



**THE CENTRAL OKLAHOMA TRANSPORTATION AND  
PARKING AUTHORITY  
AND  
OFFICE OF ARTS & CULTURAL AFFAIRS**

**Solicitation RFQ-COTPA-001**

**REQUEST FOR QUALIFICATIONS  
PUBLIC ART FOR THE NEW  
CONVENTION CENTER PARKING GARAGE**

DEADLINE: JANUARY 8, 2020 by 4:00:00PM CST



(Published in the Journal Record)  
**NOTICE TO PROPOSERS**

Notice is hereby given that the Central Oklahoma Transportation and Parking Authority (COTPA) will receive electronic proposals at the **OFFICE OF CITY CLERK, 200 North Walker Avenue, Oklahoma City, Oklahoma 73102** until 4:00:00 p.m., on the 8th day of January 2020, for the following:

REQUEST FOR QUALIFICATIONS CALL TO ARTISTS (RFQ-COTPA-001) - PUBLIC ART FOR THE NEW  
CONVENTION CENTER PARKING GARAGE IN OKLAHOMA CITY

COTPA, City of Oklahoma City and its Trusts 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. COTPA and its Trusts do 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. COTPA, City and its Trusts recommend 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 on City of Oklahoma City's website at <https://www.okc.gov/departments/bidding>.

A copy of Guidelines and Procedures for Professional Consultant Selection may be obtained from the Office of 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](http://www.dhs.gov/E-Verify).

COTPA, City and its Trusts reserve the right to waive formalities, irregularities and defects in any or all proposals, except as otherwise required by law. COTPA, City and its Trusts reserve 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. COTPA, City, and its Trusts reserve 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 Bid Sync in 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 Convention Center Parking Garage in Oklahoma City, Oklahoma

**BUDGET:**

\$134,250

**DEADLINE:**

4:00:00PM (CST) on January 8, 2020



**Figure 1:** South and East façade of the new Convention Center Garage facing Shields Avenue

**DESCRIPTION:**

The Central Oklahoma Transportation and Parking Authority (COTPA) seeks public art design proposals for its new \$23 million garage in Park Union District in downtown Oklahoma City. COTPA announces this **call for professional artists** to submit their qualifications to be considered for the 1% for Art opportunity.

The public art design and installation oversight sought through this announcement will address three “skin” walls of the new parking garage.

- The west facing wall is 4,860 sf
- The south facing wall is 78,400 sf
- The east facing wall is 27,040 sf

The materials to be used are Duo-Gard FUSION colored tiles (4” square polycarbonate tiles) with metal fasteners. More information about the tiles can be found here: <https://www.duo-gard.com/product/fusion/> . They will be installed on vertical steel cables spaced approximately 4.75” apart. The tiles come in 102 standard colors and three different finishes from clear to matt. Building code specifies that the “skin” walls allow for fifty percent coverage for proper ventilation in the parking garage. The artwork for the three “skin” walls will be designed by the selected artist. The final design will be installed by the general contractor Manhattan Construction who is responsible for all materials. They have hired a glazing company to install the polycarbonate squares. This Call to Artists includes final designs in accordance with code requirements, coordination and oversight provided by the contracted artist.

Additionally, the design sought will be:

- Instantly memorable
- Visually compelling
- Timeless and enduring
- Site specific

The six-level, 1,100 space garage will be located at 15 SW 4<sup>th</sup> St., in a developing area of the urban core east of the new Scissortail Park named the Park Union District. The garage will serve the future Omni Convention Center Hotel and MAPS3 Convention Center, Boulevard Place (a mixed-use project in development), Chesapeake Arena, and more, as well as providing office space for parking operations. The parking garage could eventually be expanded by 300 spaces, providing the ability to increase parking as the area grows. Construction is projected to take 12 months to complete, with the timeline closely linked to construction of the Omni Hotel and the MAPS3 Convention Center.

#### **BACKGROUND:**

On September 15, 2009, Item No. IX. A., City Council adopted Ordinance 23,935, establishing a requirement that 1% of budgeted expenditures for construction of new buildings, major renovation of existing buildings, and significant park development, located on City land or right-of-way, be set aside for public art. The ordinance includes the provision that it shall apply to any Trust of which City is beneficiary if said Trust has by resolution approved the 1% for Art provisions. A resolution establishing a policy allocating 1% of the budgeted construction costs for new buildings and major renovation of exiting buildings located on City and COTPA land was adopted by COTPA on October 2, 2009.

#### **ELIGIBILITY:**

This opportunity is open to all practicing artists, at least 18 years of age. Artists with prior public art experience residing in the Oklahoma City metropolitan area or beyond are encouraged to submit proposals.

All artists selected as finalists must attend all required information sessions or site visits.

**SELECTION CRITERIA:**

**The following four criteria are considered in the first round of the selection process:**

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. Price and current market value of artist(s)' work in relation to the scope and value contemplated for this commission

**The following five criteria are considered in the final round of the selection process:**

1. Availability to work within project time frame and coordinate with the general contractor and subcontractors and to be present in Oklahoma City to provide oversight during installation of the polycarbonate tiles
2. Technical feasibility of proposed project design
3. Good work habits: ability to meet deadlines, experience with budgeting, good communication skills, good problem-solving abilities—as supported by references
4. Important consideration will also be given to timelessness and enduring quality of the design proposed
5. Other criteria as may be established by the jurors. Any additional criteria shall be outlined in the jury's written instructions provided to artist(s) invited to compete in the second stage of the competition

Artist applications will be evaluated to determine whether the artist(s) involved possess the creativity, technical skills, and discipline required for this public art project.

**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 below:

**First time registration in BidSync/ Register for free:**

1. Visit: [bidsync.com/the-city-of-oklahoma-city](https://bidsync.com/the-city-of-oklahoma-city) and click on the "Register for Free" button.
2. Enter your email address twice to verify that it does not already exist in our system. Once prompted to proceed, fill in all required identification fields and agree to the Terms and Conditions for bidSync.
3. Check your **inbox** of the email you provided and locate the email from [notify@bidsync.com](mailto:notify@bidsync.com). Check your

spam folders if you do not see it in your inbox.

4. Click the activation link in the email with 24 hours of receiving to activate your new BidSync account. Once your token is verified you will be asked to select your account password.

5. Create a company profile to receive bid invitations from agencies. Verify your company address and follow the prompts to add 3 positive keywords so BidSync can search, locate, and deliver relevant solicitations for you.

We recommend “public art” as one of the keywords. If you have trouble with registration or uploading, contact customer service at (800)990.9339 or [support@bidsync.com](mailto:support@bidsync.com).

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 January 8, 2020 deadline established in this announcement. All document files must be in Word or PDF format. **Pages documents will not be accepted:** convert them to PDF. Put identifying information on each document (not images) that is submitted: your name, email at a minimum.

**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, emphasizing public art experience.

**Six Digital JPG Images for each team member**

NOTE: ONLY DIGITAL (jpg) IMAGES WILL BE ACCEPTED.

Include six digital images of COMPLETED WORK ONLY (NO RENDERINGS OR PROPOSALS WILL BE ACCEPTED) in .jpg format with a resolution of approximately 1800 X 1200 pixels (4”X6” at 300dpi/ppi). Images should not exceed 1800 pixels. Review your images against the Image ID Sheet to ensure that the images you submit are numbered in the same order as the information on the Image ID sheet. The six images will be reviewed by the Selection Committee. The initial committee review is “blind”, requiring that no identifying information or the artist/curator or anything but the artwork itself should appear on the images.

**Image ID Sheet**

An example Image ID Sheet is provided in this project announcement. You will create a similar form with the same information on your computer, save, and upload along with the other required documents when you submit your qualifications.

**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:

- Director of the Central Oklahoma Transportation and Parking Authority (COTPA) or his designee
- COTPA Board Member
- COTPA Parking Services Manager
- Architect or Project Design Team Member
- Professional art Juror with experience in public art, or as a working artist
- Arts Commission Representative
- City Council or City Manager's Office Representative
- One or more stakeholders who will use the facility on a regular basis

The committee will not be announced prior to the jury. 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 evaluate all submittals to produce a short-list of three finalists. The finalists will then be invited to participate in two events:

1. The first is a mandatory site tour during construction of the facility for a first-hand look at the design, layout and materials being used for the facility and materials and fasteners for the public art project. 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 report and other information 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:
  - One-page artist statement about work proposed
  - Background information about the artist
  - A detailed budget for how the commission amount will be used to cover design fees and oversight costs
  - A maintenance plan with an estimate of costs to operate and maintain the 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)
  - At least two project references with contact information

**SCHEDULE OF EVENTS:**

The following schedule is slated for this Call to Artists. Please note that COTPA 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. **You are strongly encouraged to register on BidSync as soon as possible if you are interested in this project.**

Call to Artists Announced .....	Monday December 9, 2019
Deadline for Artist Submissions .....	<i>No Later than 4:00:00pm CST on Wednesday January 8, 2020</i>
Notification of Jury Results .....	January 17, 2020
Deadline for Artists to accept/decline invitation to interview.....	January 24, 2020
Mandatory Site Tour .....	February 19, 2020
Second Jury/Finalist Interviews .....	March 9, 2020
Notification of Selection.....	by March 10, 2020
Contracting Period .....	April - May 2020
Design development and construction drawings.....	May - June 2020
Design development and materials ordering coordination.....	(ten week lead time).... .. By July 1, 2020
Installation oversight.....	September 15 – October 15, 2020

**Note:** Each artist or artist team that successfully participates in both the Mandatory Site Tour and the Finalist Interviews will receive \$2,000.00 to help offset costs of preparing and presenting a conceptual design report.

**SKETCHES AND MODEL POLICY:**

All sketches and/or models produced, and materials presented for the proposal interview shall become the property of The Central Oklahoma Transportation and Parking Authority (COTPA). COTPA 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.

**OTHER SUBMISSION ENTRY INFORMATION:**

COTPA reserves the right to amend or withdraw this Call to Artists at any time and for any or no reason. Receipt of submission entries by COTPA or submission of an artist’s entry to COTPA or selection of an artist for purposes of negotiating a contract confers no rights to any artist nor obligates COTPA in any manner. COTPA 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. COTPA 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 COTPA executes a contract, whichever is sooner. COTPA 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. COTPA shall not provide reimbursement for such costs. COTPA 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 COTPA. COTPA 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, COTPA 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 COTPA.

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 COTPA of Oklahoma City.

**QUESTIONS:**

Any and all questions, comments or inquiries regarding this Call to Artists, must be made through BidSync. Deadline for questions is seven 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 COTPA 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 COTPA. A sample contract is attached for reference.

**CONTRACT:**

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

In an attempt to satisfy the legal requirements of COTPA, the contract will require that artist waives rights under the Visual Artists Rights Act (VARA); however, after the written waiver, COTPA is willing to reinstate to the artist certain rights. The extent of VARA rights to be reinstated is open for negotiation between COTPA 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

## EXAMPLE OF IMAGE ID SHEET

- Image 1. Title of Work (Thumbnail 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 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 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 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 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 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 Works of Visual Art**

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:

WORK ENTITLED:

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

Signature of Artist: \_\_\_\_\_



**EXAMPLE ARTIST CONTRACT**

**1% FOR ART - PUBLIC ART COMMISSION AGREEMENT**

PROJECT:

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between The Central Oklahoma Transportation and Parking Authority, hereinafter called "CCOTPA" 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 COTPA 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.

COTPA 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, COTPA 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 COTPA, but all specific direction to or requests of the ARTIST shall be authorized by the Liaison of Arts & Cultural Affairs of 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 CCOTPA. 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.

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 City Engineer and COTPA, 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, COTPA 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 COTPA 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 COTPA or its agents. ARTIST shall provide the ARTS LIAISON and COTPA 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 COTPA 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 COTPA.

#### Section II—COTPA'S RESPONSIBILITY

COTPA 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, COTPA shall make the following changes, at COTPA'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 COTPA'S notification of final acceptance or (2) the 30<sup>th</sup> 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 COTPA, 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 \$XXX.

#### 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 COTPA, the ARTIST shall refund to COTPA all monies paid by COTPA 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 COTPA 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 COTPA the WORK in whatever form it exists at the time of termination, which shall then become the property of COTPA 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 COTPA all monies paid by COTPA 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 COTPA 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, COTPA may require either of the options that would have been available to the ARTIST in this section. Exercise of either of these options by COTPA shall not prevent COTPA 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 COTPA.
- 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 COTPA pursuant to the schedule set forth in Exhibit "C" hereto and shall be entitled to any payments owed ARTIST by COTPA pursuant to Section III hereinabove. COTPA 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 COTPA.
- F. ARTIST shall protect adjoining property and nearby buildings, including COTPA 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 COTPA.
- 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 COTPA.
- 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 COTPA'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 COTPA. Any provisions in this Agreement that appear to give COTPA 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 COTPA 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 COTPA 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 COTPA.
- 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 to COTPA:

Parking Services Manager  
EMBARK/COTPA  
431 W. Main, Suite B  
Oklahoma City, OK 73102



City Clerk  
COTPA/City of Oklahoma City  
200 N. Walker  
Oklahoma City, OK 73102

ARTS LIAISON, Office of Arts & Cultural Affairs  
Oklahoma City Planning Department  
420 W. Main Street, 9<sup>th</sup> 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 COTPA 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. 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 COTPA.
- B. 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.
- C. 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 COTPA is an additional insured under said policy or policies and that said policy cannot be canceled except upon (30) days advance written notice to COTPA.
- 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 COTPA insuring COTPA 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 COTPA and ARTS LIAISON with a certificate of such insurance which shall provide that COTPA 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 COTPA, 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 COTPA and 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 COTPA and 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 2016. 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. COTPA shall provide and install a plaque identifying the WORK at the Location.
- D. COTPA'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 by the Central Oklahoma Transportation and Parking Authority" 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 COTPA 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 COTPA, 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 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, COTPA promises ARTIST that:

- A. COTPA 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 COTPA. Alterations may be made if maintenance substantially exceeds agreed upon recommendations as determined by COTPA. COTPA agrees that the WORK shall be properly maintained as funding is available, taking into account the instructions of ARTIST.
- B. COTPA 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. COTPA shall make a reasonable effort to maintain the integrity of the WORK.
- C. Nothing in this Section XII shall preclude any right of COTPA to remove the WORK from public display.

### Section XIII—REPAIR AND RESTORATION

It is the policy of COTPA 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 COTPA desires to use someone other than the ARTIST to repair or restore the WORK, COTPA shall have such WORK performed in accordance with recognized principles of conservation as funding is available.

### Section XIV—REPUTATION

- A. COTPA'S Commitment. COTPA 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 COTPA 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. COTPA 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 COTPA through the ARTS LIAISON.

### Section XVII—SUCCESSORS AND ASSIGNS

COTPA 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 COTPA, through the ARTS LIAISON. In no event shall any contractual relation be created between any third party and COTPA.

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 COTPA, its Board, City Council, or an employee of CITY has any interest, financially or otherwise,  
in ARTIST'S business.