



**THE CITY OF OKLAHOMA CITY
OFFICE OF ARTS & CULTURAL AFFAIRS**

Solicitation RFQ-OCITY-049

**REQUEST FOR QUALIFICATIONS:
PUBLIC ART FOR SCISSORTAIL UPPER PARK
(MAPS 3)**

DEADLINE: Wednesday May 9, 2018 by 4:00:00PM CST



(Published in the Journal Record March 28, 2018)

NOTICE TO PROPOSERS

Notice is hereby given that The City of Oklahoma City will receive electronic proposals at the **OFFICE OF THE CITY CLERK, 200 North Walker Avenue, Oklahoma City, Oklahoma 73102** until 4:00:00 p.m., on the 9th of May, 2018, for the following:

REQUEST FOR QUALIFICATIONS (RFQ-OCITY-049) - PUBLIC ART FOR MAPS 3 SCISSORTAIL UPPER PARK

The City of Oklahoma City and its Trusts (“Contracting Entity”) have partnered with BidSync, Inc. to accept proposals electronically. You are invited to submit a proposal electronically through the BidSync system to supply the professional services, products, or systems specified in the electronic proposal packet. The Contracting Entity does not provide access to a computer to prepare electronic proposals or electronic proposal submission. Proposers must register with BidSync at <https://www.bidsync.com> in order to submit an electronic proposal. The Contracting Entity recommends potential proposers register and become familiar with the BidSync electronic proposal process in advance of submitting a proposal. There is no charge to the proposer for registering or submitting an electronic proposal to the Contracting Entity through BidSync. Instructions on how to get registered to propose through BidSync can be found below in the RFQ and on The City of Oklahoma City’s website at <https://www.okc.gov/departments/bidding>.

A copy of the City Guidelines and Procedures for Professional Consultant Selection may be obtained from the Office of the City Clerk at the above referenced address. Proposals shall be made in accordance with the Notice to Proposers, General Instructions and Requirements for Proposers, Oklahoma Open Records Act and Confidential Information, and the RFP proposal packet, which are a part of the complete electronic proposal packet. A sample Non-Discrimination, Anti/Non-Collusion Affidavit and Vendor Registration form is attached for the Proposer’s reference and will be completed prior to contract approval. By submitting a proposal for services, the Proposer certifies that they, and any proposed subcontractors, are in compliance with 25 O.S. §1313 and participate in the status Verification System. The Status Verification System is defined in 25 O.S. §1312 and includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security and available at www.dhs.gov/E-Verify.

The Contracting Entity reserves the right to waive formalities, irregularities and defects in any or all proposals, except as otherwise required by law. The Contracting Entity reserves the right to: reject any or all proposals; to reject a portion of any or all proposals; to negotiate and execute or to not negotiate or execute a Pricing Agreement/Contract with any proposer; and to solicit new or different proposals. The Contracting Entity reserves the right to negotiate and/or contract with one or more proposers for all or a portion of any proposal or proposed services.

Proposals timely received electronically through BidSync in the City Clerk's Office shall be forwarded to the Requesting Department for the Selection Committee to open and review. The BidSync system does not allow proposals to be submitted after the 4:00:00 p.m. deadline, on the above mentioned date. There will be no exceptions to this policy.



PROJECT:

Exterior public art for the new downtown Metropolitan Area Projects (MAPS 3) Scissortail Upper Park in Oklahoma City, Oklahoma

BUDGET:

\$500,000.00

DEADLINE:

4:00:00PM (CDT) on May 9, 2018

DESCRIPTION:

The City of Oklahoma City announces this **call for professional artists** to submit their qualifications to be considered for public art that will serve as a dynamic anchoring and threshold feature to Scissortail Park.



Figure 1: Rendering of Scissortail Park looking from Promontory toward downtown

The public art sought through this announcement will be:

- Innovative in concept
- Monumental and civic scale
- Culturally appropriate
- Timeless and enduring
- Instantly memorable and a people magnet
- Oklahoma climate appropriate
- Easily maintained

To reiterate: Successful proposals will produce works that are long-lived and easy to maintain in addition to having high aesthetic value. Materials and construction must be able to stand up to Oklahoma weather known for wind, thunderstorms, summer heat, and brief but cold winters.

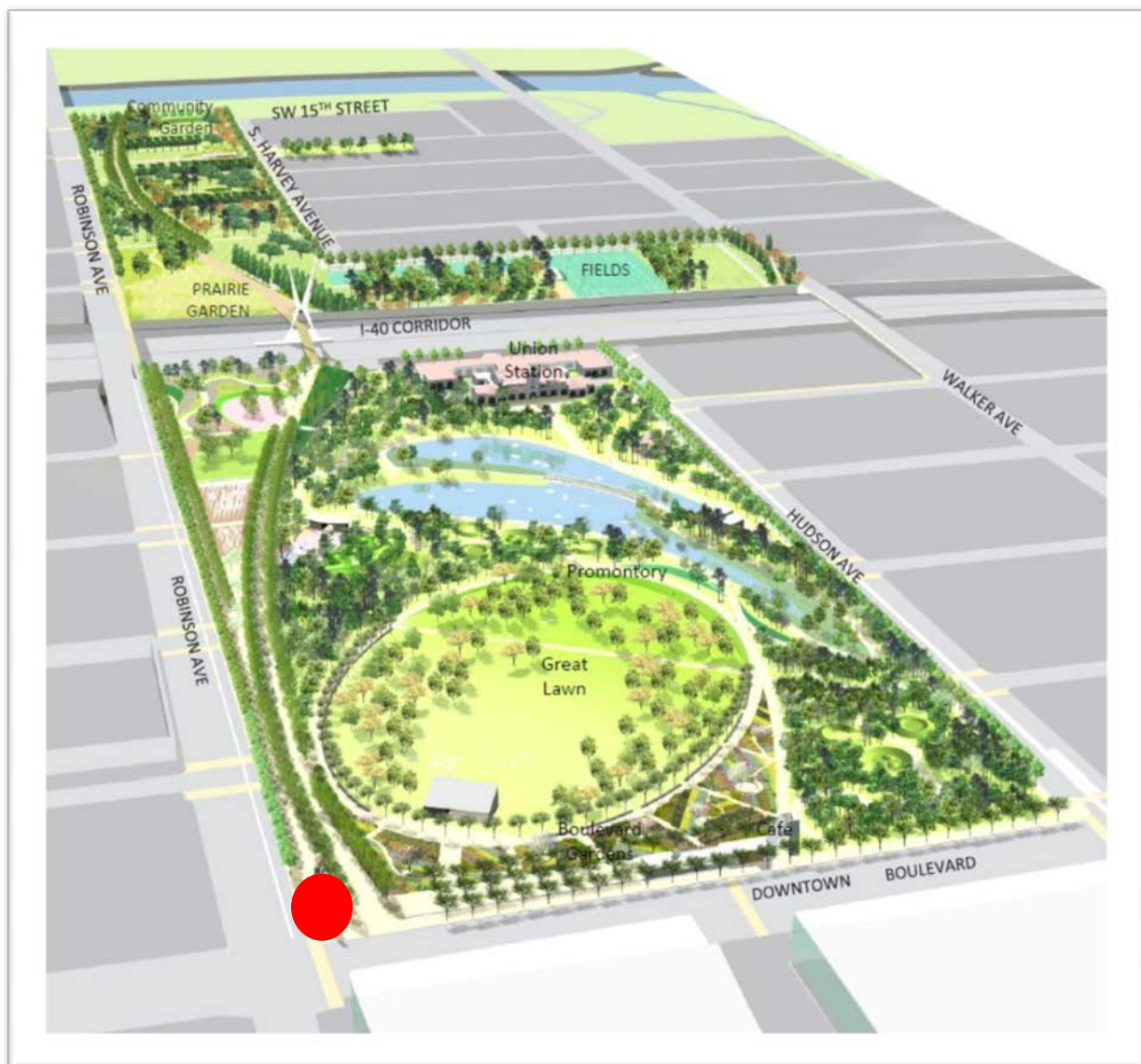
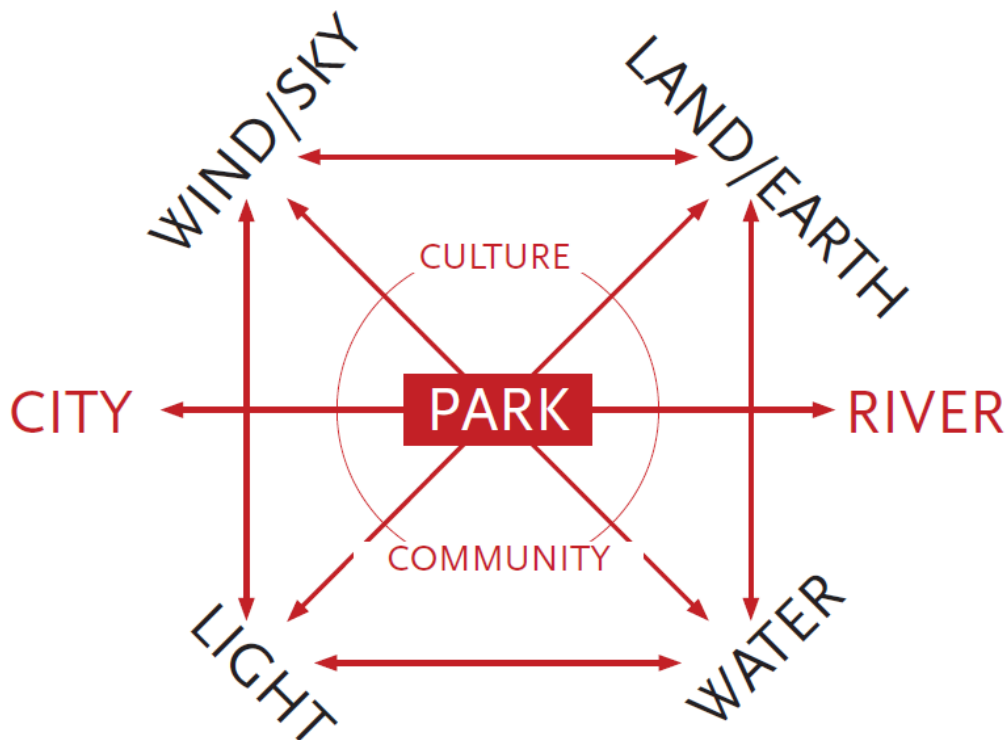


Figure 2: Scissortail Park plan; the red oval indicates this public art site

BACKGROUND

Scissortail Park, currently under construction, has been designed by Hargreaves Associates to become Oklahoma City's central park (<http://www.hargreaves.com/work/scissortail-park/>). The 70-acre park will function as the long-anticipated link between downtown and the Oklahoma River. The Upper park design features a Great Lawn and outdoor performance venue, a lake with paddle boats, urban gardens with a café, recreational facilities, children's play areas, a civic scaled interactive fountain and multiple walking/jogging paths, all set within regionally-specific native woodland and prairie landscapes. The boathouse, stage, cafe' and pavilions by Butzer Architects recall the vernacular architecture of the settlements that dotted the Oklahoma plains. The central promenade will link the downtown end of the park across Interstate 40 and the new SkyDance Bridge to the edge of the river. The restored historic Union Station is the architectural jewel of the park, with adaptive reuses including wedding venues, a restaurant and bicycle rentals. The park is a recreational and cultural focal point of the city and the front yard for the adjacent new convention center, the Chesapeake Arena and new mixed-use developments. In the words of landscape architect Mary Margaret Jones the park is expected to be "socially, economically, (and) culturally transformative" while greatly enhancing the downtown experience and lifestyle for residents and visitors.

The theme of the park is presented as the four elements: wind/sky, land/earth, water, and light. Artists are encouraged to design work reflective of this theme.



ELIGIBILITY:

This opportunity is open to all practicing artists, at least 18 years of age. Artists with prior public art experience, both those who reside in the Oklahoma City metropolitan area and those who live and work elsewhere, are encouraged to submit proposals. Submissions from artist teams are particularly encouraged. All artists and artist teams selected for final proposals must attend all required information sessions or site visits.

Proposers/proposer teams should have a wide variety of skills and training such as fabrication, structural engineering, electrical engineering, lighting design/installation, and contractor management. Proposers must demonstrate that they have skills necessary for the successful completion and installation of the proposed design, or can hire and work with qualified professionals to complete required work.

SELECTION CRITERIA:

1. Artistic excellence, originality, and ability to produce a consistent body of work, as evidenced by representation of past work in images and other supporting materials
2. Experience with projects of a similar scale and scope
3. Appropriateness of artist's approach and style to the project's intent and site
4. Availability to work within project time frame and to be present in Oklahoma City during the design review public meetings
5. Price and current market value of artist(s)' work in relation to the scope and value contemplated for this commission
6. Technical feasibility of proposed project
7. Good work habits: ability to meet deadlines, experience with budgeting, good communication skills, good problem-solving abilities—as supported by references
8. Important consideration will also be given to: safety, accessibility, durability, maintenance requirements, permanence of materials, protection against vandalism, and timelessness of the artwork proposed
9. Other criteria as may be established by the jurors. Any additional criteria will be outlined in the jury's written instructions provided to artist(s) invited to compete in the second stage of the competition.

SUBMISSION THROUGH BIDS SYNC:

Proposers must register with [BidSync](#) and submit their qualifications electronically through BidSync. The City and its Trusts recommend potential proposers register and become familiar with the BidSync electronic proposal process far in advance of submitting their qualifications materials. There is no charge to the proposer for registering or submitting an electronic proposal to the City or its Trusts through BidSync. You may receive a sales call about upgrading your registration, but there is no obligation to do so for projects

announced through Oklahoma City's Office of Arts & Cultural Affairs. Instructions on how to register to propose through BidSync can be found on the Bidding page of the City's website (www.okc.gov/departments/bidding). Additionally, detailed instructions are included below:

First time registration in BidSync:

- Go to bidsync.com. Select "REGISTER FOR FREE" button
- On "Account information" page, create an account using your email and a password (Note: the password is used during the bidding process, as well as during log-in)
- Fill in information on "Tell us about you" page
- On the "Tell us about your business" page under "What is your primary industry?" choose "Arts, Craft, Entertainment, Theatre"; under "Select keywords that best match your products/services" type in "Public Art", then enter and select "Finish Registration"
- Chose "I accept" blue button on the "BidSync Terms and Conditions" page
- On the blue ribbon at the top of the next page choose "My account"
- On the "My account" page choose "Company profile" in the upper left hand corner
- Choose the "Notifications" tab to see options to limit the types of agencies whose bids will be sent. **"Municipality" must be checked to see bids from the City of Oklahoma City.** Click blue "Save"
- Choose "Classifications": under the "NIGP classifications" tab, select the "Edit NIGP classifications" blue button
- On the "NIGP Classifications" page select "NIGP code", type in **962-07** and select the "Search" blue button
- **(962-07) Arts Services (cultural, Design, Visual, Etc.)** shows up. Select this and "Save". **All future project announcements by Oklahoma City's Office of Arts & Cultural Affairs will be classified using this code.**
- This completes the *necessary* registration process. Additional classifications may be chosen, additional information may be entered, and you can limit notifications, if desired. BidSync can take up to 24 hours to finalize new accounts. They have excellent customer service: call them at (800) 990.9339 with questions or problems.

How to submit your qualifications through BidSync:

1. Register with BidSync (see above) at least a day or two before the bid deadline. New registrants will receive an email or phone call from BidSync confirming that their account is registered. If not received, call customer service.
2. Log in to your BidSync account.
3. On the page that opens choose "Bid Opportunities"
4. Any current RFQs/RFPs from the Oklahoma City Office of Arts and Cultural Affairs should appear, if you have registered as directed.
5. Click on the title of the RFQ/RFP you wish to apply for.
6. When the new page opens, click the tab "Documents" in the middle of the page.

7. You must open and download the Call for Artists PDF before continuing. Also, open and/or download any other required document listed here. Enter password and select "Save".
8. Read the RFQ/RFP thoroughly and prepare required files as noted in instructions.
9. Go to "Place offer".
10. Click "(Upload Attachments)"; the type is small and is located in the upper right portion of the screen.
11. Select "Browse" in the new pop-up window, find required files (images, image sheet, etc.), choose and upload one at a time.
12. Then at the bottom of the page click blue button "Review offer". If all required attachments are in order, choose "Submit offer". A confirmation email will be sent to you from BidSync.

To fully respond to this Request for Qualifications, you will be required to upload the following items to BidSync prior to the 4:00:00 pm May 9, 2018 deadline established in this announcement.



Artist Statement

The artist statement is developed by the artist who will be the principal contact and project manager. The artist will lead and manage the project. Prepare a brief letter explaining why you are the best candidate for this project. If a team, explain the team members' roles and why your combined experience makes you the best candidates to be considered for this project.



Resume

Include a current professional resume for each artist and/or team member, emphasizing public art experience.



Six Digital JPG images for each team member

NOTE: ONLY DIGITAL (JPG) IMAGES OF COMPLETED WORK WILL BE ACCEPTED. NO RENDERINGS OR PROPOSALS. Include six digital images in .jpg format with a resolution of approximately 1800x1200 pixels (4"x6" at 300dpi/ppi), not to exceed 1800 pixels. Match images to Image ID sheet, numbered and ordered correctly. Initial selection committee review is "blind"; no identifying information of the artist/team, or anything but the artwork itself can be on the images.



Image ID Sheet

See sample Image ID sheet below. Create a similar form with the same information and upload along with required images and documents.

SELECTION PROCESS:

After the submission deadline, artist application materials will be screened by staff to ensure completeness of applications and conformity to the standards outlined in this Call to Artists before presentation to the selection committee. Incomplete submittals will not be considered.

The selection committee will be comprised of (but not limited to):

- Oklahoma City Mayor, or representative
- Oklahoma City Council member
- The MAPS Park Foundation representative
- The Scissortail Upper Park Operator
- Contract Oversight representative
- MAPS 3 Sub-Committee Stakeholder(s)
- Arts Commissioners (2)
- National Public Art juror
- Landscape architect/park designer
- Citizen stakeholders

The selection committee will be highly involved in the selection of finalists and recommendation of project award. At the first selection meeting, the committee will produce a short-list of three to five finalists. This is a two-step process. First, the field of submittals is narrowed by evaluation based on the images and image information only. Jurors see submitted images and hear the description given on the image ID sheet. Each juror ranks the artist from 1 (low) to 5 (high) and results are tabulated. **(Note: it is critical that artists submit their best images of relevant work.)** Second, among artists with the highest vote totals, finer distinctions are made using information from the artist resumes, statements, and references. Three to five finalists are selected for the final round, where all submitted information will be used in selecting the winning artist/artist team.

The finalists will then be invited to participate in two events:

1. The first is a mandatory site tour during construction of the park for a first-hand look at the design, layout and materials being used. Artists will meet local representatives and hear about the project and relevant history. The local representatives will also familiarize the finalists with the design, materials, construction schedule, and requirements for the final selection interview.
2. The second is an in-person presentation interview with the Selection Committee, where the artist will present a site specific conceptual design resulting from what was learned from the mandatory site tour. The artist may also present dimensioned sketches, renderings and/or a model of their proposed design, along with:
 - A detailed budget for all design elements
 - Installation details
 - Background information about the artist, team members, and each member's role on the project

- A maintenance plan with an estimate of costs to operate and maintain the work proposed
- One-page artist statement about work proposed
- Statement about any conflicts in schedule for project
- Comprehensive list of curated shows, commissions and awards over the last ten years (public and private)
- Project reference contact information for each artist team member

Each artist/artist team selected and invited to participate in the mandatory site tour and design presentations will be paid a \$5000 honorarium to offset costs for design fees, materials, travel, and expenses. Payment will be made within 30 days of receipt of an approved invoice; invoices should be submitted after final presentations.

SKETCHES AND MODEL POLICY:

All sketches and/or models produced and materials presented for the proposal interview shall become the property of The City of Oklahoma City (The City). The City requires that all proposals sketches and/or models submitted are original and unique to this Call to Artists. All sketches and/or models will be required to be limited in size and weight. Artists may request return of sketches and models at their own cost after final contracting with the awarded artist(s) is complete.

SCHEDULE OF EVENTS:

The following schedule is slated for this Call to Artists. Please note that The City reserves the right, as deemed necessary, at its sole discretion to adjust this schedule by written notice to the Artists who have registered to receive notifications through BidSync. **Interested proposers are strongly encouraged to register on BidSync as soon as possible.**

Call to Artists Announced	Wednesday March 28, 2018
Deadline for Artist Submissions.....	No later than 4:00:00 pm CDT Wednesday May 9, 2018
First Selection Committee Jury.....	Wednesday May 23, 2018
Notification of Jury Results	Friday May 25, 2018
Deadline for Artists to accept/decline invitation to interview	Wednesday May 30, 2018
Mandatory Site Tour for Artists	Wednesday June 27, 2018
Second Jury/Finalist Interviews.....	Wednesday July 25, 2018
Notification of Selection	Friday July 27, 2018
Final Contracting Period	September, 2018
Scissortail Upper Park Opening	May, 2019
Upper Park Art Installation	Summer, 2019
Upper Park Art Dedication	September, 2019

OTHER SUBMISSION ENTRY INFORMATION:

The City reserves the right to withdraw this Call to Artists at any time and for any or no reason. Receipt of submission entries by The City or submission of an artist's entry to The City or selection of an artist for purposes of negotiating a contract confers no rights to any artist nor obligates The City in any manner. The City reserves the right at its sole discretion and for any reason, to reject all submission entries and not award any contract and to solicit additional or different submission entries at a later time. The City incurs no obligation regarding this Call to Artists, or any contract resulting there-from, until a contract is fully completed and documents properly submitted and executed by all parties.

Any submission shall remain a valid entry for six (6) months after the submission deadline or until The City executes a contract, whichever is sooner. The City may, in the event the selected artist fails to negotiate a satisfactory contract or fails to perform and the contract is terminated within forty-five (45) days of its initiation, request the artist submitting the next best entry to honor their submission entry.

Costs of developing a submission entry are solely the responsibility of the artist. The City shall not provide reimbursement for such costs. The City shall not be liable for any artist's preparation costs for any reason, other than that paid as an honorarium to an artist or artists invited by the Selection Committee to produce sketches and/or models for the selection interview. Submission of an entry shall constitute acceptance of the terms, conditions, criteria, requirements and evaluations set forth in this Call to Artists and operates as an offer and a waiver of any and all objections and Proposer originated modifications to the contents of this Call to Artists.

All entries properly submitted shall be received and reviewed by The City. The City reserves the right to reject any entry deemed to be non-responsive for failure to comply fully with the terms of the Call to Artists. However, The City reserves the right, at its sole discretion, to request clarifications, corrections or additional information and to waive Irregularities in execution or delivery of the entry, provided it is in the best interest of The City.

The City reserves the right to amend this "Call To Artists" at any time no later than five (5) working days prior to the deadline for submission of the entries, unless the amendment is for the purpose of extending the deadline or time for the receipt of this Call to Artists, in which case such amendment may be promulgated at any time prior to the previously published deadline or time for Submissions receipt.

All amendments to this Call to Artists will be made through BidSync. Any oral statement or representation in response to a Written Inquiry will not be binding on The City of Oklahoma City.

QUESTIONS:

All questions, comments or inquiries regarding this Call to Artists, must be made through BidSync. Deadline for questions is seven (7) days prior to the submission deadline published on this notice.

INSURANCE:

The artist recommended by the Oklahoma City Arts Commission shall be required to enter into contract with The City of Oklahoma City (City) for the entire duration of the project. Depending on the specific scope of the project, prior to the issuance and throughout the duration of the contract, the artist/curator shall be required to maintain insurance, as required by The City. A sample contract is attached for reference.

CONTRACT:

The selected artist must be willing to negotiate a contract satisfactory to The City. In the event The City is unable or unwilling to successfully negotiate with the artist submitting the best entry, The City reserves the option of rejecting the artist and negotiating with the artist submitting the next best entry.

To satisfy the legal requirements of The City of Oklahoma City, the contract will require that artist waives all rights under the Visual Artists Rights Act (VARA); however, after its receipt of the written waiver, The City may be willing to reinstate to the artist certain VARA Trademark rights. The extent of VARA rights to be reinstated is open for negotiation between The City and the artist; however failure to come to terms on this issue will preclude the contract award to the artist. A sample VARA waiver is attached for reference.

Attachments:

- Example of Image ID Sheet
- VARA waiver
- Contract

SAMPLE IMAGE ID SHEET

- Image 1. Title of Work (Thumbnail Image Here)
Media
Dimensions (H X W X D in feet and inches)
Date work completed (use only images of completed work)
Location (City, State)
Value or amount of commission
- Image 2. Title of Work (Thumbnail Image Here)
Media
Dimensions (H X W X D in feet and inches)
Date work completed (use only images of completed work)
Location (City, State)
Value or amount of commission
- Image 3. Title of Work (Thumbnail Image Here)
Media
Dimensions (H X W X D in feet and inches)
Date work completed (use only images of completed work)
Location (City, State)
Value or amount of commission
- Image 4. Title of Work (Thumbnail Image Here)
Media
Dimensions (H X W X D in feet and inches)
Date work completed (use only images of completed work)
Location (City, State)
Value or amount of commission
- Image 5. Title of Work (Thumbnail Image Here)
Media
Dimensions (H X W X D in feet and inches)
Date work completed (use only images of completed work)
Location (City, State)
Value or amount of commission
- Image 6. Title of Work (Thumbnail Image Here)
Media
Dimensions (H X W X D in feet and inches)
Date work completed (use only images of completed work)
Location (City, State)
Value or amount of commission

**General VARA Waiver for Sculptural Works of Visual Art
(SCULPTURE)**

I, _____(print name), "Artist," hereby acknowledge the rights of attribution and integrity generally conferred by Section 106A(a) of Title 17 of the U.S. Code, (The Visual Artists Rights Act of 1990, "VARA"), and any other rights of the same nature granted by other federal, state or foreign laws. Artist hereby waives his/her VARA rights for the following work(s) of visual art:

SCULPTURE ENTITLED:

MATERIALS:

Date: _____

Signature of Artist: _____

EXAMPLE ARTIST CONTRACT

1% FOR ART - PUBLIC ART COMMISSION AGREEMENT

PROJECT:

This Agreement made and entered into this _____ day of _____, 2018, by and between THE CITY OF OKLAHOMA CITY, hereinafter called "CITY" and ARTIST NAME, hereinafter called "ARTIST", for the delivery and installation of a full-scale WORK of art, hereinafter "TITLE OF WORK HERE", also hereinafter called the "WORK."

ARTIST was selected pursuant to a competitive process by CITY to deliver and install a full-scale WORK of art at the location named in Exhibit "A" (the "location") and ARTIST is willing to provide such services and such WORK, as set forth in Exhibit "B", attached hereto and made a part of this Agreement.

CITY desires to contract with the ARTIST for the design, fabrication, delivery and installation of the WORKs on such terms and conditions as hereinafter follow:

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, CITY and ARTIST agree as follows:

Section I—ARTIST'S BASIC SERVICES

The ARTIST's WORK shall reflect concepts and designs as depicted in the proposal and recommended by the selection panel and Oklahoma City Arts Commission, which concepts and designs are set forth in Exhibit "B" attached hereto and made a part of the Agreement.

ARTIST may discuss the WORK or its requirements with various departments of the City, but all specific direction to or requests of the ARTIST shall be authorized by the Liaison of Arts & Cultural Affairs of the City of Oklahoma City, hereinafter called "ARTS LIAISON", or designee.

ARTISTS are responsible for delivery of the WORK to and installation of the WORKs at the Location and for all services and expenses associated with the delivery and installation of the WORK (including all necessary supplies, materials and equipment requirements).

ARTIST shall install the WORK so as to conform to the requirements of all City of Oklahoma City and State of Oklahoma laws, ordinances, codes, regulations, and requirements which affect installation of the WORK. If requested, ARTIST shall assist in filing any documents required to secure approval of all governmental authorities having jurisdiction.

A. Commencement of WORK

1. Upon receipt by ARTIST of the executed Agreement, WORK shall commence.
2. The goal of the parties is a DESCRIPTION OF WORK HERE that represents the creative talents of ARTIST and satisfies the specifications of CITY. The parties recognize that they must consult closely in order to accomplish these goals and that changes in the design may become desirable as the WORK is fabricated, under ARTIST'S personal supervision, in conformity with the approved concept as shown in Exhibit "B" attached hereto. The WORK shall not deviate from the approved concept as shown in Exhibit "B" unless a non-conforming change is approved in writing by the Liaison of Arts & Cultural Affairs or .
3. ARTIST shall avoid the use of materials or finishes known to be hazardous or potentially hazardous, including asbestos or any derivative thereof. ARTIST shall report to the ARTS LIAISON any material or finish hazard and any action taken by the ARTIST to minimize or eliminate the hazard.
4. Once the WORK has been fabricated, ARTIST shall submit a report to the ARTS LIAISON certifying that the WORK has been completed. The report shall include plans for installation and a description of any activities requiring coordination with CITY.

B. Delivery and Installation Phase

1. The WORK shall not be delivered to the location or installed until ARTIST has received written approval from ARTS LIAISON that the specific installation plans submitted by ARTIST have been approved by the City Engineer and CITY, which authorization shall not be unreasonably withheld.
2. Following delivery of the WORK, ARTIST shall install the WORK at the Location in the manner as provided in Exhibit "A". ARTIST shall be responsible for all expenses, labor and equipment involved with installation of the WORK. Provided however, CITY shall, at its own expense, prepare the area at which the WORK shall be installed by ARTIST.
3. All risk of destruction, or damage to, the WORK or any part thereof from any cause whatsoever shall be the responsibility of ARTIST until delivery, installation and final acceptance of the WORK by the ARTS LIAISON, except that the risk of loss or damage shall be borne by CITY prior to final acceptance of the WORK during such period of time as the partially or wholly completed WORK is in the custody, control or supervision of CITY or its agents. ARTIST shall provide the ARTS LIAISON and CITY with at least two (2) weeks' notice of the date of installation.

4. Arrangements for access to the Location for installation must be made through the ARTS LIAISON or other authorized representative, and access thereto shall not be scheduled until CITY has received from the ARTIST a Certificate of Insurance as required in Section IX. Access may be scheduled for weekends as well as during normal business hours, upon prior arrangement.
5. ARTIST shall notify the ARTS LIAISON in writing when the WORK is installed and all services have been completed to secure final acceptance by CITY.

Section II—CITY’S RESPONSIBILITY

CITY shall provide the following:

- A. Information, including requirements and specifications for the location of the WORK. The location of the WORK shall be at the site as shown in Exhibit “A”. All specifications are to be provided by (COMPLETE)
- B. Examination of materials and information submitted by the ARTIST and prompt rendering of decisions pertaining thereto, to avoid unreasonable delay in the progress of the WORK. Response to the ARTIST’S written request for decisions related to the WORK shall be made as soon as reasonably possible.
- C. As part of the plans for the construction of the site, CITY shall make the following changes, at CITY’s cost, to the site prior to installation of the WORK:
(TO BE NEGOTIATED)
- D. Final acceptance of the WORK shall be effective as of the earlier to occur of (1) the date of the CITY’S notification of final acceptance or (2) the 30th day after the ARTISTs has sent written notice to the ARTS LIAISON as required under Section I.B.5 unless the ARTS LIAISON, upon receipt of such notice and prior to the expiration of the 30-day period, gives the ARTISTs written notice specifying and describing the services which have not been completed.

Section III—COMPENSATION AND PAYMENTS

- A. Following approval of this Agreement by CITY, payments shall be made to ARTISTs as follows, in full consideration of the fabrication, delivery and installation of the WORK titled “(TITLE OF WORK HERE),”
(THIS SECTION TO BE NEGOTIATED)
- B. All requests for payment shall be submitted to the ARTS LIAISON for review and approval, and shall be in accordance with CITY procedures, which procedures will be attached to this agreement.
- C. Compensation and payment to ARTIST for artwork under this contract shall not exceed \$40,000.00.

Section IV—TERMINATION OF AGREEMENT

In the event that either party willfully or negligently fails to fulfill in a timely manner any of the stipulations of this Agreement, or otherwise violates such stipulations or commits an event of default hereunder, then the other party shall thereupon have the right to terminate this Agreement by giving

written notice by certified mail, return receipt requested, to the defaulting party of its intent to terminate and specify the grounds therefor. The defaulting party shall have 30 days after the receipt of the notice to cure the default. If the default is not cured, then this Agreement shall terminate.

In the event that this Agreement is terminated by the ARTIST before installation of the WORK without fault on the part of CITY, the ARTIST shall refund to CITY all monies paid by CITY to the ARTIST for the performance of WORK under this Agreement. The ARTIST may then retain the WORK, together with any models, plans or drawings and all materials and supplies purchased for the WORK, for the ARTIST'S own use without restrictions.

In the event this Agreement is terminated by CITY without fault on the part of the ARTIST, the ARTIST shall be entitled to a final payment or settlement as set forth in either of the following options set forth in Section IV A or B as the ARTIST deems appropriate. Exercise of either of these options by the ARTIST shall not prevent the ARTIST from pursuing a remedy otherwise available to ARTIST in law or equity.

- A. The ARTIST shall be paid an amount equal to the percentage of the WORK done at the time the Agreement is terminated, as determined by the schedule attached hereto as Exhibit "C." The Installation Phase shall be included when computing the percentage of WORK done. If payments previously made to the ARTIST exceed the total amount due, as computed above, then the ARTIST shall deliver to CITY the WORK in whatever form it exists at the time of termination, which shall then become the property of CITY for use without restriction, except that it shall not be represented to be the WORK of the ARTIST; or
- B. The ARTIST may refund to CITY all monies paid by CITY prior to the time of termination and shall then retain the WORK, together with any models, plans, or drawings and all materials and supplies purchased for the WORK, for the ARTIST'S own use without restrictions.

In the event this Agreement is terminated by CITY for fault on the part of the ARTIST, or because of the disability of the ARTIST; or is terminated automatically because of the death of the ARTIST; or in the event of any breach of its terms by the ARTIST, CITY may require either of the options that would have been available to the ARTIST in this section. Exercise of either of these options by CITY shall not prevent CITY from pursuing a remedy otherwise available to it in law or equity.

Section V—GENERAL CONDITIONS

- A. The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.
- B. The terms of this Agreement constitute the entire understanding between the parties hereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement may only be amended or modified by mutual consent of the parties hereto in writing signed by both parties.
- C. Neither the performance of this Agreement, nor any part thereof, nor any monies due or to become due thereunder may be assigned by ARTISTS without the prior written consent and

approval of CITY.

- D. The death or incapacity of ARTIST shall automatically terminate this Agreement. The ARTIST'S estate shall have no further right to perform hereunder. In the event of such automatic termination, ARTIST'S estate shall be entitled to retain any payments already made by CITY pursuant to the schedule set forth in Exhibit "C" hereto and shall be entitled to any payments owed ARTIST by CITY pursuant to Section III hereinabove. CITY shall be entitled to claim the WORK and any unused materials specifically acquired for its execution and to have the WORK completed by another person in accordance with the preliminary designs.
- E. Nothing contained in the terms of this Contract shall create or give to third parties, any claim or right of action against CITY.
- F. ARTIST shall protect adjoining property and nearby buildings, including CITY or City buildings, City roads and public streets or roads from dust, dirt, rubbish or other nuisance arising out of ARTIST'S operations or storage practices.
- G. ARTIST shall perform no construction operations of any nature on, over or across premises except such construction operations as are specifically authorized in ARTIST'S plans or specifications, or as otherwise authorized by CITY.
- H. ARTIST shall comply with all applicable laws, statutes, ordinances, regulations, and administrative requirements including but not limited to safety and engineering regulations and requirements of CITY.
- I. Directly upon completion of the installation of the WORK, ARTIST shall remove from location all equipment and any waste materials not previously disposed of, leaving location thoroughly clean and ready for CITY'S final inspection.
- J. Installation and worker safety shall be in conformance with Oklahoma laws and regulations.
- K. ARTIST shall be responsible for all mailing, shipping, transportation and travel expenses required under this Contract and all Federal and State income taxes on the amount of this Contract, as well as any State and City sales tax which might be required.
- L. ARTIST and all agents and employees of ARTIST shall observe and comply with all prevailing Federal, State and City laws, ordinances, regulations and requirements which in any way affect conduct or WORK of this Contract.
- M. ARTIST shall comply with the provisions of this Agreement pertaining to discrimination and accepting applications or hiring employees. ARTIST shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, religion, sex, or national origin, physical handicap, ancestry or age. Such action shall include: employment, upgrading, demotion, transfer, recruitment, or forms of recruitment advertising; lay-off or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training. ARTIST agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provision of this equal opportunity clause. ARTIST further agrees to insert the foregoing provisions in all subcontracts hereunder. Any violation of such provisions shall constitute a material breach of this Agreement.
- N. ARTIST is and shall be an independent contractor and is not an agent or employee of CITY. Any provisions in this Agreement that appear to give CITY the right to direct ARTIST as to the details of doing the WORK or to exercise a measure of control over the WORK means that ARTIST shall follow the wishes of CITY as to the results of the WORK only, which shall comply with all applicable laws and ordinances.

- O. This WORK, as created by the ARTIST for CITY pursuant to this Agreement, shall be considered a "WORK made for hire" as defined by Title 17, U.S.C Sections 101 and 201(b) (the United States Copyright Act of 1976), as it is a work specially ordered and commissioned for use as a contribution to CITY'S collective work of art throughout the City.
- P. Prior to beginning the WORK, ARTIST shall furnish to the ARTS LIAISON for approval any names of collaborators, makers or fabricators to be used on the WORK. Any subsequent changes are subject to the approval of the ARTS LIAISON.
- Q. It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Oklahoma, both as to interpretation and performance. Any action at law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Oklahoma.
- R. 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 the delivery or receipt thereof, as the case may be, if delivered personally or sent by registered or certified mail, return receipt requested, postage prepaid, as follows:

If the ARTS LIAISON, to:

ARTS LIAISON, Office of Arts & Cultural Affairs
Oklahoma City Planning Department
420 W. Main Street, 9th Floor
Oklahoma City, OK 73102

If the ARTIST, to:

ARTIST NAME, ADDRESS,
CITY/STATE AND EMAIL HERE

Section VI—INDEMNIFICATION

ARTIST agrees to release, to defend, to indemnify and to hold harmless CITY and its members, officers, agents and employees, from and against all claims, costs and damages, suits, costs expense, liability actions or procedures of any kind or nature whatsoever arising out of ARTIST'S activities under this Agreement.

Section VII—ARTIST'S REPRESENTATIONS AND WARRANTIES

- A. Defects in Material or Workmanship and Inherent Vice. ARTIST warrants that the WORK will be free of defects in workmanship or materials, including inherent vice, and that ARTISTS will, at ARTIST'S own expense, remedy any defects within a period of one year from the date the WORK is finally accepted by CITY and will not require maintenance substantially in excess of that described in the recommendations provided by ARTIST to CITY, and attached hereto as Exhibit "D." "Inherent vice" refers to a quality within the material or materials that comprise the WORK which, either alone or in combination, results in the tendency of the WORK to destroy itself.
- B. Public Safety. ARTIST warrants that the WORK will not contain sharp points or edges which CITY deems a danger to the public and agrees to cooperate in making or permitting adjustments to the WORK if necessary to eliminate such hazards which become apparent within one year of the date the WORK is finally accepted by CITY.
- C. Title. ARTIST warrants that the WORK is solely the result of the artistic efforts of the ARTIST and that it will be installed free and clear of any liens, claims or other encumbrances of any type.

- D. Unique. ARTIST warrants to the best of the ARTIST'S knowledge that the WORK is unique and an edition of one and does not infringe upon any copyright, and that ARTIST will not execute or authorize another to execute another WORK of the identical design, dimensions and materials as the WORK commissioned pursuant to this Agreement. This warranty shall continue in effect for a period consisting of the life of ARTIST plus 50 years and shall be binding on ARTIST'S heirs and assigns.

Section VIII—EXCUSE OR SUSPENSION OF CONTRACTUAL OBLIGATIONS

The parties shall be excused from performing an obligation under this Agreement if performance of that obligation is prevented by a condition beyond the control of the parties, such as acts of God, war, public emergency or strike or other labor disturbance. An obligation affected by a condition beyond the control of the parties shall be suspended only for the duration of the condition unless otherwise agreed by the parties. Both parties shall take reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists.

Section IX—INSURANCE-TYPE, AMOUNT, AND DURATION

ARTIST shall:

- A. Procure and maintain throughout the fabrication, transportation and installation phases of this Agreement, worker's compensation or employer's liability insurance to the extent and in the manner required by the statutes of the State of Oklahoma. ARTIST shall furnish ARTS LIAISON with a certificate of such insurance which shall provide that CITY is an additional insured under said policy or policies and that said policy cannot be canceled except upon (30) days advance written notice to CITY.
- B. Procure prior to entering the location for the purpose of installing the WORK and maintain until final acceptance of the WORK:
1. General Commercial Liability Insurance with responsible insurance underwriters acceptable to CITY insuring CITY and ARTIST against all legal liability for injuries to persons caused by ARTIST'S use and occupancy of the premises or otherwise caused by ARTIST'S activities and operations on said premises, with liability limits of not less than those established in the Governmental Tort Claims Act, 51 Oklahoma Statutes § 151 et seq., for accidental and personal injury. Currently, those limits are \$175,000 for a claim for any other loss arising out of a single act, accident, or occurrence; \$25,000 for a loss of property; and \$1,000,000 for any number of claims arising out of any single occurrence or accident. ARTIST shall furnish CITY and ARTS LIAISON with a certificate of such insurance which shall provide that CITY is an additional insured under said policy or policies
 2. Property in Transit insurance, with limits of not less than the value of commissioned WORK amount.

Section X—OWNERSHIP

- A. Title. Title to the WORK shall remain in ARTIST until ARTIST is paid in full pursuant to Section III hereinabove.
- B. Ownership of Documents. Samples. Upon final acceptance of the WORK, the studies, drawings, and models prepared and submitted under this Agreement as presented to the assembled ARTIST'S selection jury shall be returned, at ARTIST'S expense, to ARTIST and shall belong to ARTIST.

Section XI—EXPLOITATION OF THE WORK AND REPRODUCTION RIGHTS

- A. Copyright. The WORK which is the subject of this Agreement is a work made for hire, and therefore not subject to the provisions of the Visual Artists Rights Act. ARTIST hereby acknowledges that once completed, the WORK shall be exclusively owned and possessed by CITY, which may make photographs/film/video, or other two-dimensional reproductions of the WORK for educational, public relations, arts promotional and other non-commercial purposes. By this document, ARTIST expressly waives any rights which may remain under 17 U.S.C. §101 et seq. (the Copyright Act of 1976). _____ (Artist's initials and date).
- B. Reproductions. ARTIST hereby authorizes CITY to make, and to authorize the making of, photographs and other two-dimensional reproductions of the WORK for educational, public relations, arts promotional and other non-commercial purposes. In the case of such use by CITY, the ARTIST shall be entitled to customary and appropriate identification as the creator of the WORK including publication of ARTIST'S copyright notice as follows: © ARTIST NAME HERE 2018. Such notice shall also be affixed to the WORK in its location of permanent display and at any location of public display or exhibition.
- C. Label. CITY shall provide and install a plaque identifying the WORK at the Location.
- D. City's Credit. ARTIST agrees that all references made by ARTIST to the WORK shall include the following credit line: "Commissioned under Oklahoma City's 1% for Arts Ordinance" or equivalent, and that ARTIST will make a good faith effort to assure that references to the WORK by others will include the same credit line.
- E. Documentation. ARTIST shall provide the CITY with one or more .jpg photo(s) of the WORK, accurate in color and detail, within thirty (30) days after the WORK has been installed.
- F. Photography. Upon reasonable notice to CITY, ARTIST shall be permitted to enter upon the premises at a mutually convenient time or times to reproduce by photographic or other means, the WORK herein.

Section XII—CARE OF WORK AND RIGHT OF RECOVERY

All parties agree that all rights pursuant to the Visual Arts Rights Act (VARA) 17 U.S.C. § 106A *et seq.*, will be waived by ARTIST. (ARTIST'S INITIALS AND DATE HERE). However, CITY promises ARTIST that:

- A. CITY shall not intentionally destroy, damage, alter, modify or change the WORK except when the condition or security of the WORK cannot be guaranteed as determined by CITY. Alterations may be made if maintenance substantially exceeds agreed upon recommendations as determined by

CITY. CITY agrees that the WORK shall be properly maintained as funding is available, taking into account the instructions of ARTIST.

- B. CITY shall notify the ARTIST of any proposed alteration of the Site that would affect the intended character and appearance of the WORK and shall consult with the ARTIST in the planning and execution of any such alteration. CITY shall make a reasonable effort to maintain the integrity of the WORK.
- C. Nothing in this Section XII shall preclude any right of CITY to remove the WORK from public display.

Section XIII—REPAIR AND RESTORATION

It is the policy of CITY to consult with the ARTIST regarding repairs and restoration which are undertaken during the ARTIST'S lifetime, when that is practicable. To facilitate consultation, ARTIST shall notify the ARTS LIAISON of any change in the ARTIST'S permanent address. If the ARTIST is unable or unwilling to perform any necessary repairs or restoration, or if CITY desires to use someone other than the ARTIST to repair or restore the WORK, CITY shall have such WORK performed in accordance with recognized principles of conservation as funding is available.

Section XIV—REPUTATION

- A. CITY'S Commitment. CITY agrees that it will not use the WORK or ARTIST'S name in a way which reflects discredit on the WORK or on the name or reputation of ARTIST as an ARTIST. In the event the WORK is in some way represented in a manner in which it was not intended by ARTIST, ARTIST has the right to request that the WORK shall no longer be represented as the WORK of ARTIST.
- B. ARTIST Commitment. ARTIST agrees that ARTIST will not make reference to the WORK or reproduce the WORK, or any portion thereof, in a way which reflects discredit on CITY or the WORK.

Section XV—REMOVAL OR RELOCATION OF WORK

The WORK shall be placed in the Location designated in Exhibit "A" of this Agreement. CITY agrees that it will attempt to notify the ARTIST through the ARTS LIAISON if, for non-emergency reasons, the WORK has to be removed and permanently relocated to a site not specified in Exhibit "A".

Section XVI—NO ASSIGNMENT OR TRANSFER

The personal skill, judgment and creativity of the ARTIST is an essential element of this Agreement. Therefore, although the parties recognize that ARTIST may employ qualified personnel to WORK under ARTIST'S supervision, ARTIST shall not assign, transfer or subcontract the creative and artistic portions of the WORK to another party without the prior written consent of CITY through the ARTS LIAISON.

Section XVII—SUCCESSORS AND ASSIGNS

CITY and ARTIST each bind themselves, partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party in respect to all covenants of this Agreement. ARTIST shall not assign, sublet, or transfer his interest in this Agreement without the written consent of CITY, through the ARTS LIAISON. In no event shall any contractual relation be created between any third party and CITY.

Section XVIII—ANTI-COLLUSION

ARTIST warrants that no person has been employed or retained to solicit or secure this Contract upon an agreement or understanding for commission, percentage, brokerage, or contingent fee, and that no member of CITY, City Council, or an employee of CITY has any interest, financially or otherwise, in ARTIST'S business.

(REMAINING SPACE RESERVED FOR SIGNATURES)