative Counsel
Legislative Affairs Agency
Pouch Y
Juneau, Alaska

Dear Mr. Chenoweth:

The controversy surrounding the Juneau Art in Public Places project entitled "Nimbus" has come to our attention.

As you may already be aware, there do not presently exist any restrictions or conditions in Endowment grant provisions relating to removal or relocation of commissioned works from their proposed sites. However, reference should be made to the copyright laws of the United States, which indicate that the creator of a work retains right regarding the manner and location of public exhibition of his work. (See Title 17, §106(5) of the United States Code Annotated.)

In any event, the proposed disposition of the piece in question is of concern to us, since the project was made possible by a Federal grant program. Any action, especially destruction of the piece, which would undermine the purposes and intent behind the Federal Art in Public Places program could not be viewed with indifference by the Endowment.

Of course, we at the Endowment are sensitive to local concerns. We therefore hope an equitable resolution of this matter can be effected, hopefully one which takes into account the rights and interests of all involved parties, including the creator of the work.

Sincerely,

Robert Wade
General Counsel

cc: Roy Helms

*I thought you might be interested in my effort in this regard.
Maybe we could try re-selling it to some Eastern gallery.*

Dear Governor Sheffield,

I was gratified to hear that you have accepted the resignations of the entire State Council for the Arts. As an individual Alaskan, I would like to make a suggestion to you which could correct two injustices, beautify Juneau and win the gratitude of the vast majority of Juneau-ites -- at no cost to the State.

As you may know, "Nimbus" -- the misshapen piece of bluish metal in our court building's plaza -- may have been the old Art Council's worst error of judgement. A big-name Eastern "sculptor" was (lavishly) commissioned, and the resulting "Nimbus" outrage filled the EMPIRE's "Letters to the Editor" section longer than anything else since. (My own letter read, "A piece of junk is a piece of junk is a") Maybe most galling was the stipulation that "Nimbus" had to be re-sold rather than simply scrapped if found to be unacceptable. There was even a petition against Nimbus -- ignored by the Arts Council, of course. Even now "a Nimbus" means a snob-appeal boondoggle.

A local resident, Ed Way, did the "Hard Rock Miners" bronze sculpture for the new *Marine Park*. It is a brilliant and moving tribute to those men whose honest sweat originally built this town. Ed is an acquaintance of mine, and his business sense has never kept pace with his artistic skill and vision. Forging the sculpture in California, Ed "went over" his original bid (by more than \$20,000!), believing Juneau-ites would support (and expecting our Borough Assembly would compensate) his commitment.

When Ed petitioned the Assembly for compensation last week, Bill Overstreet led the (unpopular) vote against it. Bill's opposition was basically out of a sense of fiscal duty, not wanting to set a dangerous precedent for other contractors.

COULD YOU, AS ALASKA'S GOVERNOR, INTERCEDE IN THIS UNFORTUNATE SITUATION AND OFFER TO SELL "NIMBUS" SO THAT THE PROCEEDS COULD BE USED TO HELP FULLY RECOMPENSE ED WAY FOR HIS/OUR "HARD ROCK MINERS"? --ASSUMING SOMEONE MIGHT BUY SUCH SCRAP, OF COURSE.

I do not know the legal status of Nimbus, but such an action could be a beautiful and appreciated gesture appropriate to the new beginning you intend for Alaska.

Thank you for your time and for your consideration of my idea.

Respectfully,

Gov. Sheffield,

I discussed this with Bill last night. He instead prefers a private fund-raising, wanting to leave government out of it. However, a private effort may not raise much "after the fact", and a good excuse to get rid of Nimbus should be used. More importantly, this situation is a bronzen opportunity to re-emphasize that Alaskan art should be.

THE LEGISLATURE OF THE STATE OF ALASKA
THIRTEENTH LEGISLATURE

FISCAL NOTE

COPY

I. REQUEST

Bill/Resolution No. House Concurrent Resolution No. 9
 Title Veteran's Memorial in place of "Nimbus".
 Requested by House State Affairs Date 04 Jan 1983

II. FISCAL DETAIL

Agency Affected Military Affairs
 Program Category Affected Public Protection
 BRU, Program, Or Subprogram(s) Affected Life & Property Protection
 (Note: If more than one budget component is affected, separate line-item amounts and funding for each component in the analysis section.)

EXPENDITURES (Thousands of Dollars)

| | FY 83 | FY 84 | FY 85 | FY 86 | FY 87 | FY 88 |
|--------------------------|-------|-------|-------|-------|-------|-------|
| 100 PERSONAL SERVICES | | | | | | |
| 200 TRAVEL | | | | | | |
| 300 CONTRACTUAL | | | | | | |
| 400 COMMODITIES | | | | | | |
| 500 EQUIPMENT | | | | | | |
| 600 LAND & STRUCTURES | | | | | | |
| 700 GRANTS, CLAIMS, ETC. | | | | | | |
| TOTAL | | -0- | -0- | -0- | | |

FUNDING (Thousands of Dollars)

| GENERAL FUND | | | | | | |
|------------------------|--|--|--|--|--|--|
| FEDERAL FUNDS | | | | | | |
| OTHER (Specify Source) | | | | | | |
| | | | | | | |

POSITIONS

| FULL TIME | | | | | | |
|-----------|--|--|--|--|--|--|
| PART TIME | | | | | | |
| TEMPORARY | | | | | | |

III. ANALYSIS (See Fiscal Note Preparation Instruction, Section III)

No apparent fiscal impact.

IV. DATE 04 Jan 1983 PREPARED BY *D.R.* Dick Rountree
 AGENCY Military Affairs
 Original: Legislative Finance PHONE 465-4601
 cc: Budget and Management
 Prime Sponsor (First Legislator Named)
 33-001 (Rev. 12/82)