



**SCULPTURE LOAN AGREEMENT
(PUBLIC ART)**

This Sculpture Loan Agreement ("**Agreement**") is effective as of the date of the Mayor's signature below and is between the City of Everett, a Washington municipal corporation (*the "City"*), and the person identified as the Lender in the Basic Provisions below ("**Lender**"). This Agreement includes the Basic Provisions and the attached General Provisions.

In consideration of the covenants, terms and conditions set forth below, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and Lender agree as follows:

BASIC PROVISIONS	
Lender	Ken Barnes
	4207 Woodland Park Ave. N Seattle, WA 98103
	barnestrav@yahoo.com
City Project Manager	Tyler Chism
	City of Everett – Community Development 2930 Wetmore Everett, WA 98201
	tchism@everettwa.gov
Artwork Title	King Clam
Term of Agreement	From November 1, 2023 to November 1, 2025
Honorarium	1,000, paid with 30 days after installation of the Work for public display.
Display Location	Evergreen Arboretum

Attribution	Sculpture by: Ken Barnes	
Description of Work	Short Description of Work	A stone sculpture of a clam
	Date of Work	2014
	Medium	Granite
	Dimensions (without base)	28"x51"x49"
	Dimensions (with base)	N/A
	Dimensions of base	N/A
	Approximate weight in pounds	3,300
Condition of Work	Does the Work require Cleaning?	<p>No, the Work will not require cleaning.</p> <p>If the Work requires cleaning, the Lender agrees to clean the work before it is unveiled for the public.</p>
	Is the Work damaged?	<p>No, the Work is not damaged.</p> <p>If the Work is damaged, please describe: Enter description of damage</p>
Special Handling Instructions	N/A	

Insurance	Insurance Value	<p>Estimated current market value in US\$: 10,000</p> <p>Note: if value is estimated at more than \$25,000, then the City Project Manager should contact City Risk Management before proceeding with this Agreement.</p>
	<p>Will Lender insure the Work? The Work will not be insured by Lender for the duration of this Agreement.</p>	
	If Work will be insured by Lender:	<p>Insurance Company Name: <input type="text"/></p> <p>Policy Number: <input type="text"/></p> <p>Will City be Additional Insured? <input type="text"/></p>
	If Work will NOT be insured by Lender:	<p>May City insure? Yes</p>
Installation and Removal	<p>Will Lender install and remove the Work? No, the Lender will not install or remove.</p> <p>What special requirements exist for installation and removal of the Work (e.g., pad, connections, crane)?</p> <p>The art is currently installed</p> <p>The City will not pay Lender for installation and removal of the Work. The City may directly or indirectly pay or arrange for third party services reasonably necessary for installation and removal of the Work, including, but not limited to, a crane.</p>	

END OF BASIC PROVISIONS

IN WITNESS WHEREOF, the City and Lender have executed this Agreement.

**CITY OF EVERETT
WASHINGTON**

LENDER



Cassie Franklin, Mayor

Signature: Ken Barnes

Name of Signer: Ken Barnes

Signer's Email Address: barnestrav@yahoo.com

Title of Signer: Artist

12/04/2023

Date

ATTEST



Office of the City Clerk



STANDARD DOCUMENT
APPROVED AS TO FORM
OFFICE OF THE CITY ATTORNEY
JULY 24, 2023

ATTACHMENT
PROFESSIONAL SERVICES AGREEMENT
(GENERAL PROVISIONS ---SCULPTURE LOAN AGREEMENT)

1. **General.** Lender agrees to loan to the City for public display the three-dimensional tangible work of art described in the Basic Provisions (hereinafter referred to as "Work").
2. **Term.** This term of this Agreement is as stated in the Basic Provisions, if not terminated sooner.
3. **Honorarium.** The City shall pay Lender as set forth in the Basic Provisions.
4. **Display Location.** The City intends to display the Work at the Display Location stated in the Basic Provisions. The City may relocate the Work at the City's cost during the term of the Agreement.
5. **Installation/Removal.** Installation and removal of the Work shall be performed in the manner and at the cost of the Lender, described in the Basic Provisions.
6. **Representations and Warranties.** Lender represents and warrants: (A) that Lender is the sole owner of the Work; (B) that Lender has the legal right to lend the Work to the City as provided by this Agreement; and (C) that the Work is an original Work and does not infringe on another's intellectual property rights, such as copyright.
7. **Reproduction Rights.** Lender authorizes and licenses the City to reproduce and publish the image of the Work in any medium for the purpose of publicizing the Work, the City, City programs, or Lender.
8. **Standard of Care.** Subject Section 15 below, the City shall care for the Work as it would any other City property at a similar location. The City assumes no additional responsibility or liability regarding the Work unless expressly stated in this Agreement.
9. **Termination.** The City may terminate this Agreement at any time with or without cause upon thirty days' prior written notice to the Lender. The Lender may terminate this Agreement with or without cause upon thirty days' prior written notice to the City, so long as the termination does not take effect sooner than six months after the beginning of the term of this Agreement. If a party desires to terminate this Agreement with cause, the terminating party must notify the other party of the reasons for proposed termination and allow the other party a reasonable opportunity to cure.
10. **Change of Ownership or Address.** Lender must notify the City promptly in writing of any change of address or change of ownership (whether by reason of death, sale, insolvency, dissolution of marriage, gift or otherwise) of the Work. If the City is unable to contact the Lender regarding the Work, the Lender may lose his rights in the loaned property. The City may require an owner subsequent in title to the Lender to establish the legal right to receive the Work by proof satisfactory to the City. This Agreement shall be binding upon the heirs, executors, administrators, personal representatives, successors and purchasers.
11. **Attribution.** Credit or attribution of the Work shall be as described in the Basic Provisions.
12. **Emergency Conservation of the Work without Lender's Permission.** The City may apply emergency conservation measures without the Lender's permission if (i) the Lender can no longer be reached at the address set forth above (or such other address as the Lender may have provided to the City in writing) or (ii) immediate action is required to protect the Work or to protect other property in the custody of the City or because the Work has become a hazard to health or safety and the Lender will not agree to the protective measures the City recommends and is unwilling or unable to terminate this Agreement and retrieve the Work. If the City applies the conservation measures as in the preceding sentence, the City shall have a lien on the Work and on the proceeds from any disposition thereof for the costs incurred. The City will use insurance proceeds to the extent available to cover Lender's loss. To the maximum extent allowed by applicable law, the

City shall not be liable for injury to or loss of the Work by such measures. If the City applied conservation measures as provided in this Section, and if the Lender is the author of the Work, the Lender may require the City to remove any attribution of the Work to the Lender, but Lender otherwise agrees that 17 U.S.C. §106A(a)(3) shall not apply.

13. **Indemnification.** If the Lender is not the author of the Work, the Lender shall defend and indemnify the City from any claims, demands, lawsuits or other action by the author of the Work arising out of the author's rights under 17 U.S.C. §101 et seq.

14. **Insurance.**

A. Unless the Lender already has insurance on the Work that will be in effect during this Agreement, the City shall insure the Work for its fair market value at the beginning of this Agreement. Such insurance shall be for "all risks" of physical loss or damage from any external cause while at any location during the period of this loan, subject to the following limitations:

1. If the Work has been industrially fabricated and can be replaced to the Lender's specifications, the amount of such insurance shall be limited to the cost of such replacement;
2. If the Work is fragile or otherwise difficult to insure, the City may insist that the Lender either self-insure or maintain Lender's own insurance on the Work;
3. The City may in its discretion require an appraisal or other reasonable evidence of the estimated fair market value of the Work for insurance purposes;
4. If the Lender does not state a fair market value for the Work or the Lender cannot produce reasonable evidence of the Work's fair market value, the City may either (i) require the Lender to maintain its own insurance on the Work, or (ii) insure the Work in an amount determined by the City (provided that such determination
5. shall not be construed for any purpose to be an appraisal by the City);
6. The City is not required to insure for any risk or loss beyond the coverage provided by its "all risk" policy.

B. Neither the execution of this Agreement nor the provision of insurance coverage at the Lender's stated fair market value shall constitute an endorsement or approval of the Lender's stated fair market value by the City for any purpose whatsoever. The City's policy covering the Work will contain the usual exclusions for loss or damage due to war, invasion, hostilities, rebellion, terrorism, insurrection, confiscation by order of any government or public authority, risks of contraband or illegal transpiration and/or trade, nuclear damage, wear and tear, gradual deterioration, insects, vermin and inherent vice, and for damage sustained due to and resulting from any repairing, restoration or retouching process unless caused by fire and/or explosion. The Lender agrees that, in the event of loss or damage, recovery shall be limited to such amount, if any, as may be paid by the insurer, thereby releasing the City, and the officers, agents and employees of the City from liability for any and all claims arising out of such loss or damage.

C. If the Lender chooses to maintain his own insurance, the Lender must provide to the City: (i) a certificate of insurance evidencing coverage; (ii) an endorsement naming the City as an additional insured; and (iii) waiver any rights of subrogation against the City from any liability in connection with the Work. The City shall not be responsible for any error or deficiency in information furnished to the Lender's insurer or for any lapses in the Lender's insurance coverage.

15. **Limits on Liability.** In no event is City liability to Lender in excess of the fair market value of the Work. The City has no liability to third parties. The City shall not be liable for loss of or damage to the Work due to or resulting from (i) normal wear and tear, (ii) gradual deterioration or vermin,

(iii) inherent vice, pre-existing flaw or condition, (iv) radioactive contamination, wars, terrorism, strikes, riots, or civil commotion, and (v) repair, restoration or retouching processes other than those repair, restoration or retouching processes undertaken as emergency conservation measures. The City shall not be liable for loss of or damage to the Work due to the willful misconduct or negligence of the Lender. This Agreement shall in no way inure directly or indirectly to the benefit of any carrier or other bailee.

16. **Waiver.** Any waiver by the Lender or the City or the breach of any provision of this Agreement by the other party will not operate, or be construed, as a waiver of any subsequent breach by either party or prevent either party from thereafter enforcing any such provisions.
17. **Complete Agreement.** This Agreement contains the complete and integrated understanding and agreement between the parties and supersedes any understanding, agreement or negotiation whether oral or written not set forth herein.
18. **Modification of Agreement.** This Agreement may only be modified by a writing explicitly identified as a modification of this Agreement that is signed by authorized representatives of the City and the Lender.
19. **Severability.** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void, insofar as it is in conflict with said laws, and the remainder of the Agreement shall remain in full force and effect.
20. **Notices.**
 - A. Notices to the City of Everett shall be sent to the City Project Manager address in the Basic Provisions.
 - B. Notices to the Lender shall be sent to Lender's address in the Basic Provisions.
21. **Venue.** Venue for any lawsuit arising out of this Agreement shall be in the Superior Court of Snohomish County, Washington.
22. **Governing Law.** The laws of the State of Washington, without giving effect to principles of conflict of laws, govern all matters arising out of or relating to this Agreement.
23. **City Marks/No Endorsement.** The Lender will not use any trade name, trademark, service mark, or logo of the City (or any name, mark, or logo confusingly similar thereto) in any advertising, promotions, or otherwise, without the City's express prior written consent. The fact that a Work has been loaned to the City shall not indicate any endorsement by the City.
24. **No Personal Liability.** No officer, agent or employee of the City shall be personally responsible for any liability arising under this Agreement, whether expressed or implied, nor for any statement or representation made or in any connection with this Agreement.
25. **Force Majeure.** Each party shall be excused from delays in performing or from its failure to perform hereunder to the extent that such delays or failures result from causes beyond the reasonable control of such party; provided that, in order to be excused from delay or failure to perform, such party must act diligently to remedy the cause or effect of such delay or failure to the extent the party is able. In the event of such delays, the timetables shall be extended by as many calendar days as the delay caused by forces outside the reasonable control of the parties.
26. **Signature/Counterparts.** This Agreement and any amendment thereto may be signed in counterparts, each of which shall be deemed an original, and all of which, taken together, shall be deemed one and the same document. AdobeSign signatures are fully binding. Any ink, electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as an original signature.

**END OF GENERAL PROVISIONS
(SCULPTURE LOAN AGREEMENT)**












Ken Barnes_11302023_SD-compressed

Final Audit Report

2023-12-05

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-  Signer barnestrav@yahoo.com entered name at signing as Ken Barnes
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 Agreement completed.

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