

Office of Arts & Cultural Affairs of the City of Oklahoma City

Call to Artists:

Request for Qualifications for Public Art for the
Wendel Whisenhunt Sports Complex

RFQ-OCITY-101

Deadline for responses:

4:00:00 p.m. CDT Wednesday August 4, 2021



Project: Exterior sculpture for the Wendel Whisenhunt Sports Complex at Woodson Park, 3200 S. Independence Ave

Total art award: \$39,000.00

Bid published: July 7, 2021

Bid deadline: August 4, 2021

The exterior sculpture sought through this announcement will be designed for and installed on the lawn between the main entrance gates of the Sports Complex and the concession/office building.



Image 1: The entrance to the soccer fields and office/concession building at the Sports Complex

Background

People who use the Sports complex are typically family focused and reflect the full diversity of the population of Oklahoma City. The design for the sculpture will be lively and colorful, have a soccer or sport theme or inspiration, and be reflective of the cultural diversity of the City.

Budget

The Art award is \$39,000 to pay for all expenses including but not limited to: design, construction, installation, any required permits, engineering, labor, artist fee, and insurance. A permanent art marker identifying the work and the artist is also required.

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 17.

It is preferred that artists create a culturally diverse team which will include at least one artist or apprentice artist who lives, works, or attends school in the area of Oklahoma City south of I-40 and west of I-35. The Office of Arts and Cultural Affairs can aid artists in identifying potential artists and/or apprentices.

Submission through Periscope

Proposers must register with [Periscope](#) and submit their qualifications electronically through Periscope (formerly BidSync). **The City and its Trusts recommend potential proposers register and become familiar with the Periscope 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 Periscope. 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 Periscope/ Register for free:

1. Visit: <https://prod.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 Periscope 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.

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 4:00:00 pm deadline on the date established in this announcement:

Artist Contact information and references

Include names of all team members with email and phone, and two references (names and preferred contact only; do not include letters of reference)

Statement

Briefly explain your approach to design generally, and how you may approach this project specifically. Explain why you or your team are uniquely suited to this Project.

Resume(s)

Include a concise one-page current professional resume for each artist, emphasizing public art experience if you have it, and other relevant information.

Digital JPG Images

Submit eight (8) images. If the entry is as a team, there must be at least one representative work for each team member, with no more than six (6) images from any individual team member. No images are required for a team member who works in an organizational or management capacity only.

Note: Only digital (JPG or PDF) images of **completed** work will be accepted. No renderings or proposals may be included. Provide digital images in .jpg format, not to exceed 2MB in size. 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, city, year completed, cost or value; you may also include a very brief one-sentence explanatory statement. See attached sample below and create a similar form in **portrait format**. 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 nonmandatory Zoom information webinar is scheduled for Wednesday July 14, 2021, at 2:00 pm CDT at <https://okc.zoom.us/j/91240080896> for all interested artists; please join up to 15 minutes before the webinar starts:

- Call to Artists (RFQ) Announced.....July 7, 2021**
- Non-mandatory information meeting.....2 pm CDT Wednesday July 14, 2021**
- Deadline for Submissions 4:00:00 pm Wednesday August 4, 2021**
- Selection Committee meeting Wednesday August 11, 2021**
- Site Tour Friday August 27, 2021**
- Final presentations and selectionFriday September 24, 2021**
- Arts Commission presentation4:00pm on Monday October 18, 2021**
- Council authorization and approval TBD**

Contracting Fabrication, Installation..... TBD 2021

Selection committee

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

- Arts Commissioner
- Professional Art Juror
- Parks Department representative
- Stakeholders

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

Selection criteria

Submissions will be evaluated to determine whether the artist or artist team 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 the 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 with the proposed Project schedule

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 \$1,000 (only one \$1,000 payment per team) 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 will 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 all other rights in and to the Work, except ownership and possession. City will have ownership and possession of Work pursuant to this Agreement, but will not own the copyright to the Work, which will be retained by Artist. No Work created by Artist for City, pursuant to this Agreement or any other agreement, will 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 The City or submission of an artist’s entry to The City or selection of an artist for purposes of negotiating a contract confers no rights to any artist nor obligates The City in any manner. The City reserves the right, at its sole discretion and for any reason, to reject all submission entries and not award any contract and to solicit additional or different submission entries at any time. The 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. The City will not provide reimbursement for such costs. The City will 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 will 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 will be received and reviewed by The City. The City reserves the right to reject any entry deemed to be non-responsive for failure to comply fully with the terms of the Call to Artists. However, The City reserves the right, at its sole discretion, to request clarifications, corrections, or additional information and to waive Irregularities in execution or delivery of the entry provided it is in the best interest of The City.

Selected artist will be required to provide the City of Oklahoma City with:

- - A certificate of insurance for workers’ compensation and liability coverage; or, statement of self-insurance. Insurance must be in force prior to entering Location for the purpose of completing the Work and until final acceptance of the Work by the Arts Liaison.

- General Commercial Liability Insurance with responsible insurance underwriters acceptable to CITY insuring CITY and Artist against all legal liability for injuries to persons caused by Artist's use and occupancy of the premises or otherwise caused by Artist's activities and operations on said premises, with liability limits of not less than those established in the Governmental Tort Claims Act, 51 Oklahoma Statutes § 151 et seq., for accidental and personal injury. Currently, those limits are \$175,000 for a claim for any other loss arising out of a single act, accident, or

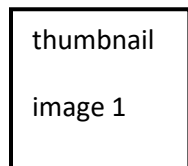
occurrence; \$25,000 for a loss of property; and \$1,000,000 for any number of claims arising out of any single occurrence or accident. Artist will furnish CITY and Arts Liaison with a certificate of such insurance which will provide that CITY is an additional insured under said policy or policies, and which will be in effect for the duration of the Agreement.

- A fully executed General Waiver for Works of Visual Art for each participating artist, a sample of which is included in this Call to Artists.

Example of image ID sheet

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

1. Image



Title of Work

Media

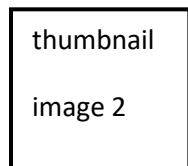
Dimensions (H X W X D in feet and inches)

Date work completed (use only images of completed work)

Location (City, State)

Value or amount of commission

2. Image



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. Image



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

... and so on up to 8 images

General VARA Waiver for Works of Visual Art (Sculpture)

I, _____ (print name), “Artist,” hereby acknowledge the rights of attribution and integrity generally conferred by Section 106A(a) of Title 17 of the U.S. Code (The Visual Artists Rights Act of 1990, “VARA”), and any other rights of the same nature granted by other federal, state or foreign laws. Of his/her own free act, Artist hereby waives his/her VARA rights with respect to the uses specified below, and acknowledges that The City of Oklahoma City, or anyone duly authorized by The City of Oklahoma City may have cause to remove said sculpture when to do so is determined to be in the best interest of The City. I understand that care will be taken to preserve the integrity of the piece.

Artist hereby further asserts that he/she has a copyright in and to the aforementioned Sculpture, and retains the exclusive right to make copies, including photographs of the placed Sculpture, and the right to create derivative works during placement of the Sculpture at:

_____ Neighborhood or District Association in Oklahoma City
Address

SCULPTURE ENTITLED: _____

MATERIALS: _____

SPECIFIED USES: Artistic enhancement of the property located at the above address in Oklahoma City.

Artist hereby acknowledges that an Art Easement conferred by the property owner for placing a sculpture on a particular property may specify a fixed period of time during which every effort will be made by the property owner to allow such sculpture to remain. However, as Artist hereby further acknowledges, despite the specific term provisions of the Art Easement, a requirement for removal of the sculpture to accomplish the best interests of The City may occur, and the removal requirement on the part of The City may occur without opportunity for prior notice to Artist.

Date: _____ Signature of Artist: _____

I, _____ (printed name) do hereby acknowledge the VARA rights of attribution and integrity of Artist, including a copyright interest, as set forth above, and hereby grant permission for Artist to display his/her Sculpture for enhancement of the property at the address set forth above.

Date: _____ Printed name of Purchaser: _____

Signature of Purchaser

Sample public art agreement for information 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 will 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," will authorize all specific direction or responses to all requests of the Artist. Artist will 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 will 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 will assist in filing any documents required to secure approval of all governmental authorities having jurisdiction.

A. COMMENCEMENT OF WORK

1. Work will 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 will 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 will request additional information from City as needed to prepare construction drawings and specifications to the satisfaction of the City.
2. Artist will 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 will complete an Engineering Plan. The Engineering Plan will accurately depict the site for the Work, including dimensions in inches and feet. The Engineering Plan will 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 will include:
 - a. Elevation renderings that will accurately depict the final "look" of the Work. The size weight and materials will be clearly shown on the drawings. All elevation renderings will include scale for dimension purposes and will be signed and sealed by an Oklahoma licensed architect/engineer prior to review and for permitting purposes.
 - b. Artist will 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 will be included. Connection Drawings will be signed and sealed by Oklahoma licensed architect/engineer prior to review and for permitting

purposes. IF NON-STRUCTURAL: Artist will complete a Site Plan. The Site Plan will accurately depict the site for the Work, including dimensions in inches and feet. The Site Plan will be based on plans created by the Project Architect and General Contractor, which will be provided to Artist by the City. The Site plan will include an aerial view and an elevation rendering that will accurately depict the final “look” of the Work. The size weight and materials will be clearly shown on the drawings. All elevation renderings will include scale for dimension purposes. IF ELECTRICAL: Artist will complete Electrical and Lighting Plans and details will include complete wiring diagrams, specifications, and estimated load. Plans will 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 will be requested from Artist in writing. Artist will then be allowed at least thirty (30) days to provide requested information.
 5. Artist will avoid the use of materials or finishes known to be hazardous or potentially hazardous, including asbestos or any derivative thereof. Artist will 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 will 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 will begin.
 4. Artist will 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 will include images of fabrication with the monthly progress report. Once fabrication of the Work is completed, Artist will submit a report to the Arts Liaison certifying that the Work has been completed. The report will include plans for installation and a description of any activities requiring coordination with the City.
- D. Delivery and Installation Phase
1. The Work will 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 will not be unreasonably withheld.
 2. Following delivery of the Work, Artist will install the Work at the Location in the manner as provided in Exhibit “A.” Artist will 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 will 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 will 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 will 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 will be as authorized through the Arts Liaison or authorized representative, and access thereto will 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 will 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 will 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 will 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 will 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 will 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 will 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 will have thirty (30) days after the receipt of a termination notice to cure the default. If the default is not cured, then this Agreement will 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 will 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 will not prevent the Artist from pursuing a remedy otherwise available in law or equity.
 - a. The Artist will 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 will be included when computing the percentage of Work completed. If payments previously made to the Artist exceed the total amount due, then the Artist will deliver to the City the Work in whatever form it exists at the time of termination, which will then become the property of the City for use without restriction, except that it will 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 will 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 will 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 will not be construed to be a waiver of such provisions, nor will 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 will 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 will be fulfilled by Artist.
- E. Nothing contained in the terms of this Agreement will create or give to third parties any claim or right of action against City.
- F. Artist will 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 will 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 will 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 will remove from Location all equipment and any waste materials not previously disposed of, leaving Location thoroughly clean and ready for City, final inspection.
- J. Installation and worker safety will be in conformance with Oklahoma laws and regulations.
- K. Artist will be responsible for all mailing, shipping, transportation and travel expense required under this Agreement and all Federal and State income taxes on the total compensation from this Agreement, as well as any State and City sales tax which may be required.
- L. Artist and all agents and employees of Artist will observe and comply with all prevailing Federal, State and City laws, ordinances, regulations and requirements which in any way affect conduct or Work under this Agreement.
- M. Artist agrees, in connection with the performance of work under this Agreement that Artist will not discriminate in accordance with the Non-Discrimination Statement, Exhibit "X," attached to this Agreement. Further, any violation of such provisions will constitute a material breach of this Agreement.
- N. Artist states that Artist has not been a party to any collusion in the Selection, preparation of the Conceptual Design Report, or in connection with the award or approval of this Agreement as fully described on the Anti/Non-Collusion Affidavit, Exhibit "X," attached to this Agreement.
- O. Artist fully discloses all personal and business relationship that have existed within one (1) year prior to the date of this Agreement with the project architect, the engineer, staff, Selection Committee or any other party to this project on the Personal and Business Relationship Affidavit, Exhibit "X," attached to this Agreement.
- P. Prior to beginning the Work, Artist will 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 will be governed by the laws of the State of Oklahoma, both as to interpretation and performance. Any action of law, suit in equity or judicial

proceeding for the enforcement of this Agreement or any provision thereof will be instituted only in the courts of the State of Oklahoma.

Section VI-NOTIFICATION

- A. All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement will be in writing and will be deemed to have been duly given upon the delivery and
- B.
- C. receipt, if delivered personally, or sent by registered or certified mail with return receipt requested and postage prepaid, as follows:

If the Arts Liaison, to:

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

If the City, to:

City Clerk
The City of Oklahoma City
200 N. Walker Avenue, 2nd Floor
Oklahoma City, OK 73102

If the Artist, to:

artist
address
city, state

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 and 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 will 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 will continue in effect for a period consisting of the life of Artist plus 50 years and will be binding on Artist's heirs and assigns.

Section IX-EXCUSE OR SUSPENSION OF CONTRACTUAL OBLIGATIONS

The parties will 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 will be suspended only for the duration of the condition unless otherwise agreed by the parties. Both parties will 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 will:

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 will furnish Arts Liaison and City with a certificate of such insurance which will 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 will 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. 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 will furnish City and Arts Liaison with a certificate of such insurance which will provide that City is an additional insured under said policy or policies.
- B. Property in Transit insurance, with limits of not less than \$XXXXXXXX.

Section XI-OWNERSHIP

- A. Title. Title to the Work will 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 and upon written request from Artist, the studies, drawings, and models prepared and submitted under this Agreement as presented to the assembled Selection Committee will be returned, at Artist's expense, to Artist and will belong to Artist.

Section XII-EXPLOITATION OF THE WORK AND REPRODUCTION RIGHTS

- A. Copyright. Artist will 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 will have ownership and possession to Work pursuant to the Agreement, but will not own the copyright to the Work, which will 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 will be entitled to customary and appropriate identification as the creator of the Work as follows: Name of Artist © 2020. Such notice will 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 will create and install an art marker identifying the Work or integral to the Work. The art marker will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will 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 will notify Artist of any proposed alteration of the Location that would affect the intended character and appearance of the Work and will consult with Artist in the planning and execution of any such alteration. City will make a reasonable effort to maintain the integrity of the Work.
- D. Nothing in this Section XIII will 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 will 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 will tender payment of the surplus value of the Work utilizing the same process by which City now sells surplus goods and equipment. City will freely make such conveyance, transfer and assignment within thirty (30) days following receipt of notice and payment, and Artist will 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 will 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 will 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 will 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 will 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.