

REPORT TO CITY COUNCIL

DATE: FEBRUARY 25, 2015
TO: HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL
FROM: GREG RAMIREZ, CITY MANAGER *GR*
BY: AMY BRINK, DIRECTOR OF COMMUNITY SERVICES *AB*
SUBJECT: APPROVAL OF AGREEMENT FOR PURCHASE OF BRONZE SCULPTURE FOR THE ART IN PUBLIC PLACES PROGRAM

Back in October 2014, the City of Agoura Hills approved a piece of art to be added to the City's collection of Art in Public Places program. The piece that was approved was called "Angle of Repose" and it is going to be commissioned and purchased from the local artist, Daniel Stern.

"Angle of Repose" is a five-foot-long, bronze sculpture that reflects a man lying down, napping with a book on his lap. Daniel Stern has exhibited his artwork with the Tracy Park Gallery, Malibu, and through the L.A. Contemporary Gallery, Culver City, California. He lives locally and is very involved in the City of Malibu and it's newly-formed Arts Commission.

The Cultural Arts Council will place the sculpture outside, in front of the Agoura Hills City Hall/Library entrance. Daniel Stern creates his artwork with the idea that children could, and would be, able to climb on it. Therefore, the front entrance would be a perfect fit for this type of public art. The total cost of the project is \$14,500, which includes purchase price and installation costs.

The City Council unanimously approved the both sculpture and expenditure back in October 2014.

RECOMMENDATION

Staff respectfully recommends the City Council approve the agreement with Daniel Stern for the purchase of the piece of art entitled, "Angle of Repose."

**AGREEMENT BETWEEN THE CITY OF AGOURA HILLS AND
DANIEL STERN FOR THE PURCHASE OF PUBLIC
ARTWORK**

THIS AGREEMENT (Agreement) is entered into this 25th day of February, 2015, by and between the City of Agoura Hills (City) and DANIEL STERN, whose address is 10350 Santa Monica Boulevard, Suite #130, Los Angeles, California, 90025.

RECITALS

- A. On February 11, 1998, the Agoura Hills City Council adopted a resolution establishing procedures and guidelines for an Art in Public Places program.
- B. The City Council recognized that aesthetic enhancement and enrichment of the community would come by including fine art throughout the city.
- C. The goal of the Art in Public Places program is to provide a collection of nationally recognized permanent artwork that includes a wide range of quality artwork styles, themes, and media.
- D. Currently, there are eighteen pieces in the City's Art in Public Places collection, which includes a variety of pieces from sculptures to paintings to murals.
- E. The City desires to purchase the work of art consisting of a five-foot-long bronze sculpture entitled "Angle of Repose" ("Artwork") from the Artist for the City's Art in Public Places Program.

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

ARTICLE 1: SCOPE OF SERVICES

1-1. GENERAL

(a) The Artist shall provide the City with a copy of construction plans to include dimensions, weight, a description of the materials used, and how it is assembled to include the interior structural column.

(b) The Artist shall provide the City with the name and address of the foundry used for the bronze casting.

(c) If photographs exist of the construction process and components of the Artwork a digital copy of said photographs shall be provided to the City.

(d) The Artist shall provide the City with written instructions for appropriate maintenance and conservation of Artwork and shall provide the City with any manufacturers' specifications and warranty information for materials used in the Artwork.

(e) The Artist shall submit an invoice to the City, in the fixed fee amount agreed upon in this Agreement, when all services required have been completed in substantial conformity with this Agreement.

1-2. RISK OF LOSS

Artist bears the sole risk of damage to or loss of all Artwork to be produced by Artist pursuant to this Agreement until such Artwork is delivered to City and City accepts such Artwork as satisfactorily completed.

ARTICLE 2: COMPENSATION AND PAYMENT

2-1. FIXED FEE

The City shall pay the Artist the fixed sum of fourteen thousand dollars and zero cents (\$14,000.) (Fixed Fee), which shall constitute full compensation for all services and materials to be performed and furnished by the Artist under this Agreement. The Fixed Fee shall be paid in one installment.

ARTICLE 3: WARRANTIES

3-1. WARRANTIES OF TITLE

The Artist represents and warrants that:

- (a) The Artwork is solely the result of artistic effort by the Artist.
- (b) The Artwork is unique and original and does not infringe upon any copyright.
- (c) The Artwork, or a duplicate thereof, has not been accepted for sale elsewhere, except as disclosed and authorized in accordance with Section 5-1 below.
- (d) Artwork is free and clear of any liens from any source whatsoever.

3-2. WARRANTIES OF QUALITY AND CONDITION

The Artist represents and warrants that:

- (a) The execution of the Artwork has been performed in a workmanlike manner.
- (b) The Artwork, as fabricated and installed, will be free of defects in material and workmanship, including any defects or known qualities which cause or accelerate deterioration of Artwork;
- (c) Reasonable maintenance of Artwork will not require procedures substantially in excess of those described in the maintenance recommendations by the Artist to the City. With reasonable promptness, the City shall give notice to the Artist of any observed breach.
- (d) The warranties described in this paragraph shall survive for a period of no less than one (1) year after the date of this agreement.
- (e) 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 warranty which is curable by the Artist and which cure is consistent with professional standards, including, for example, cure by means of repair or re-fabrication of the Artwork.

ARTICLE 4: TITLE, COPYRIGHTS, AND ASSIGNMENT OF ROYALTY RIGHTS

(a) Title to Artwork shall pass to the City upon final acceptance and final payment to the Artist under this Agreement. The Artist hereby assigns the right to collect any

royalty payments including, without limitations, those provided by Civil Code Section 986 to the City and to the City's assigns.

(b) All studies, drawings, designs, and models prepared and submitted under this Agreement shall become the property of the City. The City retains the title and the Artist retains all copyrights to Artwork as installed at the Site.

ARTICLE 5: ARTIST'S RIGHTS

5-1. GENERAL

The Artist retains all rights under the Copyright Act of 1976 (17 USC 101 et.seq.) except ownership and possession of the Artwork as installed at the Site. The Artwork is one of a limited edition of eight (8) plus two (2) artist's proofs. The Artist shall not make any exact duplicates or reproduction of the completed Artwork in excess of the eight plus two artist's proofs, nor permit others to do so, without the express prior written permission of the City. The Artist grants to the City and its assigns a nonexclusive, royalty-free license to reproduce images of the Artwork without payment of a royalty to the Artist. For the purposes of this Agreement, the following are permissible image reproductions including but not limited to: any written or printed information pertaining to the City; reproduction in exhibition catalogues, books, slides, photographs, postcards, posters, and calendars; in art magazines, art books and art and news sections of newspapers; in general books and magazines not primarily devoted to art; slides and film strips; video; computer web sites and television.

5-2. CREDIT TO THE ARTIST

All images of Artwork by the City shall contain a credit to the Artist and the following copyright notice "©Angle of Repose."

5-3. CREDIT TO THE CITY

The Artist shall use his or her best efforts to give a credit in any public showing under the Artist's control of illustrations of the Artwork installed at 30001 Ladyface Court, Agoura Hills, California, 91301: "An original Artwork owned by the City of Agoura Hills."

5-4. COPYRIGHT REGISTRATION

Any registration of a copyright under the Copyright Act of 1976 shall be the sole responsibility of the Artist, and the costs of such registration shall be borne by the Artist. The City has no obligation to sue or defend on behalf of the Artist to protect Artist's claims.

ARTICLE 6: SITING

The Artwork will be displayed in an exterior public area at the Agoura Hills City Center, or such other appropriate location designated by the City. The City retains the right to move the Artwork from one site to another throughout the serviceable life of the Artwork.

ARTICLE 7: REMOVAL, REPAIR, OR ALTERATION

7-1. The City may temporarily or permanently remove the Artwork from public display at any time.

7-2. The City may conduct work to conserve, repair, or restore the Artwork at any time where the City deems such work is prudent or necessary, provided that the City does not intentionally or through gross negligence physically deface, mutilate, alter or destroy the Artwork.

7-3. The City shall not intentionally alter, modify or change the Artwork without obtaining written permission from the Artist, except as provided for in Section 7-4.

7-4. If the Artist does not provide written permission within sixty (60) calendar days of permission being requested, the City shall have the right to alter, modify or change the Artwork pursuant to Section 7-3, providing the following terms and conditions are met:

(a) The Artist shall have the first right of refusal to purchase all or part of the Artwork at the fair market value as determined by a qualified professional appraiser selected by the City and the Artist for which the City and the Artist will share the cost; or

(b) The Artist shall have the right to have his or her name removed from the Artwork as an alternative remedy.

ARTICLE 8: ARTIST AS INDEPENDENT CONTRACTOR

The Artist shall perform all work under this Agreement as an independent contractor and not as an agent or employee of the City. The Artist shall not be supervised by any employee or official of the City nor shall the Artist exercise supervision over any employee or official of the City.

ARTICLE 9: INDEMNIFICATION

9-1. To the full extent permitted by law, Artist shall indemnify, hold harmless and defend City, its elected officials, officers, agents, employees, attorneys, servants, volunteers, successors and assigns from and against any and all claims, demands, causes of action, liability, losses, costs or expenses for any damage due to death or injury to any person and injury to any property resulting from any alleged intentional, reckless, negligent or otherwise wrongful acts, errors or omissions of Artist or any of his volunteers or any other person or entity involved by, for, with or on behalf of Artist in the performance of this Agreement. Such costs and expenses shall include reasonable attorneys' fees incurred by counsel of City's choice. The parties understand and agree that the duty of Artist to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

9-2. Artist, on behalf of himself and his heirs, executors, administrators and assigns, hereby releases, discharges and agrees not to sue the City of Agoura Hills, its agents, officers, servants and employees, for any injury, death or damage to or loss of personal property arising out of, or in connection with Artist's performance of services pursuant to this Agreement, from whatever cause, including the active or passive negligence of the City of Agoura Hills.

- 9-3. Artist's obligations under this or any other provision of this Agreement will not be limited by the provisions of any workers compensation act or similar act. Artist expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.
- 9-4. City does not, and shall not waive any rights that it may possess against Artist because of the acceptance by City, or the deposit with City, of any insurance policy or certificate. This hold harmless and indemnification provision shall apply regardless of whether or not any insurance policies are determined to be applicable to the claim, demand, damage, liability, loss, cost or expense. Artist agrees that Artist's covenant under this Section shall survive the termination of this Agreement.
- 9-5. Artist agrees to pay all required taxes on amounts paid to Artist under this Agreement, and to indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Artist shall fully comply with the workers' compensation laws applicable to Artist and/or Artist's volunteers. Artist further agrees to indemnify and hold City harmless from any failure of Artist to comply with applicable workers' compensation laws. City shall have the right to offset against the amount of any fees due to Artist under this Agreement any amount due to City from Artist as a result of Artist's failure to promptly pay to City any reimbursement or indemnification arising under this Section.

ARTICLE 10: COMPLIANCE

The Artist shall be required to comply with all federal and state laws and the City statutes, ordinances and regulations applicable to the performance of the Artist's services under this Agreement including, but not limited to any applicable Public Contract Code and/or Labor Code requirements.

ARTICLE 11: ENTIRE AGREEMENT

This writing embodies the entire Agreement and understanding between the parties hereto, and there are no other Agreements or understandings, oral or written, with reference to the subject matter hereof that are not merged herein and superseded hereby.

ARTICLE 12: MODIFICATION

No alteration, change, amendment or modification of the terms of this Agreement shall be valid, unless made in writing and signed by both parties hereto and approved by appropriate action of the City.

ARTICLE 13: APPLICABLE LAW

This Agreement, regardless of where executed or performed, shall be governed by and construed in accordance with the laws of the State of California.

ARTICLE 14: ASSIGNMENT

This Agreement is an agreement between the parties. The Artist shall not assign, encumber, or transfer voluntarily or involuntarily any of its rights, duties, or obligations under this Agreement without the express written consent of the City in each instance. Any such assignment, transfer, or encumbrance given without written consent of the City shall render this Agreement void.

ARTICLE 15: HEIRS AND ASSIGNS

This Agreement shall be binding upon and shall inure to the benefit of the City and of the Artist and of their respective heirs, personal representatives, successors and permitted assigns.

ARTICLE 16: NOTICES

All notices, requests, demands and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon delivery and receipt thereof, as the cause may be, if delivered personally or sent by certified mail, return receipt request, postage-prepaid as follows:

THE CITY: City of Agoura Hills
City Clerk
30001 Ladyface Court
Agoura Hills, California 91301

ARTIST: Daniel Stern
10350 Santa Monica Boulevard, Suite #130
Los Angeles, CA, 91301

ARTICLE 17: ATTORNEY'S FEES

Should any action or proceeding be brought to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs.

ARTICLE 18: SURVIVING ARTICLES

Articles 3, 4, 5, 6, 7, 9, 14, and 15 shall survive the date whereby all services required under this Agreement have been performed. Obligations contained in other articles shall thereafter terminate.

ARTICLE 19: SEVERABILITY

Wherever possible, each provision of this Agreement shall be interpreted in such a manner as to be valid under applicable law. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect.

SECTION 20. GOVERNING LAW; JURISDICTION

City and Artist understand and agree that the laws of the State of California shall govern the rights, obligations, duties and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Any litigation concerning this Agreement shall take place in the municipal, superior, or federal district court with geographic jurisdiction over the City of Agoura Hills. In the event such litigation is filed by one party against the other to enforce its rights under this Agreement, the prevailing party, as determined by the Court's judgment, shall be entitled to reasonable attorney fees and litigation expenses for the relief granted.

ARTICLE 21: CITY MANAGER'S SIGNATURE

It is an express condition of this Agreement that said Agreement shall not be complete or effective until signed by either the City Manager or authorized designee on behalf of the City and by the other party.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective authorized officers or representatives as of the day and year set forth below.

DATED: _____, 2015

CITY OF AGOURA HILLS

Illece Buckley Weber,
Mayor

ATTEST:

Kimberly M. Rodrigues, MMC
City Clerk

Date Approved by City Council

APPROVED AS TO FORM:

Candice K. Lee,
City Attorney

ARTIST

Lost Men Productions California, Inc.
10350 Santa Monica Boulevard
Suite #130
Los Angeles, CA 90025
Attn: Laure Stern
Phone number: 310-623-1775
Fax number:

By: _____
Name:
Title:

By: _____
Name:
Title:

[Signatures of Two Corporate Officers Required]

Exhibit A

Photograph of Artwork titled "Angle of Repose" by Daniel Stern to be installed at the Agoura Hills Civic Center City Hall/Library entrance located at 29901/30001 Ladyface Court, Agoura Hills, CA 91301.

