



## City Council Meeting - Final

August 21, 2023  
7:00 PM

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- G. **2023-172** Approval to award RFQ 23-028 Call to Artists: Painted Utility Boxes to Elaine Stephenson and Shea O'Connor and to authorize the Mayor to sign and execute all documents.



# City of Smyrna

## Issue Sheet

A Max Bacon  
City Hall  
2800 King Street  
Smyrna, GA 30080

File Number: 2023-172

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**Agenda Date:** 8/21/2023

**In Control:** City Council

**File Type:** General ID

**Agenda Section:**  
Formal Business

**Agenda Number:** G.

**Department:** Administration

**Agenda Title:**

Approval to award RFQ 23-028 Call to Artists: Painted Utility Boxes to Elaine Stephenson and Shea O'Connor and to authorize the Mayor to sign and execute all documents.

***Ward 6 Mayor Pro Tem / Councilmember - Tim Gould***

**ISSUE AND BACKGROUND:**

The Smyrna ARTery concept goal is to introduce public art opportunities along Atlanta Road from Brawner Hall to the Belmont Shopping Center. The first projects to be implemented are utility box murals, both painted and vinyl wrapped. The Painted Utility Box project includes utility boxes located at two intersections along Atlanta Road: Fleming Street and Collier Drive.

The city received 21 submissions for RFQ 23-028 Call to Artists: Painted Utility Boxes. Members of the Arts & Culture Task Force scored the submissions and recommended two artists, one for each available utility box in this project. The task force recommends awarding the project to artists Elaine Stephenson and Shea O'Connor. Artists will each receive a \$3000 stipend for execution of their work.

**RECOMMENDATION / REQUESTED ACTION:**

Staff recommends approval to award RFQ 23-028 Call to Artists: Painted Utility Boxes to Elaine Stephenson and Shea O'Connor and to authorize the Mayor to sign and execute all documents.

## **AGREEMENT FOR THE INSTALLATION OF PUBLIC ART**

This agreement for the installation of public art is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_ (the "Effective Date") by and between The City of Smyrna ("City") \_\_\_\_\_ (the "Artist") to paint artwork placed on City-controlled Utility Box to be assigned by the City (the "Work").

### **WITNESSETH:**

WHEREAS, the City recognizes that public art provides opportunities for citizens of Smyrna to enjoy quality art and helps make Smyrna a better place to live; and

WHEREAS, the City intends to place mural work on a utility box located and approved as a Smyrna owned Utility Box; and

WHEREAS, the City has determined that it would like to place the Artist's Work on a location to be determined by the City (the "Site"); and

WHEREAS, the City has conducted a selection process and, as a result, has chosen the Work created by the Artist, to be installed at the Site.

NOW THEREFORE, the City and Artist, for and in consideration of the promises and the covenants, representations, warranties, and agreements hereinafter set forth, hereby agree as follows:

### **AGREEMENT**

1. **Definitions.** As used herein, the terms listed below shall have the following meanings:

"AFFILIATE" shall mean, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with the City. An Affiliate of the City shall include the City of Smyrna.

"AGREEMENT" shall mean this Agreement for the Installation of Public Art.

"ARTIST" shall mean \_\_\_\_\_ and his or her heirs, agents, estate, and personal representatives.

"ARTWORK" shall mean the mural work created on a utility box in accordance with the Agreement for the Installation of Public Art made and entered into on the date above by and between the Artist and the City and shall also be referenced herein as the "WORK."

"PARTY" or "PARTIES" shall mean each or all, as appropriate, of the persons who have executed and delivered this Agreement, each permitted successor or assign of such a party, and when appropriate to affect the binding nature of this Agreement for the benefit of another party, any other successor or assign of such a party;

“PERSON” shall mean any person or entity, whether an individual, trustee, corporation, general partnership, limited partnership, trust, unincorporated organization, business association, firm, joint venture, governmental agency, or authority.

2. Scope of Services. Artist is solely responsible for the installation and removal of the Work as applicable. The functions and services to be provided under this Agreement (the “Services”) are more specifically outlined in **Exhibit “A,”** attached hereto and incorporated herein by this reference. The City and Artist acknowledge and agree that the City has engaged Artist as an independent contractor, not as an agent or employee of the City. Artist is not an officer or agent of the City and has no authority to bind the City to any contractual or other obligations. Artist shall be responsible for proper administration and payment of all taxes attributable to the Services rendered and the income received under this Agreement. Artist shall hold the City harmless from and against all such taxes and costs.

3. Compensation. The City shall pay Artist a fixed fee of Two Thousand Dollars and 00/100 (\$3,000.00) as full compensation for all the materials furnished and services performed pursuant to this Agreement by the Artist, including its employees, subcontractors, and anyone working at its direction. This fee shall represent total compensation inclusive of the licensing rights granted herein, regardless of any circumstances, whether or not those circumstances were foreseeable at the time of the execution of this Agreement. The fee shall be paid in the installments set forth below. Each installment shall represent full and final, non-refundable payment for all services and materials provided prior to the due date. The first installment of 50% or \$1000.00 shall be due upon execution of this Agreement, to cover design and sketching as outlined in **Exhibit “A”**. The final disbursement of 50% or \$1000.00 is to be due following satisfactory completion of the utility box and completion of maintenance items indicated in **Exhibit “A”**.

4. Term. The term of this Agreement shall begin on the Effective Date and end on the issuance of the final disbursement (the “Contract Term”) unless sooner terminated by either party as provided herein. During the Contract Term, the Work will be installed at the Site and the Services shall be completed within the schedule for completion, as directed by the City.

The Contract Term may be extended by written consent of the parties. The parties shall agree to a reasonable extension of the Contract Term in the event of unavoidable delays not due to the negligence or willful misconduct of the party seeking the extension. An agreement by the parties to extend the Contract Term in order to complete the Services outlined in this Agreement shall not obligate the City to make additional payments to Artist, unless specifically agreed to in writing by both parties.

5. Termination. The City shall have the right to terminate this Agreement upon fifteen (15) days' written notice, with or without cause.

6. Indemnification. Artist agrees to indemnify and hold harmless the City, its officers, directors, employees, agents, and Affiliates from any and all suits, actions, proceedings, debts, damages, liabilities, injuries, obligations, losses, demands, claims and expenses, whether arising before or after the expiration or termination of this Agreement and in any manner directly or indirectly attributable to Artist or the Work, (“Claims”) against the City, its officers, directors, employees, agents, and Affiliates sustained or alleged to have been sustained in connection with, to have arisen out of or resulting from the performance of Artist’s duties hereunder. This provision shall apply even in the event of fault or negligence, whether active or passive, or strict liability of the City.

Artist hereby acknowledges that the City does not assume liability for the installation of the Artist’s Work, nor for any damage, theft, or loss of the Work arising from its display in this exhibit. Additionally, the City does not assume any liability for any loss or damage to the Work while the same is in transit, being installed, or on display. It is understood that all Work created and displayed is at the Artist’s own risk.

7. Non-Exclusive License.

- a. Commencing on the Effective Date of this Agreement, Artist hereby grants to the City the unencumbered, non-exclusive, and perpetual rights to produce printed and digital materials of the Work for all manners of fundraising purposes and use.
- b. The Artist hereby grants the City the perpetual right, but not the obligation, to assert, and to defend against any actual or threatened infringement of the Artwork, copyrights, and/or trademarks.
- c. The perpetual aspects of this Agreement shall in no way be construed to restrict the entering of the Artwork into the public domain by operation of the Copyright Act of 1976, 17 U.S.C. 101, et seq., or other State or Federal laws, shall not be rendered invalid due to the operation of such laws, and in perpetuity, shall be upheld to the maximum extent possible within the parameters of such laws.
- d. The City agrees to make reasonable efforts to provide proper attribution to the Artist, such as “Original Artwork by \_\_\_\_\_”. the City shall also use reasonable efforts to require that third parties include reasonable and appropriate attribution in reproductions of the Artwork permitted by the City.
- e. The Artist shall be entitled to retain reproductions of the Artwork for purposes of the Artist’s own portfolio and promotional efforts.
- f. The Artist shall notify the City of any changes in his address as the same is listed in Paragraph 15 of this Agreement. The failure to do so, if such failure prevents the City from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce those provisions of this Agreement, including but not limited to those provisions that

require notice to, consultation with, and/or express approval of the Artist. Notwithstanding this provision, the City shall use reasonable efforts to locate the Artist when matters arise relating to the Artist's rights.

- g. This Paragraph 7 shall survive any termination or expiration of this Agreement.

8. Covenants and Representations and Warranties of the Artist. Artist represents and warrants that:

- a. Except as otherwise disclosed in writing to the City, the design and all other documents submitted to the City are unique, original and do not infringe upon any copyright or trademark;
- b. The design and all other documents submitted to the City are free and clear of any liens from any source;
- c. Artist represents and warrants to the City that the Work does not violate any rights, including trademark rights;
- d. Artist hereby agrees to indemnify the City, its Affiliates, agents, assigns, and licensees from all costs, losses, liabilities, and damages (including reasonable attorneys' fees) arising from or related to any misrepresentation or breach of any of the foregoing representations and warranties or any of his agreements or covenants contained in this Agreement; and
- e. These representations and warranties shall survive the termination of this Agreement.

9. Covenants and Representations and Warranties of the City. the City represents to the Artist that it will use its best efforts to maintain the integrity of the Artwork in any reproductions. This representation shall survive the termination of this Agreement.

10. Communications. The Artist shall not communicate any information related to this engagement or the work in connection herewith to any public officials, governmental bodies, press, media, or any other public or private news medium, without the written consent of the City. It is intended that the Services performed hereunder are confidential in nature and shall not be publicly disseminated unless approved by the City. If approved, the City will coordinate with the Artist in the public dissemination of information about title work related to this engagement, and unless and until the City approves in writing, the Artist shall not communicate any information related to the Work to government officials, the press, publications, and other media, or press releases.

11. Assignment, Transfer, and Subcontracting.

- a. *Transfer.* Neither party hereto shall assign its rights, duties, or obligations under this Agreement without the prior written consent of the other party. Once written consent is obtained, then this Agreement shall be assignable and shall inure to the benefit of, be enforceable by, and bind the parties

hereto, or their respective successors, assigns, and personal representatives. Notwithstanding the foregoing, the City shall have the right to assign this Agreement to the City of Smyrna at its sole discretion and without the consent of the Artist, to any entity formed or designated by the City as its agent for purposes of implementing all or a portion of the City's responsibilities. In such instances, the City shall promptly advise the Artist of any such assignment and provide the Artist with the name of any replacement contact person.

- b. *Subcontracting.* Artist may subcontract portions of the services to be provided under this Agreement provided that the subcontracting shall not affect the visual quality of the Work, shall be carried out under the personal supervision of Artist, and Artist provides written notice to the City of the subcontracting and the City approves of said subcontracting.

12. Notices. All notices, demands, or requests provided for or permitted to be given pursuant to this Agreement must be in writing. All notices, certificates, or other communications hereunder shall be addressed as follows:

If to the City:           City of Smyrna  
                                  2800 King Street SE  
                                  Smyrna, GA 30080  
                                  Telephone: (770) 434-6600  
                                  Attention: Ashley Youmans  
                                  Email: [ayoumans@smyrnaga.gov](mailto:ayoumans@smyrnaga.gov)

If to Artist:             \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_  
                                  \_\_\_\_\_

The City or Artist may, by notice given hereunder, designate further or different addresses to which the other party shall send subsequent notices, certificates, or other communications.

IN WITNESS WHEREOF, the City, by and through its duly authorized officers,  
and Artist have executed this Agreement as of the date first written above.

FOR THE ARTIST:

FOR CITY OF SMYRNA:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Type or Print Name and Title

**Derek Norton, Mayor**  
\_\_\_\_\_  
Type or Print Name and Title

Signature Date: \_\_\_\_\_

Signature Date: \_\_\_\_\_



## **“EXHIBIT A”**

### **Scope of Services**

**Utility Box Location:** The City will assign location and theme via address and map link as approved and designated by the City of Smyrna.

**Description:** Client wishes to enhance their space with the original artwork in the form of a mural by Artist \_\_\_\_\_

#### **Price Breakdown:**

**Total Artist Stipend: \$3,000.00**

Deposit (Execution of Contract): \$1500.00

Final Payment (paid once painting work is approved, completed, and maintenance package is approved): \$1500.00

#### **Additional Terms:**

- 1) Artist agrees to provide answers, in writing, to questions raised, as needed, in public meetings. Artist will coordinate with the City to provide these answers.
- 2) Artist agrees to be responsible for maintenance of the mural following completion for a period of 8 months. Conditions for maintenance are as follows:
  - a. The paint is peeling from the surface.
  - b. The paint is bubbling, fish-eye, haziness, or some other chemical reaction.
- 3) Any construction, damage to the utility box painted work from vandalism or other means, DOES NOT constitute maintenance and may necessitate additional costs to be invoiced by Artist.
- 4) A maintenance package will be delivered as part of the completion of the mural. Artist may work with the City for completion of the package. This package is composed of the following:
  - a. A color key of the finished painted utility box which identifies which colors are used and where. These colors will have manufacturer, finish, and color coding.
  - b. Any custom-made colors will have a painted swatch with color information captured on the back of the swatch.
  - c. Any extra paint left from painting the utility boxes may be left with the City's Public Works department.
  - d. MSDS sheets for all paints used in the project.

**Payment Terms:** The first 50% (\$1500.00) will be paid to the artist upon execution of the contract. The remaining balance (\$1500.00) is due after completion of painting utility box and City approval.