

**CITY OF KELLER, TEXAS AND BRAD OLDHAM SCULPTURE
AGREEMENT FOR ARTIST SERVICES AND ORIGINAL ARTWORK**

1. PURPOSE

The City of Keller (City) desires to have a 316 polished stainless steel outdoor sculpture (Sculpture) for the City of Keller Police Department/Regional Animal Services/Detention facility, located at 330 Rufe Snow Drive, Keller, TX 76248. Brad Oldham Sculpture (BOS) has agreed to design, sculpt, fabricate in stainless steel and install said Sculpture to prepared installation site, provide a corresponding small scale model, up to twelve inches (12") tall (Maquette) in cast bronze nickel plated, and an artists' plaque also in stainless steel. The Sculpture design will be a dog style, from sixty inches (60") to eighty-four inches (84") tall for the finished Sculpture.

2. EFFECTIVE DATE

This Agreement ("the Agreement") between the City of Keller, Texas, and the Artist shall be effective upon execution by all signatories hereto (the "Effective Date") and shall continue thereafter until all obligations of the parties to each other under this Agreement have been performed in full, unless terminated sooner under the provisions thereof. Upon any such termination, neither party shall have any further obligation nor liability under this Agreement, and this Agreement shall have no applicability following such termination.

3. REMUNERATION

The City is to pay BOS a total amount not-to-exceed \$40,000 for the Sculpture and Maquette. The City shall provide certificate if sales tax should not be charged. This amount will be paid according to the schedule set forth below. Any changes to this schedule must be agreed to by both parties in writing:

- a. First Payment of \$10,000 is payable by the City to BOS within two (2) weeks of the signing of the Agreement.
- b. Second Payment of \$15,000 is payable by the City to BOS upon completion and approval by the City of Maquette prior to commencement of the mold-making process for the Sculpture.
- c. Third Payment of \$15,000 is payable by the City to BOS after the Sculpture is finished, delivered and installed at net 30 terms.

4. EXHIBIT SITE AND SCULPTURE PAD

The Exhibit Site for the Sculpture will be on the northeast lawn of the City of Keller Police Department/Regional Animal Services/Detention facility as shown in Exhibit A. The City shall secure a contractor for the design and construction of a sculpture pad with input from BOS. The City shall have full discretion over the design and construction of the sculpture pad and any associated features or landscaping and shall be responsible for all costs related thereto. By installing the Sculpture on the sculpture pad, BOS represents and warrants to City that the sculpture pad is suitable for display of the Sculpture. Warranty of construction and craftsmanship of the sculpture pad will be the responsibility of the contractor hired by the City.

5. SCULPTURE FABRICATION AND INSTALLATION

BOS shall design, sculpt, fabricate in 316 mirror stainless steel and install the Sculpture and deliver the corresponding small scale model (Maquette) in accordance with the proposal and sketch accepted by the Public Arts Board (Exhibit B).

The Sculpture design and fabrication time line will be as follows:
Design and clay Maquette: 6 to 8 weeks from receipt of deposit
Fabrication and installation: 4 to 7 months from approval of clay Maquette.

Environmental lighting is strongly suggested to be designed by the City at the fabrication site. All costs associated with lighting shall be paid by the City.

BOS will manufacture the sculpture at the foundry and technique of BOS's choice and shall cooperate with the foundry and the City in completing the Sculpture in a form acceptable to the City and suitable for exhibition on city property in Keller, Texas as determined by the Keller Public Arts Board.

BOS will meet deadlines and unveiling dates as agreed upon by both the City and BOS.

All processes, sculpting and final molding of the Sculpture must meet with the approval of the City. Periodic inspection by the Keller Public Arts Board to view the sculpting and molding process of the clay maquette will be allowed with prior notification of such visits. The technique of creating this sculpture will be hammering of 316 stainless steel sheet to the desired form, welding, sanding and polishing to mirror finish. This work will be performed by craftsmen proprietary to BOS. The foundry location and/or site visits shall not be allowed on this project. Progress photos will be shared throughout the project, upon request by the City.

BOS will create one limited edition, cast bronze, nickel plated Maquette of the Sculpture, the cost of which is included in the contracted amount for the Sculpture.

BOS agrees to warrant the workmanship and repair any damage, at no expense to the City, to the Sculpture for the period of five (5) years following the installation and acceptance of the Sculpture by the City, with the exception of vandalism or an Act of God. For the purposes of this Agreement, an Act of God is defined as an event caused solely by the effects of nature such as flood, tornado or other natural disaster.

BOS shall be responsible for transportation and delivery of the Sculpture to the Exhibit Site, and for installation of the Sculpture on the Sculpture Pad.

6. EXCLUSIVITY

BOS is in the expressed business of creating and building original artwork that is unique to a location, a community and/or a story. To provide additional assurances to City that the Sculpture will be exclusive to the City, BOS offers that it will not create a substantially similar sculpture in another location that would lessen the impact of developing a unique community and sense of place. This exclusivity does not apply to the ability of BOS to continue building upon and implementing the artistic techniques, materials, design experience, and all other creative and technical skills required to produce future site-specific work for other clients.

7. CREDITS

The City agrees to credit BOS with "Name of Sculpture© Brad Oldham Sculpture" at the final installation site and on related materials and communication channels, where possible.

8. MAINTENANCE

Sculpture must be made of materials that can withstand permanent exposure to all forms and extremes of weather and require no maintenance by the City.

City shall maintain the Exhibit Site at City's cost and expense and shall not seek reimbursement for City's maintenance costs from BOS.

9. LIMITED GRANT OF LICENSE

Title and possession of the Sculpture will be vested in the City upon delivery, inspection, installation and acceptance by the City.

Upon receipt of the full payment of the price set forth in this Agreement and for the term of the copyright of the Sculpture, BOS grants the City limited, nonexclusive, worldwide rights and license to use 2D images and/or representations of the Sculpture in promotional materials solely for the purpose of promoting the project for which the Sculpture was commissioned.

All rights not explicitly listed here shall be reserved by BOS. BOS retains the ownership and copyright of the Sculpture (but not ownership of the physical Sculpture and Maquette described in Section 1) and all work products associated with the Sculpture, except as otherwise specifically noted herein. BOS may, at its election, file a copyright application for registration with the U.S. Copyright Office. The City acknowledges and agrees that BOS owns all rights, titles and interests in and to the Sculpture, which includes all 2D and 3D renderings, preliminary works, and work product created by BOS for the Sculpture, and owns the copyright therefor, regardless of registration. Accordingly, except as set forth in this Agreement, only BOS has the right to reproduce, copy, display, distribute, duplicate, or make derivative works of the Sculpture.

10. DERIVATIVE WORK & RIGHT OF FIRST REFUSAL

If the City wishes to proceed with developing 3D artwork inspired by the Sculpture, the City shall first in writing offer to enter into negotiations with BOS for developing and/or producing such artwork. In the event the City and BOS do not agree on the terms for such development and production within 20 days following the written offer to BOS, the City, as appropriate, shall have the option to contract with other potential manufacturer(s), provided the price and terms agreed upon with such other manufacturer(s) shall not be more favorable to such manufacturer(s) than the price and terms offered BOS. If such contracts are entered into by the City, BOS shall be paid a commission by the City equal to a percent of the contract amount to be negotiated per occurrence. Notwithstanding the aforesaid option and any action taken by the City thereunder, the City may elect at any time within 40 days following the written offer to BOS to accept BOS's offer. Derivative work(s) of the Sculpture, including but not limited to the contract described in this paragraph, is subject to the written approval of BOS, such approval not to be unreasonably withheld or delayed.

11. HOLD HARMLESS AND INDEMNITY PROVISION

BOS shall hold harmless, indemnify and defend the City, its officers, agents, employees and volunteers from all damages, costs or expenses in law or equity that may at any time arise or be asserted because of injury to property or bodily or personal injury (including death) occasioned by any willful or negligent act or omissions of BOS or any of BOS's officers, agents, employees and volunteers.

12. FORCE MAJEURE

In no event shall BOS be responsible or liable for any failure to perform or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including but not limited to Acts of God (including fire, flood, earthquake, storm, hurricane, or other natural disaster), war, invasion, act of foreign enemies, hostilities (regardless of whether war is declared), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, terrorist activities, government sanction, blockage, embargo, work stoppage, labor dispute, strike, lockout, accidents, nuclear or natural catastrophe, interruption or failure of electricity or telephone service, or loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that BOS shall use reasonable efforts to resume performance as soon as practicable under the circumstances.

13. RESERVATION OF RIGHTS

Notwithstanding any other provisions of this Agreement, if the City is unable or unwilling to make, or continue to make, the Site available, or to construct the Sculpture Pad (due to budgetary constraints, City Council action, inadequate available staffing, natural disaster or for any other reason, or no reason), BOS shall have no right to bring action or make any claim against the City as a result of such action or inaction.

14. NOTICE

Unless otherwise provided herein, all notices required hereunder shall be given by United States registered or certified mail, or other form of mail which offers proof of mailing, postage prepaid and addressed to the party at the address below:

If to City:

City of Keller Public Arts Program
P. O. Box 770
Keller, TX 76244

If to BOS:

Brad Oldham Sculpture
1200 Ross Avenue, Number 180
Dallas, TX 75202

15. MISCELLANEOUS PROVISIONS

- a. This Agreement constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.
- b. In the event of any disagreement, breach or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to mediation, prior to the commencement of legal action. Should either party be successful in litigation whereby that party prevails in an action against

the other party for a breach of the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

- c. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Tarrant County, Texas, and venue for any action arising under this Agreement shall lie in Tarrant County, Texas.
- d. The signatories hereto shall be subject to all ordinances of the City, whether now existing or in the future arising.
- e. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Artist warrants and represents that the individual executing this Agreement on his behalf has full authority to execute this Agreement and bind Artist to the same.
- f. The City Council has authorized the City Manager of the City of Keller to execute this Agreement on behalf of the City.
- g. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, it is the parties intent that the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.
- h. All notices required to be given under this Agreement shall be given in writing and shall be effective when actually delivered or when deposited in the United States mail, first class, postage prepaid, addressed to the party to whom the notice is to be given at the addresses shown above. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying the purpose of the notice is to change the party's address. For notice purposes, each party agrees to keep the other informed at all times of its current address.

CITY OF KELLER

Signature

Title

Date

BRAD OLDHAM SCULPTURE

Signature

Name:

Date

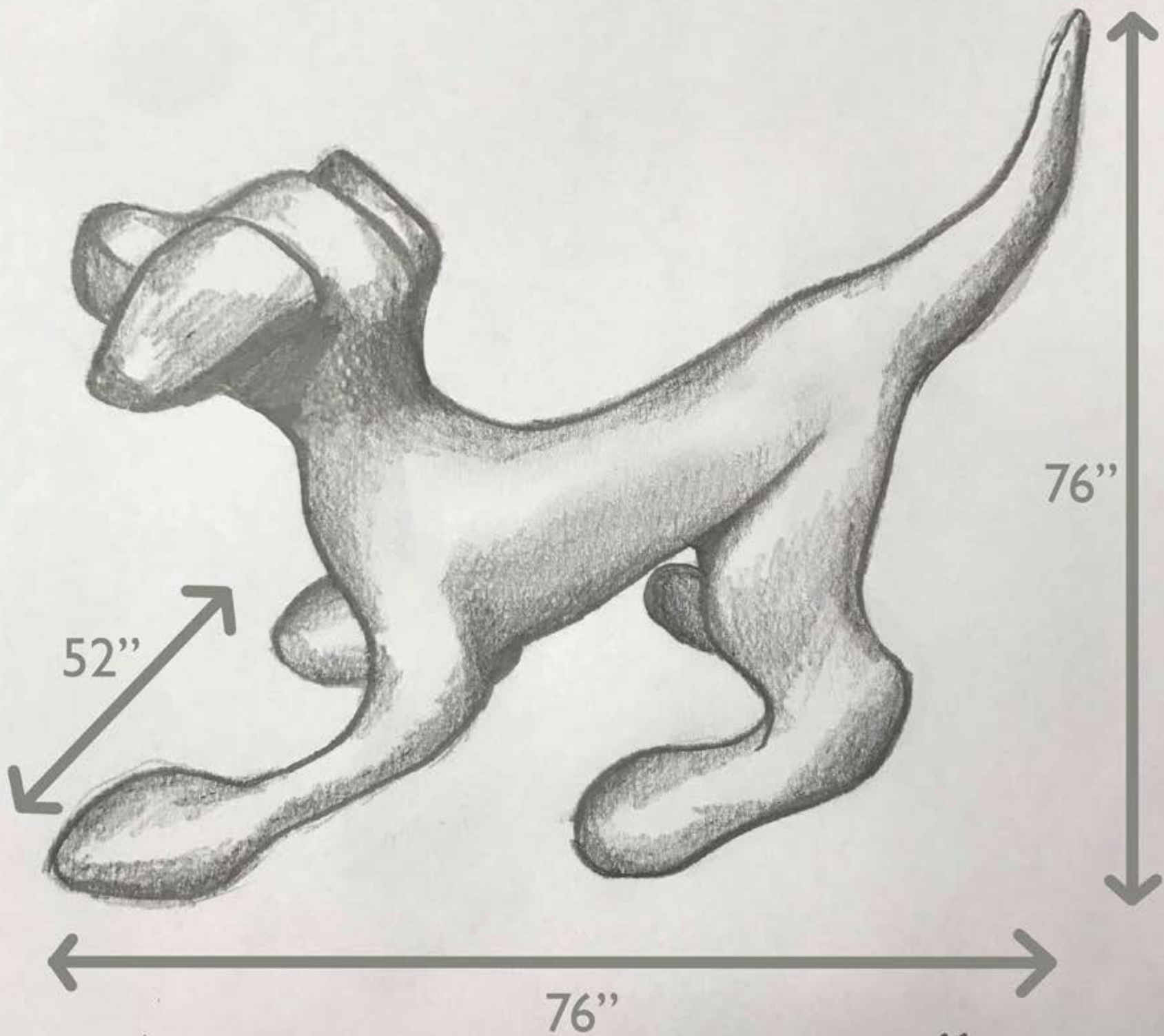


6/12/2018

Regional Animal Services Sculpture



DISCLAIMER
This data has been compiled for City of Keller. Various official and unofficial sources were used to gather this information. Every effort was made to ensure the accuracy of this data, however, no guarantee is given or implied as to the accuracy of said data.



Brad Oldham



Brad Oldham



Brad Olsham



Brad Olshan



Brad Oldham