

1 August 3, 1995
2 1% For Art : cb

INTRODUCED BY: PETE VON REICHBAUER
PROPOSED NO.: 95-539

MOTION NO. **9658**

3 A MOTION approving an Agreement between the
4 City of Federal Way and King County for the
5 Purchase and Stewardship of Public Artwork for
6 Steel Lake Park.

7 WHEREAS, the King County arts commission has recommended a \$19,000
8 appropriation for public artwork to benefit the Federal Way community and the county
9 council has appropriated the funds for the 1993 budget year as per Ordinance 10641, and

10 WHEREAS, the city of Federal Way has agreed to contribute \$20,000 towards the
11 acquisition of the Artwork and the city council has appropriated the funds as part of the
12 city's 1993 budget, and

13 WHEREAS, the city and the county have agreed through a Memorandum of
14 Understanding to select an artist(s) and establish a partnership to develop site specific public
15 artwork, and

16 WHEREAS, it is in the public interest that the jurisdictions cooperate to ensure the
17 continuing protection and stewardship of the Artwork, and

18 WHEREAS, pursuant to R.C.W. 39.34, the Interlocal Cooperation Act, the parties
19 are each authorized to enter into an agreement for cooperative action;

20 NOW, THEREFORE BE IT MOVED by the Council of King County:

21 The attached Agreement Between the city of Federal Way and King County for the
22 Purchase and Stewardship of Public Artwork for Steel Lake is approved.

23 PASSED by a vote of 13 to 0 this 18th day of September 1995.

24 KING COUNTY COUNCIL
25 KING COUNTY, WASHINGTON

26 Kent Pullen
27 Chair

28 ATTEST:

29 Janet Masno
30 Deputy Clerk of the Council

31 Attachment:

32 A. Interlocal Agreement Between City of Federal Way and King County for the
33 Purchase and Stewardship of Public Artwork for Steel Lake Park

AGREEMENT BETWEEN THE CITY OF FEDERAL WAY AND KING COUNTY
FOR THE PURCHASE AND STEWARDSHIP OF
PUBLIC ARTWORK FOR STEEL LAKE PARK

THIS IS AN AGREEMENT between King County, a home rule charter county and a political subdivision of the State of Washington, hereinafter referred to as the "County", and The City of Federal Way, a municipal corporation of the State of Washington, hereinafter referred to as the "City" (collectively the "Parties").

WHEREAS the King County Arts Commission has recommended a \$19,000 appropriation for public Artwork to benefit the Federal Way community and the County Council has appropriated the funds for the 1993 budget year as per Ordinance 10641; and

WHEREAS the City has agreed to contribute \$20,000 towards the acquisition of the Artwork and the City Council has appropriated the funds as part of the City's 1993 budget; and

WHEREAS the City and the County have agreed through a Memorandum of Understanding to select an artist(s) and establish a partnership to develop site specific public artwork; and

WHEREAS it is in the public interest that the jurisdictions cooperate to ensure the continuing protection and stewardship of the Artwork; and

WHEREAS pursuant to R.C.W. 39.34, the Interlocal Cooperation Act, the Parties are each authorized to enter into an agreement for cooperative action;

NOW THEREFORE, the County and City hereby agree:

1. Party Responsibilities.

In regard to selection, proposal development and acquisition of the Artwork, the responsibilities of each Party as mutually agreed to and documented in the Memorandum of Understanding shall apply.

2. Description of Artwork.

- 2.1 The Artwork, which has been approved and accepted by the City through the Federal Way Arts Commission and the County through the King County Arts Commission, shall be located at Steel Lake Park, 2410 S. 312 Street, Federal Way, Washington. The artists are Gail Simpson and Aristotle Georgiades, hereinafter referred to as the "Artists."

- 2.2 The Artwork shall consist of three basic elements: approximately fifty (50) linear feet of artist designed and fabricated functional guardrail; a series of five (5) trellis panels with built-in seating; and a gazebo. A copy of the accepted proposal is attached as Exhibit A.
- 2.3 For the purposes of determining the percentage interest each of the Parties shall retain in the Artwork, the County's interest shall be forty-nine percent (49%) and the City's interest shall be fifty-one percent (51%).

3. Maintenance and Stewardship of the Artwork.

- 3.1 The City shall maintain the park in which the Artwork is sited. Maintenance should include, but is not limited to, upkeep of grounds including landscaping, sidewalks, and site amenities such as benches and lighting.
- 3.2 The City shall assume all maintenance responsibilities for the Artwork after installation. The cost of maintenance and repairs shall be the sole responsibility of the City.
- 3.3 The City shall ensure that the Artwork is properly maintained, protected and preserved. The City and the County acknowledge that Artwork which is located in an open, public area is subject to normal wear and tear and weathering.
- 3.4 The County shall conduct a visual survey of the Artwork on an annual basis, using the services of professional art installers, administrators and/or conservators. The cost of the survey shall be the sole responsibility of the County. The County shall notify the City of any maintenance and/or repairs recommended by the survey consultant.
- 3.5 The City shall have the authority to accomplish routine maintenance and repairs which do not materially alter the Artwork without authorization from the County and/or the Artists. For the purposes of this Agreement, routine maintenance to the Artwork and surrounding area shall include, but not be limited to, the following: mowing; weed control; litter removal; power washing of paved surfaces; hand washing of Artwork surfaces; minor repair of bolts and welds to Artwork surfaces and repainting repaired areas to match existing paint; repainting of Artwork surfaces marred by graffiti and vandalism to match existing paint; replacement of wood at bench portions of Artwork due to vandalism or damage (replacement of wood will be in kind and painted to match original artist-specified color); replacement of any non-custom post, rail, chain link or fasteners due to failure of materials and wear and tear with like materials, dimensions, gauges and finishes.
- 3.6 The City will not alter, modify, change or remove the Artwork, or affect repairs which will materially alter the Artwork, without written authorization from the Artists and the County regarding the proposed alteration, modification or change. Such authorization shall not be unreasonably withheld. In the event repairs or modifications are accomplished which materially alter the Artwork, the City and the County agree to no longer represent the work as that of the Artists, upon receipt of a written request to that effect from the Artists.
- 3.7 If the City materially alters or destroys the Artwork without written notification and response from the County, then the City will pay for all necessary repairs

or reimburse the County the cost of the Artwork or the County's percentage share of value of the Artwork, as described in Section 2.3, whichever is greater. In the event that the Artwork is damaged by the City beyond repair, then the City shall also pay for any and all costs associated with the removal of the Artwork. This stipulation does not apply to vandalism or destructive actions not conducted by the City.

- 3.8 The City shall notify the County of any damage to the Artwork as soon as possible.
- 3.9 The County shall agree to keep a current record of the disposition and condition of the Artwork and make that information available to the Artist upon request.

4. Removal and Disposition of the Artwork.

- 4.1 At the request of the City, the Artwork may be removed from the site upon written authorization from the Artists and the County in the event that the artwork has been damaged beyond repair, or damaged to the extent that the expense of repair and restoration is found to be unreasonable, or to the extent that it is no longer representative of the Artists' intent.
- 4.2 The Artwork may be removed upon written authorization from the County if the Artwork represents a threat to public safety.
- 4.3 In the event that the Artwork must be removed from the site, and sold, the Artists shall be given the right of first refusal to purchase the Artwork.
- 4.4 In the event that the City and the County mutually agree to remove the Artwork from the site and sell the Artwork at any time in the future, during the lifetime of the Artists, the City and the County agree to pay the Artists a sum equal to fifteen percent (15%) of the appreciated value of the Artwork. For the purposes of this Agreement, appreciated value shall mean the sales price of the work, less the original amount paid to the Artists, less the cost of removal of the Artwork. The remaining balance shall be divided in accordance with the % of ownership of the City and the County respectively as per Section 2.3. Except as provided for in Section 3.6 of this Agreement, the costs associated with the removal of the artwork shall be divided evenly between the City and the County.

5. Duration.

This Agreement shall be effective upon signature and authorization by both Parties. The term of the Agreement shall be for ten (10) years or until both Parties mutually consent in writing to its termination.

6. Indemnification and Mutual Hold Harmless.

- 6.1 The County shall indemnify and hold harmless the City and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, which are caused by or result from a negligent action or omission of the County, its officers, agents and employees in performing obligations pursuant to this Agreement.

In the event that any suit based upon such a claim, action, loss or damage is brought against the City or the City and the County, the County shall defend the same at its sole cost and expense and, if final judgement be rendered against the City and its elected officials, officers, agents and employees or jointly against the City and County and their respective elected officials, officers, agents and employees, the County shall satisfy the same.

- 6.2 The City shall indemnify and hold harmless the County and its elected officials, officers, agents or employees, or any of them, from and against any and all claims, actions, suits, liability, loss, costs, expenses and damages of any nature whatsoever, which are caused by or result from a negligent action or omission of the City, its officers, agents and employees in performing obligations pursuant to this Agreement.

In the event that any suit based upon such a claim, action, loss or damage is brought against the County or the County and the City, the City shall defend the same at its sole cost and expense and, if final judgement be rendered against the County and its elected officials, officers, agents and employees or jointly against the County and City and their respective elected officials, officers, agents and employees, the City shall satisfy the same.

- 6.3 Each Party to this Agreement shall immediately notify the other of any and all claims, actions, losses or damages that arise or are brought against that Party relating to or pertaining to the Artwork or site identified in Exhibit A.
- 6.4 The County's and the City's indemnification in this section shall survive this Agreement.

7. Audits and Inspections.

In addition to the requirements set forth, the records related to matters covered by this Agreement are subject to inspection, review or audit by the County or the City at the requesting Party's sole expense during the term of this agreement and three (3) years after termination. Such records shall be made available for inspection during regular business hours within a reasonable time of the request.

8. Waiver and Amendments.

- 8.1 Waiver of any breach of any term or condition of this Agreement shall not be deemed a waiver of any prior or subsequent breach. No term or condition shall be waived, modified or deleted except by an instrument, in writing, signed in advance by the Parties hereto.
- 8.2 Amendments to this Agreement may be made from time to time as mutually agreed by both Parties in writing. The Agreement may not be altered, amended, or modified except by an instrument in writing signed by both Parties hereto with the same formality as this Agreement.

9. Administration.

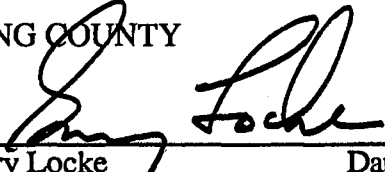
- 9.1 This Agreement shall be administered by the City through the City Manager or his designee.

- 9.2 Any notices and/or actions required as a result of this contract shall be directed to the County through the Manager of the Cultural Resources Division or his designee. Each Party shall inform the other in writing of its respective contract administrator. The administrators of the Agreement shall meet as needed.
- 9.3 Any conflict that is not resolved by the contract administrators shall be referred to the City of Federal Way City Manager and the County Director of Parks, Cultural and Natural Resources Department, who shall resolve the conflict.

10. Entire Agreement.

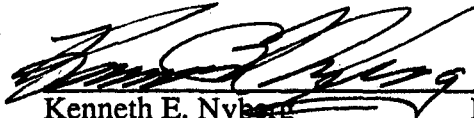
This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes all previous agreements, written or oral, except as incorporated herein, between the Parties with respect to the subject matter hereof. Time is of the essence of this Agreement.

KING COUNTY


 Gary Locke
 County Executive

Date 9/27/95

THE CITY OF FEDERAL WAY

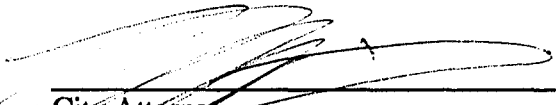

 Kenneth E. Nyberg
 City Manager, City of Federal Way

Date 9/21/95

Approved as to form:


 Deputy Prosecuting Attorney

Approved as to form:


 City Attorney

Attachment

Exhibit A Approved Artwork Proposal

EXHIBIT "A"SCOPE OF WORK

The Artists shall create and install three sculptural constructions for Steel Lake Park (the "Artwork"), to be integrated into the planned and existing features of the renovation. These are to be placed at both ends and the central area of the park, and two will be linked to the architectural structures. A gazebo, a series of trellises, and a fence for the parking lot patio will have certain designed elements in commons, and will work with the landscaping so that there is a feeling of harmony with the surroundings and sensitivity to the look, history and use of the park. The Artists shall work with the architects' team to successfully integrate ideas within the site plan.

***Trellises:** A set of four trellises, each one 4' wide by 8' high are to be located to the side of the beach house patio near the lifeguard area. These will be staggered in a cluster that will include a small arbor, and permit passage around and through the structure. (Another set of three further back may be included if it will not impede traffic flow). The trellises will have a standard latticework bottom half, and a top half that has an image "drawn" in steel. The images shall be of boats, fish, dancers and dogs. The trellises, like the fence and gazebo, shall be constructed of heavy gauge steel which will be powdercoated a satin black color, and set into the ground in concrete footings. The small bench seats will be painted wood.

***Gazebo:** Will be located in the area at the far end of the park where the weeping willow trees grow. The gazebo shall be in the shape of a boat, with two benches inside. It will be open on one side and will be roofed in galvanized steel. It will be ornamented along the top with cast aluminum fish sculptures, painted a light blue. This structure will be anchored on a round concrete pad. The construction will also be heavy gauge steel with latticework base and powdercoated black.

Guardrail: around the parking lot patio will be a fairly simple design pattern alternating in panels with "drawn" sections that resemble the ones in the trellises. This fence will be built in sections that bolt together and are anchored in the concrete of the plaza. The fence shall have bars spaced at 3 1/2" and the drawn sections will have no negative spaces in which a child (or adult) could get a body part caught. The railing shall be powdercoated black.

Except as provided for in Paragraph 13.2 of the Agreement, the Artists shall not subcontract any portion of the Artwork without the knowledge and consent of the City.

In completing this Scope of Work, the Artists responsibilities shall include:

a. The Artists agree to comply with all applicable City, state and federal laws, regulations and ordinances regarding performance of the Scope of Work.

b. The Artists shall notify the City of changes in their addresses.

c. The Artists shall give credit in the following form for any public showings of reproductions of the Artwork: "From the collection of the King County Arts Commission, King County, Washington and Federal Way Arts Commission, Federal Way, Washington.

d. The Artists shall provide all labor and materials necessary to produce and complete a finished work of art; delivery of Artwork; and installation of the Artwork.

e. The Artists shall be responsible for completion of fabrication, delivery and installation of the Artwork in accordance with the agreed upon schedule. The Artists will seek out regular updates from the City in scheduling information and deadlines relevant to their art project.

f. The Artists shall coordinate the schedule for implementation and completion of all studio fabrication with the City Department of Parks and Recreation.

g. The Artists shall coordinate all activities necessary for implementation of on site fabrication, delivery and installation with the City Department of Parks and Recreation. On site activities must be coordinated in accordance with the construction schedule. The Artists must comply with all provisions provided by the City Department of Parks and Recreation for working within the project area.

h. The City Department of Parks and Recreation will provide necessary site support and preparation in accordance with the requirements of the Artwork as identified in the Scope of Work.