



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

**Call to Artists:
Request for Qualifications for Public Art for
Senior Health and Wellness Center No. 3**

RFQ-OCITY-103

**Deadline for responses:
4:00:00 p.m. CST Wednesday January 20, 2021**



(Published in the Journal Record on December 23, 2020)

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 20th day of January 2021, for the following:

CALL TO ARTISTS: REQUEST FOR QUALIFICATIONS (RFQ-OCITY-103)
PUBLIC ART FOR SENIOR HEALTH AND WELLNESS CENTER NO. 3

The 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. The City 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. The 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 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 City and its Trusts reserve the right to waive formalities, irregularities, and defects in any or all proposals, except as otherwise required by law. The 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. The 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 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: Public Art for Senior Health and Wellness Center No. 3
Total art award: \$76,500
Bid published: December 23, 2020
Bid deadline: January 20, 2021

The interior artwork sought through this announcement will be designed for and installed in the main entry area of the new Wellness Center currently under construction at NE 36th and Lincoln Boulevard. The work is envisioned to be a heritage wall, visually telling the story of women, men, and children who lived their lives and worked for racial equity, and those who continue the work today.

For this project there is a strong preference for telling the story with technological and mixed media: film, video, projection, projection mapping, LED lighting, etc. A strong interactive component is also desired so that members and visitors to the Wellness Center can create a changing tableau of information and images.



Image: Lobby entry lounge of Wellness 3. Walls and windows may be utilized for the public art

Budget

The total art award is **\$76,500.00** for all costs for designing, creating, and installing the work, including but not limited to materials, engineering, research, travel, transportation, required insurance (see Section X in attached "sample public art agreement), and any necessary permits.

Background

This new Senior Health and Wellness Center is the third such state-of-the-art center which encourages healthy lifestyles and serves as a gathering place for active seniors. The site near the State Capitol is in the heart of the area where Clara Luper, James Stewart, Ayanna Najuma and many others associated with the civil rights struggles in Oklahoma City lived, worked, and went to school. They were preceded and followed by a multitude of citizens who contributed and are contributing to the ongoing movement to create racial and social equity. This artwork will be a testament to all of their lives and works.

The completed artwork should tell a different kind of story in a different way: not just static images of the heroines and heroes, but a community curated experience of the sights and sounds of the evolving story of Ward 7 and surrounding areas. It should reflect NE Oklahoma City in a way not reflected in other projects, by being reflective of the past, and projective of the future.

Eligibility

This opportunity is open to all practicing artists who are at least 18 years of age. Submissions from artist teams are particularly encouraged. All artists and artist teams selected as finalists must attend all required information sessions or site visits. Artist teams may include artist apprentices younger than 18.

It is preferred that artists create a culturally diverse team which will include at least one locally-based artist or apprentice artist who lives, works, or attends school in Oklahoma City or is currently enrolled as a student at Langston University. The Office of Arts and Cultural Affairs can aid teams in identifying potential artists and/or apprentices.

The artist or team that is selected for the award must identify a locally based (living within a 120 mile radius of the Project site) Project Manager who is the main Project contact and who can be on site or react quickly as needed for construction meetings and other contingencies. Artists may designate themselves, if locally based.

Despite the preference for technological media, entries by artists working in traditional media will be given full consideration by the Selection Committee.

Submission through BidSync

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 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. 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.

What to submit

To fully respond to this Request for Qualifications you will be required to upload the following items to BidSync prior to the deadline established in this announcement:

Artist Contact information and references

Include names of all team members with email and phone.

References

Provide names and contact information for two professional references

Resume(s)

Include a concise one-page current professional resume for each artist, emphasizing public art experience.

Digital JPG Images

An individual artist may submit up to 6 images; and an artist team that regularly works as a team may submit up to 6 images. An artist team assembled for this project may submit up to 10 images. There must be at least one representative work for each team member; with no more than 6 images from any individual team member.

Note: Only digital (JPG or PDF) images of completed work will be accepted. No renderings or proposals may be included. Include digital images in .jpg format, not to exceed 2MB in size. (For help in resizing images please attend the non-mandatory information meeting). Match image file names to image ID sheet, numbered and ordered consecutively (for example: 1.artist.title1; 2.artist.title2; etc). Do not put any identifying information of the artist/team, or anything but the artwork itself on or in the images.

Image ID Sheet

Enter image ID information for each image consecutively: file name/number, title, medium, dimensions, location (city), year completed (see attached sample). Create a similar form with the same information on your computer, save it, and upload along with the other required documents when you submit these qualifications. The ID sheet must include thumbnail images to help identify the work. Include basic artist contact information on the ID sheet.

Note: All written information must be in Word or PDF format. Documents in Pages cannot be read and will not be accepted.

Schedule of events

The following schedule is proposed for this Call to Artists. All times and dates are tentative; the City reserves the right, as deemed necessary, at its sole discretion to adjust this schedule by written notice to all the artists who have timely responded. A non-mandatory Zoom information meeting is scheduled for Wednesday January 6 , at 2 p.m. CST for all interested artists; please join up to 15 minutes before the meeting starts: <https://okc.zoom.us/j/96908281603>

- Call to Artists (RFQ) Announced..... Wednesday, December 23, 2020**
- Non-mandatory information meeting..... 2 p.m. CST Wednesday, January 6, 2021**
- Deadline for Submissions 4:00:00 p.m. CST Wednesday, January 20, 2021**
- Selection Committee meeting Wednesday, January 27, 2021**

Mandatory Site Tour Wednesday, February 17, 2021
Final presentations and selection (Zoom)Friday, March 19, 2021
Arts Commission recommendation..... 4:00pm CDT on Monday, April 19 , 2021
City Council authorization and approval TBD 2021
Contracting Fabrication, Installation..... TBD

Selection committee

The Art Selection Committee may include but is not limited to:

- Arts Commissioner
- Professional Art Juror
- Parks Department representative
- Stakeholder
- Facility operator representative

The Committee will evaluate all responses to this call and choose three finalists for the Project art award. The chosen finalists must attend a mandatory site tour* and prepare concepts and a Conceptual Design Report to present to the Selection Committee.

*The site tour will be conducted in a manner that follows strict safety protocols.

Selection criteria

Artist applications will be evaluated to determine whether the artist involved possesses the creativity, technical skills, and discipline required for this public art project. Criteria to be applied and interpreted by the Selection Committee in choosing the finalists include:

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. Evidence of experience with projects of a similar scale and scope
3. Appropriateness of artist 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 all 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

Finalists will prepare and present to the Selection Committee a Conceptual Design Report. The report must include:

- Illustrations and/or models of the proposed design
- A detailed project Budget
- Installation/production details (surface prep, on-site equipment, proposed timeline)
- A maintenance plan with an estimate of annual costs to maintain the proposed work
- A one-page or less statement about the proposed work
- A statement about any conflicts in artist's schedule for project (refer to Schedule of Events)

Criteria to be applied and interpreted by the Selection Committee in the Final Selection include:

1. Technical feasibility of proposed project
2. Good work habits: ability to meet deadlines, experience with budgeting, good communication skills, good problem-solving abilities—as supported by references
3. Safety, accessibility, durability, maintenance requirements, permanence of materials, and protection against vandalism of the artwork proposed
4. Other criteria as may be established by the Selection Committee. Any additional criteria will be outlined in the Committee's written instructions provided to artist(s) invited to compete in the second stage of the competition

Each finalist/finalist team will be paid a fee of \$2,000 (one \$2,000 payment *per finalist team* or individual finalist) to include all design fees, materials, transportation, and any other costs or fees associated with competing in the selection process, attending the site tour, and making a final presentation. These fees are usually processed and paid within four weeks of the Final Selection.

Copyright

Artist shall retain all rights under 17 U.S.C. §101 et seq. (the Copyright Act of 1976), subject to rights of attribution and certain other specific rights, as well as all other rights in and to the Work, except ownership and possession. City shall have ownership and possession of Work pursuant to this Agreement, but shall not own the copyright to the Work, which shall be retained by Artist. No Work created by Artist for City, pursuant to this Agreement or any other agreement, shall be considered a "work made for hire" as defined by Title 17, U.S.C §§ 101 and 201(b) (the United States Copyright Act of 1976).

Other submission information

The City 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 City or submission of an artist's entry to City or selection of an artist for purposes of negotiating a contract confers no rights to any artist nor obligates City in any manner. 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 any time. City incurs no obligation regarding this Call to Artists, or any contract resulting therefrom, until a contract is fully negotiated, and all documents have been properly submitted and executed by all parties.

Costs of developing a submission entry are solely the responsibility of the artist. City shall not provide reimbursement for such costs. City shall not be liable for any artist's preparation costs for any reason, other than that fee 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 City. 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, 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 City.

Selected artist will be required to provide City: (a.) A certificate of insurance for workers' compensation and liability coverage, or an exemption certificate procured from Oklahoma's Workers' Compensation Commission; (b.) General Commercial Liability Insurance evidenced by with a certificate of such insurance which shall provide that City is an additional insured under said policy or policies; (c.) property in transit insurance for an amount equal to the art award; (d.) a VARA waiver (sample below); and (e.) an installed informational marker or plaque for the public artwork. For more details and additional requirements see attached [Sample public art agreement](#).

Example of image ID sheet

Artist name: _____ Artist email: _____ Artist phone: _____

1.

thumbnail
image 1

 Title of Work
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

2.

thumbnail
image 2

 Title of Work
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

3.

thumbnail
image 3

 Title of Work
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

Etc. up to 6 (for individuals) or 10 (for one-time teams) images

Sample VARA waiver

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:

ARTWORK ENTITLED:

MATERIALS:

Date: _____ Signature of Artist: _____

Sample public art agreement. This is for information purposes only.

CITY OF OKLAHOMA CITY
1% FOR ART-PUBLIC ART COMMISSION AGREEMENT
PROJECT: Name of artwork

THIS AGREEMENT, made and entered into this date day of month, year, by and between The City of Oklahoma City, hereinafter called "City," and Artist name-can also include dba name here, hereinafter called "Artist," for describe scope here and remain consistent with description throughout agreement (example: the design, fabrication, delivery and installation) of a sculpture/mural/other titled "name of artwork," hereinafter called the "Work."

Artist was selected pursuant to a competitive process by the City for design, create and install a full scale Work at the location described in Exhibit "A," hereinafter the "Location" and Artist is willing to provide such services and the 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, creation, and installation of the Work 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 1: ARTIST SERVICES

The Artist's Work shall reflect concepts and designs as depicted in the Conceptual Design Report and recommended by the stakeholder Selection Committee and the Oklahoma City Arts Commission, which concepts and designs are set forth in Exhibit "B," attached hereto and made a part of this Agreement. Artist may discuss the Work or its requirements with various departments of the City, but the Arts Liaison or her designee, hereinafter called "Arts Liaison," shall authorize all specific direction or responses to all requests of the Artist. Artist shall be responsible for design, create, and install and for all services and expenses associated with design, create, and install of the Work, including all necessary supplies, materials, equipment, and permit requirements. Artist shall design, create, and install the Work to conform to the requirements of all City and State of Oklahoma laws, ordinances, codes, regulations, and requirements which affect completion 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. Work shall commence upon Artist's receipt of the executive Agreement and a written Notice to Proceed authorized by the Arts Liaison.
2. The goal of the parties is for Artist to design, create, and install a Work titled "name of artwork," as described in Exhibit "B." In addition, Artist shall design and provide material specifications and other requirements as may be necessary for an appropriate art marker.

3. The Work represents the creative talents of the Artist and satisfies the specifications of the City. Both parties recognize that they must consult closely to accomplish the Work that is the goal of this agreement.

B. COMPLETION OF DESIGN

1. Artist shall request additional information from City as needed to prepare construction drawings and specifications to the satisfaction of the City.
2. Artist shall travel to the Location as necessary to field verify and coordinate with staff, consultants and general contractor regarding the Location and the Work.
3. IF STRUCTURAL: Artist shall complete an Engineering Plan. The Engineering Plan shall accurately depict the site for the Work, including dimensions in inches and feet. The Engineering Plan shall be based on plans created by the Project Architect and General Contractor, which will be provided to Artist by the City. Artist's Engineering Plan shall include:
 - a. Elevation renderings that shall accurately depict the final "look" of the Work. The size weight and materials shall be clearly shown on the drawings. All elevation renderings shall include scale for dimension purposes and shall be signed and sealed by an Oklahoma licensed architect/engineer prior to review and for permitting purposes.
 - b. Artist shall complete Connection Drawings reflecting details of how the sculpture will be connected to the building infrastructure or the site. Connection drawings showing sizes, types of fasteners and materials shall be included. Connection Drawings shall be signed and sealed by Oklahoma licensed architect/engineer prior to review and for permitting purposes. IF NON-STRUCTURAL: Artist shall complete a Site Plan. The Site Plan shall accurately depict the site for the Work, including dimensions in inches and feet. The Site Plan shall be based on plans created by the Project Architect and General Contractor, which will be provided to Artist by the City. The Site plan shall include an aerial view and an elevation rendering that shall accurately depict the final "look" of the Work. The size weight and materials shall be clearly shown on the drawings. All elevation renderings shall include scale for dimension purposes. IF ELECTRICAL: Artist shall complete Electrical and Lighting Plans and details shall include complete wiring diagrams, specifications, and estimated load. Plans shall be signed and sealed by an Oklahoma licensed architect/engineer prior to review for permitting purposes.
4. Artist may be required to complete Other Information. Depending on the installation method, additional drawings may be requested for review and permitting purposes. Any Other Information required shall be

requested from Artist in writing. Artist shall then be allowed at least thirty (30) days to provide requested information.

5. 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 Artist to minimize or eliminate hazard.

C. CONSTRUCTION DRAWINGS AND SPECIFICATIONS - IF STRUCTURAL

1. Prior to Artist completion of Construction Drawings and Specifications for the Work, Artist will apply for and receive City Engineer approval. The City Engineer will use the Engineering Plan, Connection Drawings, Site Plan, Electrical and lighting Plan, and Other Information as may be requested by Public Works, including revisions that may be requested for the City Engineer's evaluation.
2. Artist shall secure all required reviews, licenses, and similar legal authorizations at Artist's expense for development of the Work and pay all costs for licensing and permitting the Work as may be necessary for the installation and maintenance of the Work at the Location until final acceptance by the City.
3. Once all plans are permitted, fabrication of the Work shall begin.
4. Artist shall send monthly progress reports by the first business day of each month to okcarts@okc.gov during the term of this agreement. During fabrication, Artist shall include images of fabrication with the monthly progress report. Once fabrication of the Work is completed, 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 the City.

D. Delivery and Installation Phase

1. The Work shall not be delivered to the Location or installed until Artist has received written authorization from the Arts Liaison or her designee that the specific installation plans submitted by Artist have been approved by the 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 the installation of the Work.
3. All risk of destruction of, 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 is authorized 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 a thirty (30) day notice of the proposed date of installation.

4. Arrangements for access to the Location for installation shall be as authorized through the Arts Liaison or authorized representative, and access thereto shall not be scheduled until City has received from 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 as authorized by the Arts Liaison.
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.
6. The anticipated Project schedule that includes completion is described on Exhibit "E," attached to this agreement.
7. Artist shall prepare or cause to be prepared a detailed Maintenance Plan for the Work. The Maintenance Plan is subject to changes based on finalized construction methodology and/or material selection and shall be submitted within 30 days following Final Acceptance of the Work.

Section II-CITY'S RESPONSIBILITY

- A. City shall provide all information, including requirements and specifications, for the Location of the Work, which shall be as shown on Exhibit "A." All specifications shall be provided as authorized through the Arts Liaison.
- B. City shall examine materials and information submitted by the Artist and promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the Work unless City must rely on a third-party Conservatory or other expert for decisions. Response to the Artist's written request for decisions related to the Work shall be made in writing as soon as reasonable possible.
- C. City shall provide final acceptance of the Work to 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 Artist has sent written notice to the Arts Liaison as required under Section I.D.5., unless the Arts Liaison, upon receipt of such notice and prior to the expiration of the 30-day period, authorizes written notice to the Artist specifying and describing the services which have not been completed.
- D. City, through the authorization of the Arts Liaison, shall provide technical assistance and recommendations to Artist to secure all required reviews, licenses and similar legal authorizations, licensing and permitting for the Work as may be necessary for the installation and maintenance of the Work at the Location until final acceptance by City.

Section III-COMPENSATION AND PAYMENTS

- A. Following approval of this Agreement by the City, payments shall be made to Artist in full consideration of the design, fabrication, delivery, and installation of the Work as described on Exhibit "G," attached to this agreement.

- 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 are described on Exhibit "D," Processing Artist Claims for Payment, attached to this Agreement.
- C. Compensation and payment to Artist for Work under this contract shall not exceed \$XXX, as described on Exhibit "C," attached to this agreement.

Section IV-TERMINATION OF AGREEMENT

If 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 to the defaulting party by certified mail, return receipt requested, of its intent to terminate and specifying the grounds for the termination. The defaulting party shall have thirty (30) days after the receipt of a termination notice to cure the default. If the default is not cured, then this Agreement shall terminate without further required action of the party giving notice. City may terminate this Agreement at any time, for convenience, when it is in the best interest of the City to do so.

A. Termination by Artist

If this Agreement is terminated by Artist before installation of the Work without fault on the part of the 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 Artists own use without restrictions.

B. Termination by City

1. 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 this paragraph, 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 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 Payment Schedule, Exhibit "G," attached to this Agreement. The Installation Phase shall be included when computing the percentage of Work completed. If payments previously made to the Artist exceed the total amount due, then the Artist shall deliver to the City the Work in whatever form it exists at the time of termination, which shall then become the property of the 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.
2. In the event this Agreement is terminated by City for fault on the part of the Artist, or in the event of any breach of the terms of this Agreement 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 Artist without the prior written consent and approval of City.
- D. Optional for Studios/Teams: The death or incapacity of individual artist name will not affect the terms of this contract which shall be fulfilled by Artist.
- E. Nothing contained in the terms of this Agreement shall create or give to third parties any claim or right of action against City.
- F. Artist shall protect adjoining property and nearby buildings, in accordance with City's [Standard Specifications for the Construction of Public Improvements](#), including delivery to site, proper storage, and protection of City Buildings, roads and public streets from dust, dirt, rubbish or other nuisance arising out of Artist's operations or storage practice.
- 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 in writing by Arts Liaison.
- 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 the 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, final inspection.

Section VII-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, expenses, liability actions or procedures of any kind or nature whatsoever arising out of Artist's activities under this Agreement.

Section VIII-ARTISTS' REPRESENTATIONS AND WARRANTIES

- A. Defects in Material or Workmanship and Inherent Vice. Except for unforeseen changes in environmental conditions or changes to the Location by City or by third parties affecting the Work site (including but not limited to, damage by car or other vehicle or equipment, intentional vandalism, tornado, windblown objects and hail), Artist warrants that the Work will be free of defects in workmanship or materials, including inherent vice, and that Artist will at Artist's own expense, promptly remedy any defects that arise within a period of three (3) years from the date the Work is finally accepted by City. Artist further warrants that the Work will not require maintenance substantially more than that described in the recommendations provided by Artist to City for the following periods from date the Work is finally accepted by City: thirty (3) years for structural components including titanium and cabling elements; three (3) years for computers and related electronic components used for lighting programming and data input; and, the manufacturer's warranted period for LED lights. The Maintenance Plan is attached hereto as Exhibit "F." "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. City agrees that it shall exercise reasonable care and diligence to prevent conditions that may damage or otherwise degrade the materials and structure of the work.
- B. Public Safety. Artist warrants that the Work will not contain sharp points or edges or be constructed of a material which, when broken will be of such nature that the City deems it a danger to the public. Artist agrees to cooperate in making or permitting adjustments to the Work, if necessary to eliminate such hazards which become apparent within three (3) years 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 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 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 IX-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. The Schedule will be equitably adjusted to reflect delays in the work that are not the fault of the parties.

Section X-INSURANCE TYPE, AMOUNT, AND DURATION

Artist shall:

Procure and maintain throughout the fabrication, transportation and installation phases of this Agreement, any insurance, including employers' liability insurance, to the extent and in the manner required by the statutes of the State of Oklahoma. Artist shall furnish Arts Liaison and City 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 thirty (30) days advance written notice to City.

Artist shall procure, prior to entering the Location to install the Work and maintain until final acceptance of the Work by Arts Liaison:

- A. 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 X 151 et seq., for accidental and personal injury. If the Policy limits are aggregate in nature, then Artist shall provide evidence from their insurer that there is adequate remaining coverage pursuant to the provisions of this Agreement. 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; \$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.
- B. Property in Transit insurance, with limits of not less than \$XXXXXXX.

Section XI-OWNERSHIP

- A. Title. Title to the Work shall remain with Artist until Artist is paid in full pursuant to Section III herein above.
- B. Ownership of Documents. Samples. Upon final acceptance of the Work and upon written request from Artist, the studies, drawings, and models prepared and submitted under this Agreement as presented to the assembled Selection Committee shall be returned, at Artist's expense, to Artist and shall belong to Artist.

Section XII-EXPLOITATION OF THE WORK AND REPRODUCTION RIGHTS

- A. Copyright. Artist shall retain all rights under 17 U.S.C. §101 et seq. (the Copyright Act of 1976), subject to section XIII of this contract and all other rights in and to the Work, except ownership and possession, except as otherwise provided in this Agreement. **City shall have ownership and possession to Work pursuant to the Agreement, but shall not own the copyright to the Work, which shall be retained by Artist.**
- B. Reproductions. Artist hereby authorizes City to make, or 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, Artist shall be entitled to customary and appropriate identification as the creator of the Work as follows: Name of Artist © 2021. 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. Art Marker. Artist shall create and install an art marker identifying the Work or integral to the Work. The art marker shall be developed in accordance with current standards promulgated by the Oklahoma City Arts Commission.
- 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 Art Ordinance" or equivalent, and that Artist will make a good faith effort to ensure that any and all references to the Work by others will include the same credit.
- E. Documentation.
1. During fabrication and submitted by the 5th day of every month, Artist shall provide the City with one or more publication photos of the work in progress, accurate in color and detail and in .jpg format, along with a written progress report.
 2. During installation Artist shall provide the City with one or more publication photos of the work in progress, accurate in color and detail and in .jpg format
 3. After completion Artist shall provide the City with one or more publication photos of the Work, accurate in color and detail and in .jpg format, within thirty (30) days following installation of the Work.
- 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 described herein.
- G. Publicity. The City grants to the Artist the right to use the City's name and project name and project name and description for non-commercial purposes relating to the Work, such as to identify the Work as part of Artist's portfolio, promotional and marketing materials including, but not limited to, on Artist's website, and in third party publications or media.

Section XIII-CARE OF WORK, REPAIR AND RESTORATION AND RIGHT OF RECOVERY

All parties agree that application of the Visual Artists Rights Act (VARA) 17 U.S.C. § 106A *et seq.*, will be waived by Artist.

_____ (Artist's initials and date). However, the City promises Artist that:

- A. City shall not intentionally destroy, damage, alter, modify, or change the Work except when the condition, safety or security of the Work cannot be guaranteed as determined by the City.
- B. It is the policy of City to consult with Artist regarding repairs and restoration which are undertaken during Artist's lifetime, when that is practicable. To facilitate consultation, Artist shall notify City of any change in Artist's permanent address, email address or contact telephone number. If Artist is unable or unwilling to perform any necessary repairs or restoration, or if City desires to use someone other than Artist to repair or restore the Work, City shall have such Work performed in accordance with recognized best practices and in accordance with an Artist's workplan approved by City in advance.
- C. When practical to do so, the City shall notify Artist of any proposed alteration of the Location that would affect the intended character and appearance of the Work and shall consult with Artist in the planning and execution of any such alteration. City shall make a reasonable effort to maintain the integrity of the Work.
- D. Nothing in this Section XIII shall preclude any right of the City to remove the Work from public display or to permanently relocate the Work to a Location not specified in Exhibit "A."
- E. If at any time, the City elects to remove the Work and deaccession the work from its public art collection for either surplus sale and/or destruction of the Work, City shall so advise Artist, Artist may, at its option, to be exercised within thirty (30) days following receipt of such notice, request that City convey, transfer and assign to Artist, the Work, and all City's rights to the Work, along with any and all intellectual property rights held by City and acquired under this Public Art Commission Agreement or otherwise related to the Work. If Artist requests such conveyance, transfer, and assignment, Artist shall tender payment of the surplus value of the Work utilizing the same process by which City now sells surplus goods and equipment. City shall freely make such conveyance, transfer, and assignment within thirty (30) days following receipt of notice and payment, and Artist shall remove the Work from the Location within thirty (30) days following receipt of the conveyance, transfer, and assignment from the City. If no response is received from Artist within thirty (30) days following receipt of notice from City, City may proceed with its plan to deaccession the Work from the collection and either surplus sale and/or destroy the Work.

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 way 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's Commitment. Artist agrees that Artist will not refer to the Work or reproduce the Work, or any portion thereof, in a way which reflects discredit on City or the Work.

Section XV-NO ASSIGNMENT OR TRANSFER

The personal skill, judgment and creativity of 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.

XVI-SUCCESSORS AND ASSIGNS

City and Artist each bind themselves, their 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 to the extent the law allows. Artist shall not assign, sublet, or transfer Artist's interest in this Agreement without the written consent of the City, through the Arts Liaison or her designee. In no event shall Artist attempt to create a contractual relationship between any third party and the City.

Section XVI-ANTI-COLLUSION

Artist warrants that no person has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for commission, percentage, brokerage, or contingent fee, and that no member of The City of Oklahoma City Council, or an employee of The City of Oklahoma City, or an Oklahoma City Arts Commissioner has any interest, financially or otherwise, in Artist's business.

IN WITNESS WHEREOF, the parties hereto have approved this Agreement as indicated by the authorized signatures below, as of the dates there set out.

APPROVED by The City of Oklahoma City and SIGNED by the Mayor this _____ day of _____, 2021.