

Oklahoma City Zoological Trust

Call to Artists:

Request for Qualifications for Public Art for the Zoo Orientation Plaza and Africa-Themed Savannah Exhibits Oklahoma City Zoo + Botanical Garden

RFQ-OCITY-118

Deadline for responses:

4:00:00 p.m. CST Wednesday, November 10, 2021



Figure 1: Concept Rendering by Peckham Guyton Albers & Viets, Inc.



Project: Exterior sculpture for the Zoo Orientation Plaza and Africa-Themed Savannah Exhibits
Oklahoma City Zoo + Botanical Garden
2101 NE 50th Street, Oklahoma City, OK 73111

Total art award: \$186,750
Announcement: October 28, 2021
Deadline: Wednesday, November 10, 2021, at 4:00:00pm

The exterior public artwork sought through this announcement will be designed for and installed at the Zoo Orientation Plaza at the center of its Africa-Themed Savannah Exhibits. The work sought will be an extraordinary focal point reflecting the type of animalia typically found on the Savannah in Africa. The work will unite and strengthen the theme for the exhibition site and may be designed and fabricated using bronze, other metals, stone, or any variety of materials suitable for harsh outdoor environments and Oklahoma weather that includes strong winds, high temperatures, hail, and other extremes. Construction is currently underway with completion anticipated in November 2022.



Figure 2 Concept Rendering provided by Peckham, Guyton, Albers & Viets, Inc.

Architectural Introduction

To survive in Africa—to welcome the next sunrise—everything must adapt. The variety of terrain gave generations of plants, animals and humans the opportunity to genetically diversify and adapt. The long-limbed giraffe can reach the most nutrient-rich food, roots in the wetlands hold fast to saturated earth, and great cats muffle their movements as the wind rustles the tall grass.

To survive in Africa—to pass on wisdom to the next generation—everything must strive. Water and food must be sourced. The sun’s energy must be stored. The young must be protected. Listen. Smell. Hunt. Run. Every moment is danger. Every moment is precious.

To survive in Africa is to live.

Budget

The Art award is \$186,750 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.

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.

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.

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 six (6) images. If the entry is as a team, there must be at least one representative work for each team member, with no more than four (4) 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. Images with artist standing next to artwork will not be used.

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** with the same information 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 Zoo 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.

Call to Artists (RFQ) Announced.....October 28, 2021
Deadline for Submissions 4:00:00 pm Wednesday, November 10, 2021
Selection Committee meeting..... Wednesday, November 17, 2021
Mandatory Site Tour for Finalists.....Thursday, December 2, 2021, from 2-3:30pm
Final presentations and selection (virtual meeting).. Wednesday, January 5, 2022, from 3-5pm
Arts Commission Review January 24, 2022
Zoo Trust authorization and approval Wednesday, January 26, 2022
Contracting Fabrication, Installation by November 2022

Selection committee

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

- Arts Commissioner
- Professional Art Juror
- Oklahoma Zoological Trust Representatives
- Oklahoma Zoological Society Representatives
- Architectural Team Representatives
- 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 \$3,000 (only one \$3,000 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. Zoo 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 Zoo, 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 Zoo 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 Zoo or submission of an artist’s entry to the Zoo or selection of an artist for purposes of negotiating a contract confers no rights to any artist nor obligates the Zoo in any manner. The Zoo 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 Zoo 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 Zoo will not provide reimbursement for such costs. The Zoo will not be liable for any artist’s preparation costs for any reason, other than the fee paid for finalists invited by the Selection Committee to the mandatory site tour and to produce conceptual design reports to present to the Selection Committee. 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 Zoo. The Zoo 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 Zoo 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 Zoo.

Selected artist will be required to provide the Zoo with:

- - A certificate of insurance for workers' compensation and liability coverage; or a certification of waiver obtained from the State of Oklahoma. 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 ZOO insuring ZOO 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 ZOO and Arts Liaison with a certificate of such insurance which will provide that ZOO 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

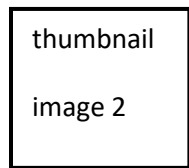
Dimensions (H X W X D in feet and inches)

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 6 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 Oklahoma City Zoological Trust and Botanical Gardens (Zoo), or anyone duly authorized by the Zoo may have cause to remove said sculpture when to do so is determined to be in the best interest of the Zoo. 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:

SCULPTURE ENTITLED: _____

MATERIALS: _____

Signature of Artist

OKLAHOMA CITY ZOOLOGICAL TRUST AND BOTANICAL GARDENS
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 Oklahoma City Zoological Trust and Botanical Gardens, hereinafter called "Zoo," 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 Zoo 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. Zoo 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, Zoo 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 Zoo, 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 Zoo 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 Zoo. 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 Zoo as needed to prepare construction drawings and specifications to the satisfaction of the Zoo.
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 Zoo. 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 Zoo. 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 Zoo.
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 Zoo.

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 Zoo, 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 Zoo 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 Zoo or its agents. Artist will provide the Arts Liaison and Zoo 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 Zoo 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 Zoo.
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-ZOO'S RESPONSIBILITY

- A. Zoo will provide all information, including requirements and specifications, for the Location of the Work, which will be as shown on Exhibit "A." All specifications will be provided as authorized through the Arts Liaison.
- B. Zoo will 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 Zoo 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. Zoo will provide final acceptance of the Work to be effective as of the earlier to occur of (1) the date of the Zoo'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. Zoo, through the authorization of the Arts Liaison, will 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 Zoo.

Section III-COMPENSATION AND PAYMENTS

- A. Following approval of this Agreement by the Zoo, payments will 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 will be submitted to the Arts Liaison for review and approval, and will be in accordance with Zoo 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 will 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. Zoo may terminate this Agreement at any time, for convenience, when it is in the best interest of the Zoo 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 Zoo, the Artist will refund to Zoo all monies paid by Zoo 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 Zoo

- 1. In the event this Agreement is terminated by Zoo 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 Zoo the Work in whatever form it exists at the time of termination, which will then become the property of the Zoo 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 Zoo all monies paid by Zoo 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 Zoo for fault on the part of the Artist, or in the event of any breach of the terms of this Agreement by the Artist, Zoo may require either of the options that would have been available to the Artist in this section. Exercise of either of these options by Zoo will not prevent Zoo 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 Zoo.
- 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 Zoo.
- 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 Zoo 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 Zoo, 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 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 Zoo, to:

Zoo Director
Oklahoma City Zoological Trust
2101 NE 50th Street
Oklahoma City, OK 73111

If the Artist, to

artist
address
city, state

Section VII-INDEMNIFICATION

Artist agrees to release, to defend, to indemnify and to hold harmless Zoo 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 Zoo 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 Zoo. Artist further warrants that the Work will not require maintenance substantially more than that described in the recommendations provided by Artist to Zoo for the following periods from date the Work is finally accepted by Zoo: thirty (3) years for structural components including _____ 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. Zoo 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 Zoo 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 Zoo.
- 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

Prior to entering the Location to install the Work Artists shall procure 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 Artists against all legal liability for injuries to persons caused by Artists' use and occupancy of the premises or otherwise caused by Artists' 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. If the Policy limits are aggregate in nature, then Artists shall assure that the insurance provider presents evidence that at the point of contract there is adequate remaining coverage to assure compliance with to the provisions of this Agreement. Artists shall furnish Arts Liaison and City with a certificate of such insurance which shall state 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.
- B. Employers' Liability Insurance and/or Workers' Compensation Insurance, shall be provided to the extent and in the manner required by the statutes of the State of Oklahoma. Artists 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. An Oklahoma Affidavit of Exempt Status Under the Workers' Compensation Act for each Artist or employee of Artist may be accepted in lieu of workers' compensation coverage, if determined to be appropriate.
- C. Insurance covering the Work or components of the Work while in transit, with aggregate limits of not less than \$ (commission amount).

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. **Zoo 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 Zoo 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 Zoo, 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. Zoo's Credit. Artist agrees that all references made by Artist to the Work will include the following credit line: "Commissioned under Oklahoma City Zoo and Botanical Garden'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 Zoo 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 Zoo 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 Zoo 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 Zoo, 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 Zoo grants to the Artist the right to use the Zoo'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 Zoo promises Artist that:

- A. Zoo 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 Zoo.
- B. It is the policy of Zoo 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 Zoo 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 Zoo desires to use someone other than Artist to repair or restore the Work, Zoo will have such Work performed in accordance with recognized best practices and in accordance with an Artist's workplan approved by Zoo in advance.
- C. When practical to do so, the Zoo 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. Zoo will make a reasonable effort to maintain the integrity of the Work.
- D. Nothing in this Section XIII will preclude any right of the Zoo 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 Zoo elects to remove the Work and deaccession the work from its public art collection for either surplus sale and/or destruction of the Work, Zoo will so advise Artist, Artist may, at its option, to be exercised within thirty (30) days following receipt of such notice, request that Zoo convey, transfer and assign to Artist, the Work, and all Zoo's rights to the Work, along with any and all intellectual property rights held by Zoo 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 Zoo now sells surplus goods and equipment. Zoo 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 Zoo. If no response is received from Artist within thirty (30) days following receipt of notice from Zoo, Zoo 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. Zoo's Commitment. Zoo 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 Zoo 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 Zoo through the Arts Liaison.

XVI-SUCCESSORS AND ASSIGNS

Zoo 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 Zoo, through the Arts Liaison or her designee. In no event will Artist attempt to create a contractual relationship between any third party and the Zoo.

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 Oklahoma City Zoo Trust, or Oklahoma City Council, or an employee of the Oklahoma City Zoo and Botanical Gardens or 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 Oklahoma City Zoological Trust and SIGNED by its Chair this _____ day of _____, 2021.