



**AGREEMENT BETWEEN THE CITY OF SMITHVILLE AND ARTIST FOR  
THE RICHARD D. LATHAM CULTURAL DISTRICT  
SCULPTURE ON MAIN PROGRAM**

This agreement is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by and between the City of Smithville, Texas (“City”), a municipality, and \_\_\_\_\_ (“Artist”), related to the City’s Richard D. Latham Cultural District Sculpture on Main Program (“Sculpture on Main”). The City and the Artist may be referred to herein singularly as the Party and together as the Parties.

**WHEREAS**, the City partnered with the Lost Pines Artisans’ Alliance to create the Richard D. Latham Cultural District, designated by the Texas Commission of the Arts on September 5, 2013, which was developed with the goal of promoting public art for the benefit of the Smithville community through the display of unique art throughout the City; and

**WHEREAS**, the Richard D. Latham Cultural District has determined that the Sculpture on Main Program will benefit local, regional, and national artists as a venue for displaying their work and will benefit the Smithville community as a means of viewing unique artwork on a daily basis; and

**WHEREAS**, the Richard D. Latham Cultural District issued a “call to artists” requesting that qualified artists and/or owners of authenticated sculpture art submit bid responses for free standing sculptures, of original design to be installed either on concrete pads or as free standing in designated City pedestrian routes, which is referred to herein as the Sculpture on Main Program; and

**WHEREAS**, the City has determined that, once installed, the sculptures located in the City’s Main Street area will contribute to the vitality and attractiveness of the urban streetscape, promote art and culture, and improve the touristic appeal of the City.

**NOW THEREFORE**, in consideration of the mutual benefits described in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City and the Artist agree as follows:

1. **Scope of Work.** Consisting in general terms, the selected Artist will design and install an original sculpture at a location selected by the City. The artwork shall be of high quality, respond to the urban context in which the sculpture is located, and be appropriate given the placement and the intended audience. The Artist acknowledges and understands that the sculpture must fit on a concrete base measuring 18” wide X 18” deep X 12” tall. The City cannot accept sculptures that need special attention or maintenance, for example: electricity or water. (For more information, see the application form in Exhibit A. The application form includes all rules and guidance, including deadlines, materials, process, and oversight.) **The artist also agrees to pay the City a 10% Commission on the sale of any artwork sold through this program.**
2. **Time of Completion.** The work performed by the Artist pursuant to this Agreement shall commence upon completion of this contract and shall be completely installed by **November 29, 2021**. The City may grant a reasonable extension in the event of delays due to conditions beyond the Artist’s control or Acts of God that render timely performance of the Artist’s services impossible. On completion of all sculpture installations, members of the City Council, Chamber of Commerce, Cultural District, and Lost Pines Artisans’ Alliance, and other community members

will judge the sculptures for First (\$500), Second (\$300), and Third (\$200) Place Awards. The Winners will be announced and publicized by the City, LPAA, Cultural District and other partners.

**3. Termination.** The City may terminate the Artist's contract for any reason or no reason at all, at any time, by written notice to the Artist. The Artist may also terminate the contract for any reason or no reason at all with written notice to the City. Any entry fees or artist stipends will not be refunded.

**4. Materials/Process/Oversight.**

- a. During installation and while removing the artwork, the City will provide pedestrian barriers as needed. The Artist must obtain City approval and coordination prior to blocking or altering pedestrian or vehicular traffic. The location of sculptures shall be determined by the City of Smithville (see Exhibit B).
- b. The Artist will acknowledge receipt and understanding of and responsibility for the requirements as needed contained in Exhibit C.

**5. Ownership of Work.**

- a. The sculpture art is on loan to the City of Smithville for one year commencing upon installation of the sculpture. During this time, the Artist will allow the City the right to photograph, publish and display the sculpture art publicly for non-commercial purposes including media, publicity, exhibition catalogues, maps or City websites.
- b. The City is not responsible for any third-party infringement of intellectual property rights. It is understood that the sculpture art may be photographed by the public and that the City cannot control the public's use of those photographs or depictions.
- c. The Artist acknowledges and agrees that the sculpture art may be removed at any time by the City, without any notification to the Artist prior to or after the removal of the sculpture art.
- d. In the event the City requires reproductions of the sculpture art for commercial purposes, a separate agreement will be executed between the Artist and the City. For purposes of this Agreement, the term "commercial" shall mean a use or purpose that results in direct monetary gain to the City (e.g., the sale of postcards).
- e. The City warrants and agrees that all representations of the sculpture art by the City shall credit the Artist.

**6. Guarantee of Workmanship and Maintenance.**

- a. For a period of one (1) year, the Artist agrees to replace or correct any material defects in the artwork, whether caused by defects in the design, workmanship or materials used in the sculpture. In the event the City asks the Artist to repair damage to the sculpture caused by vandalism, collision or other unforeseeable environmental damage, the Artist shall be reimbursed by the City for the reasonable material and labor costs for repairs.
- b. The City may, at its sole option, perform care, maintenance and repair of the sculpture art that it deems necessary. In conjunction therewith, the Artist shall assist with any advice relating to the care of the sculpture and shall provide the City with several digital images of the completed work in order to facilitate the maintenance/repair of same.

- c. Notwithstanding the above, the City shall have no obligation to repair or maintain the sculpture whether due to wear and tear, gradual deterioration, reaction or contamination, acts of nature or vandalism, or any other cause, and may remove the artwork at any time.

**7. Safety.** The Artist shall use best efforts to safeguard the public from injury or loss in connection to the work. The City will supply safety barricades and assist the Artist with same, as per the procedures noted on Exhibit C.

**8. INDEMNITY, HOLD-HARMLESS AND RELEASE.**

**Except as otherwise specifically noted herein:**

- a. **The Artist shall indemnify and hold harmless the City, and its officers, agents, and employees, from and against all claims, damages, losses, and expenses and legal fees including attorney's fees arising out of or related to the Artist's performance under this Agreement, whether to person or property and whether or not the claim, damage or loss was known, unknown, foreseeable or unforeseeable to the Parties.**
  - b. **The Artist recognizes and understands that there is an inherent danger in working near and around City streets, City equipment, utility structures and pedestrian pathways. The Artist further understands that while remote, there is a possibility during installation an injury or harm to the Artist could occur, the extent of which harm or injury is unknown. The Artist is specifically advised to use gloves, hardhats and other safety gear when working on the installation. In the event of any injury or harm to the Artist as a result of his/her work on the installation, whether bodily injury or property damage, the Artist hereby releases, in full, the City, its officers, agents, affiliates, and employees from all present and future claims, causes of action or demands that the Artist now has or may hereafter accrue in anyway related to or arising out of the Agreement and the Artist's sculpture whether known, unknown, foreseen or unforeseen.**
9. **Integrated Agreement.** This Agreement contains all the terms, considerations, understandings and promises of the Parties. It should read as a whole, and its terms can only be modified by an instrument in writing signed by both Parties.
10. **Insurance of Artwork while on Display.** The City will submit this Agreement, a description of the Sculpture and the Artist's estimate of value to the City's insurance carrier, TML Risk Pool, and request coverage for loss, theft, damage of the piece while on loan to the City under the Agreement,. The decision as to coverage and insurance, including level of coverage offered, shall be set in the sole discretion of the TML Risk Pool. The Artist specifically agrees and acknowledges that the Artist shall be responsible for insuring the Artwork for any amounts over that determined by the TML Risk Pool, and specifically acknowledges and agrees that the City shall have no liability for loss, damage, theft, vandalism, repair, or claims, of any nature above the amount and value provided by the City's carrier, TML Risk Pool, is the carrier's sole discretion.

In Witness whereof, the Artist and the City of Smithville (by its City Manager) have executed this Agreement and have caused the Agreement to be executed.

City of Smithville, Texas

Artist

\_\_\_\_\_  
Robert Tamble, City Manager

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

Exhibits:

A: Sculpture on Main Application

B: Location of Sculptures

C: City Procedures and Process

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

Print Name: \_\_\_\_\_

E-Mail: \_\_\_\_\_

Phone: \_\_\_\_\_

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

**Exhibit A**  
**Current Sculpture on Main Application**  
 Richard D. Latham Cultural District Sculpture on Main Program



**THE SMITHVILLE SCULPTURE ON MAIN PROJECT**  
**Call for Entries**

The Smithville Sculpture on Main Project is accepting applications for outdoor sculpture.

Sculptures will be selected through a juried process and will be considered to be “on loan” to the Cultural District while they are in Smithville. They will be installed throughout Smithville’s historic downtown Main Street for one (1) year. Sculptures may be for sale while on loan to this project.

**2020-2021 EXHIBITION SCHEDULE**

<b>Deadline</b>	<b>Scheduled Event</b>
October 29, 2021 10:00 AM	Submission deadline (entry fee and submission form) Confirmations of receipt of submissions
November 15	Notification of acceptance
Prior to installation	Signed agreement, affidavit, and W-9 due
November 15-29	Installation by appointment (excluding 11/11)
December 11, 2021	Tentative times for unveiling events: <b>5:00 PM: Artist Reception &amp; Award Ceremony V</b> <b>Via ZOOM</b>
November 2022, TBD	Artists to remove artwork by appointment

You are invited to submit your work to be displayed for the year-long public exhibit that showcases outdoor sculpture. Please note the following guidelines:

1. This call is open to all artists. A sculpture currently owned by an individual other than the artist may be submitted along with a certification of authenticity from the artist.  
Interactive sculptures with sound, lights, or movements are not admissible. Sculptures that need electricity or water will not be accepted.

2. The five sculptures accepted **MUST** be able to be secured to a 18 x 18 x 12 inch base provided by the City or be of a free-standing nature with no base required. A 12 x 12-inch template with the position of the four bolts in the pad will be provided to artists to ensure that their sculpture can be affixed securely to the base. The sculpture must have steel tabs or plates attached to the bottom in order to secure the sculpture to the concrete base. Sculptures must be durable enough to withstand exposure to the elements for one (1) year and safe for the viewing public. The City of Smithville (The City) will provide insurance on all installed artwork for the year. It is the artist’s responsibility to work with the City to install and remove the sculpture.



3. Each artist may submit up to three works. A non-refundable entry fee of \$25 for the first sculpture and \$10 each for up to two additional sculptures will be required for each submission. This fee will help ensure that the program is sustainable.

Submit the attached application form & at least 3 high-resolution digital photographs showing the sculpture at different angles to Jill Strube at [jstrube@ci.smithville.tx.us](mailto:jstrube@ci.smithville.tx.us) or by mail to [City Hall, 317 Main](#)

Street, Smithville TX 78957. Photographs must be at least 300 dpi and 5" x 7" size to be juried as well as for marketing collateral. Please note that the quality of the photograph can influence the jury process.

Drawings/Plans for sculptures are not acceptable in lieu of photographs of completed works.

**Entries including photos and fees are due by 10:00 AM on October 29, 2021.**

4. Jury recommendations will be based on the originality and creativity of the sculpture as well as its safety, durability, and suitability for an outdoor public exhibit.
5. Pending City Council approval of selected artist exhibitors, the City will work with the artist to install up to eight (8) sculptures. Selection will be done by a blind jurying process by a pool of jurors chosen by the project organizers. The judging for prizes will be done after the installation of the sculptures by a different set of community judges.  
A \$250 stipend per each accepted artist's sculpture will be issued for delivery, installation, and removal of sculptures.

*Prizes: First Place: \$500, Second Place: \$300, and Third Place: \$200.*

6. All artists selected to exhibit a sculpture must sign an artist's agreement with the City and provide a W-9 form. Participating artists will meet with representatives from the City and the Smithville Area Chamber of Commerce by appointment after the artist submits the signed agreement and W-9 to install the sculpture. All artists agree to leave sculptures accepted for display in place until November 2021.
7. ***The sculpture may be for sale.*** If a sculpture is purchased during the exhibit year, the owner is requested to keep the sculpture in place until the end of the year's program. If the sculpture is removed (upon condition that the City agrees to its early removal), the artist who provided the sculpture will install another sculpture (subject to City approval) at the artist's expense.  
A commission of 10% will be due to the City of Smithville for any sculpture that is sold through the Smithville Sculpture on Main program.

For more information, see [www.smithvilleculturaldistrict.com/making-art-happen](http://www.smithvilleculturaldistrict.com/making-art-happen)

For questions or more information, please contact Jill Strube with the City of Smithville/Cultural District:  
512-237-3282, Ext. 2109 / [jstrube@ci.smithville.tx.us](mailto:jstrube@ci.smithville.tx.us).

Sponsors: The Richard D. Latham Cultural District of Smithville TX (a partnership between the City of Smithville and the Lost Pines Artisans' Alliance)<sup>1</sup> and the Keep Smithville Beautiful Committee of the Smithville Area Chamber of Commerce

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<sup>1</sup> On September 5, 2013, the Texas Commission on the Arts officially designated Smithville among the first 24 Cultural Districts in Texas. The Richard D. Latham Cultural District partners intend to use arts, history, and culture for economic development purposes to enhance the quality of life for residents and visitors through programming designed to highlight the Cultural District. Additional information about the Richard D. Latham Cultural District is available at [www.smithvilleculturaldistrict.com](http://www.smithvilleculturaldistrict.com).

**Exhibit B**  
**Location of Sculptures**

Richard D. Latham Cultural District Sculpture on Main Program

The Sculpture(s) Titled: “ \_\_\_\_\_ ”

by \_\_\_\_\_ (Artist) will be located within the city limits of Smithville, Texas at:

Location:

- |   |   |
|---|---|
| <input type="checkbox"/> Place 1: Gazebo at 1 <sup>st</sup> & Main    | <input type="checkbox"/> Place 4: SW Corner of 2 <sup>nd</sup> & Main |
| <input type="checkbox"/> Place 2: NE Corner of 1st & Main             | <input type="checkbox"/> Place 5: NW Corner of 2 <sup>nd</sup> & Main |
| <input type="checkbox"/> Place 3: SE Corner of 2 <sup>nd</sup> & Main | <input type="checkbox"/> Place 6: SE Corner of Main & Loop 230        |

At least 48 hours prior to the date/time that Artist will deliver the Sculpture to the location, the Artist shall contact Jack Page or Jill Strube, by calling (512) 237 3282, to discuss details and any particulars related to the installation.

**The City of Smithville will determine and coordinate the exact final location of the Artwork on the site. The Artist is responsible for all equipment, materials, manpower and tools required for delivery and installation of the Artwork at the location and will remain at the location until the installation is completed to the full satisfaction of the Artist.**

**Map Locator**



**Exhibit C**

**City Procedures and Process**

Richard D. Latham Cultural District Sculpture on Main Program

1. Smithville’s Public Works Department’s normal hours of operation are Monday-Friday, 7:30 a.m. to 4:30 p.m. All communications are requested to be within the hours of operation to ensure a timely response. Please contact Jack Page at (512) 237-3282 regarding onsite inspections, pre-construction meetings, traffic control needs, and sculpture placement. Forty-eight (48) hours’ notice is required prior to the start of any work at the locations defined in Exhibit “B.”
2. The pre-construction/ site visit will address location, traffic control, sculpture pad size and any anchoring requirements, and will address any safety concerns during the installation process, including safety barricades.
3. The artist or designee shall contact the Public Works Department to provide the following items regarding installation; at the time of the pre-construction/ site visit:
  - Name of the party responsible for installation/ delivery, and contact information
  - A template of the bolt pattern if required for placement
  - Estimated time of arrival
  - A copy of the executed contract and W-9
4. The artist or designee shall contact the Public Works Department to remove the sculpture at the designated time at the end of the program.
5. Should the sculpture sell during the time it is on display on Smithville’s Main Street, the Artist shall:
  - Pay a 10% Commission on the sale price to the City of Smithville to help sustain the program for future years
  - Communicate with the Public Works Department and Grants Administrator regarding potential removal of the sculpture
    - i. It is the City’s preference to leave the sculpture in place until the end of the program
    - ii. If the new owner wishes to take possession of the sculpture prior to the end of the program, the artist shall be responsible to provide a different sculpture, which must be approved by City Council, at the artist’s expense

I, \_\_\_\_\_, the Artist, understand the terms of this agreement and I understand that I am responsible to provide information and communication as needed.

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

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