



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 07/25/2023

REQUESTER: Heather Poole, Assistant City Attorney

PRESENTER: Heather Poole, Assistant City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT AND/OR POSTPONEMENT OF CONTRACT K-2324-41: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND THE FIREHOUSE ART CENTER, INC. IN THE AMOUNT OF \$120,000 TO ASSIST WITH THE OPERATION OF THE CENTER.

BACKGROUND:

During the budgeting process for fiscal year 2023-2024 (FYE 2024), a number of requests from non-profit agencies for General Fund budget allocations were specifically reviewed, discussed, and approved by Council. Pursuant to those discussions, funding agreements were prepared and submitted to the various agencies for their execution. One of those agencies is the Firehouse Art Center, Inc.

DISCUSSION:

The FYE 2024 agreement which comes before Council at this time is the same basic form agreement for all agencies. The signed agreement provides that the Firehouse Art Center, Inc. will use City funds of \$120,000 to assist with the operation of the Center.

The agreement includes a reporting procedure by the agency to the Council of expenditures of the funds in an amount not to exceed \$120,000. The agreement also provides for cancellation by either party with thirty (30) days written notice and specifically provides for cancellation and return of any unexpended funds should the agency fail to use the funds for the purpose for which they are intended or should the agency be dissolved or cease to exist any time during the contract period.

The agreement also includes an automatic renewal provision [section C(3)], which provides that the agreement automatically renews annually provided that the Agency requests the same amount of funding each year and City Council appropriates sufficient funding in the budget.

RECOMMENDATION:

Staff recommends that the funding agreement submitted herewith be approved. Funds in the amount of \$120,000 should be disbursed from City Council-Contributions and Organizations (10110101-44741).

FUND DISBURSEMENT AGREEMENT

This agreement is made and entered into on the ____ day of _____, 2023, by and between the City of Norman, Oklahoma, a municipal corporation, party of the first part and hereinafter referred to as "City" and

Firehouse Art Center, Inc.

(Name of Organization)

party of the second part, and hereinafter referred to as "the Organization", witnesseth:

- A. That in consideration for the performance by the organization of the covenants and agreements as specified herein, the City, covenants and agrees:
1. To disperse to the Organization the sum of \$120,000 for the purpose of providing a grant to assist with the operation of the Firehouse Art Center.
 2. Disbursement of funds shall be made annually to the Organization at the beginning of the City's fiscal year subject to, and contingent upon, the City Council appropriating funds annually to fund this agreement.
- B. That in consideration for the performance of the covenants and agreements of the City as stated herein, the Organization covenants and agrees:
1. To expend funds granted by the City for the purpose as listed above.
 2. Allow a representative of the City to hold an ex-officio position on the Organization's Board of Directors.
 3. Provide at least one oral presentation per year on the activities of the Organization to the Norman Board of Parks Commissioners and to provide a written report on the activities of the Organization to the City, said report to be sent to the attention of the Director of Parks and Recreation. This annual report shall include a summary of all activity along with revenue and expenditure summaries for all activity of the preceding year. All detailed records associated with the Firehouse Arts Center shall be made available for review within ten (10) days by the Firehouse Arts Center upon request from the City of Norman.
- C. It is further understood and agreed by both parties:
1. In the event the Organization is dissolved all such funds not yet expended for the purposes provided herein shall immediately revert back to the City and the Organization shall immediately deliver such unexpended funds to the City.

2. In the event the Organization should mishandle the expenditure of funds as provided herein, such action will be considered a breach of this agreement, and any unexpended funds as provided by this agreement, from the date of notice by the City, shall immediately revert back to the City and the Organization shall immediately deliver such unexpended funds to the City.
 3. This agreement shall automatically renew annually upon City Council approval of the annual budget subject to and contingent upon the appropriation of funds to fund this agreement.
 4. This agreement may be canceled by either party upon the giving of thirty (30) days written notice of cancellation to the other. Upon cancellation any unexpended funds as provided by this agreement, from the date of notice of cancellation, shall immediately revert back to the City, and the Organization shall immediately deliver such unexpended funds to the City.
- D. It is further understood and agreed by both parties that the Organization and any employee of the Organization is a separate entity from the City and the Organization and its employees are responsible for its actions and that the Organization agrees to indemnify and save harmless the City from all fines, suits, proceedings, claims, demands, action, loss, and expense from liability of any kind whatsoever (including but not limited to attorney fees for costs incurred in litigation) and from any person whomsoever asserting the same arising or growing out of or in any way connected with the Organization's management, operation and services.
- E. There are no other terms, either express or implied, than those expressly stated herein.
- F. This contract will supersede any previous contract, agreement or resolution; however, this agreement shall not modify in anyway the lease agreement between the parties signed in 1984.
- G. In witness hereof, the parties hereto have executed this agreement on the day first above written.

FIREHOUSE ART CENTER, INC.



President

ATTEST:



SECRETARY

Approved as to form and legality by the office of the City Attorney this 18th day of July, 2023.



Office of the City Attorney

Approved by the Norman City Council this _____ day of July, 2023.

MAYOR

ATTEST:

CITY CLERK

EMERGENCY REPAIR WORK AUTHORIZATION CONTRACT

Customer Name: _____
 Cell Phone Number: _____
 Email Address: _____
 Billing Address: _____
 Worksite Address: _____

Services will be billed based on the following:

This contract is with the customer. This contract is NOT with an insurance company. The customer is responsible for paying the full amount of the invoice per the contract terms even if the insurance company does not pay the contract/invoice(s) in full. Insurance deductibles are the customer's responsibility and Cavins Group does not discount or absorb insurance deductibles in any way. All equipment is the property of Cavins Group and may not be altered, relocated, or manipulated in any way. Any alterations or misuse of equipment and associated materials or fuel could result in injury to persons and damage to property and Cavins Group will not be held liable for such injuries, deaths, or damages. Any damage to equipment may result in the customer/client being held liable and billed for repairs/replacement.

SERVICE RATES	Per Hour (8AM-5PM)/ After Hours / After 11PM	
Construction/Maintenance Technician	\$99.00 / \$175.00 / \$215.00	
Remediation/Extraction Technician	\$110.00 / \$200.00 / \$240.00	
Project Manager	\$130.00 / \$235.00 / \$275.00	
Roofing Technician	\$155.00 / \$280.00 / \$320.00	
Administrator (Documentation, Reports, Insurance Correspondence, Materials Research, etc.)	\$95.00 / \$170.00 / \$210.00	
Logistics/Procurement Technician	\$99.00 / \$175.00 / \$215.00	
Electrician	\$135.00 / \$240.00 / \$280.00	
Plumber	\$110.00 / \$200.00 / \$240.00	
Welder	\$150.00 / \$270.00 / \$310.00	
HVAC	\$135.00 / \$240.00 / \$280.00	
Water Extraction Truck (does not include cost of technician per hour) – per vehicle, per hour	\$300.00 / \$540.00 / \$540.00	
Mobilization/Demobilization (if we arrive to a job and no work is needed) – OKC/Norman	\$225.00 per technician dispatched	
Mobilization/Demobilization (if we arrive to a job and no work is needed) – Tulsa/Stillwater	\$350.00 per technician dispatched	
Mobilization/Demobilization (if we arrive to a job and no work is needed) – Dallas	\$450.00 per technician dispatched	
Court Case Consulting or Witness	\$200.00 per hour	
Hazardous Conditions Fees: TBD on a project-by-project basis	\$100.00-\$500.00 per hour	
Holiday Rates: Thanksgiving/Christmas Eve/Christmas/New Year’s Eve/New Year’s Day/July 4 th	\$395.00 per hour	
Equipment (does not include costs of delivery, set up, monitoring, fuel, or pick up)		
Portable Extraction Unit (does not include cost of technician per hour)	\$85.00	per hour
Blower Rental (per unit)	\$38.50	per day
Axial Fan Air Mover (per unit)	\$45.00	per day
Direct Injection drying system (per unit) – hardwood floors	\$180.00	per day
Direct Injection drying system (per unit) – Walls and ceilings	\$140.00	per day
LG Dehumidifier Rental (per unit)	\$115.00	per day
Desiccant Dehumidifier Rental (per unit)	\$350.00	per day
Air Flow Management/Air Filtration/Air Scrubber/AFD’s (Filters are additional)	\$120.00	per day
Air Scrubber	\$120.00	per day

Initials _____ Date _____

Equipment (does not include costs of delivery, set up, monitoring, fuel, or pick up)		
Spider Box (portable power distribution)	\$37.00	per day
25' / 50' / 100' Extension Cord	\$5 / \$10 / \$15	per week
60,000 BTU Propane Heater	\$25.00	per day
220,000 BTU Heater	\$475.00	per day
70,000 BTU Kerosene Heater	\$37.00	per day
Compact Heater / 31,000 BTU Heater	\$160.00	per day
115,000 BTU Heater	\$220.00	per day
APT Testing (does not include cost of technician per hour)	\$24.00	per test
Zip post Rental (per post)	\$5.00	per day
Trash pump – gas	\$75.00	per hour
Trash pump – Small	\$50.00	per hour
Electric Floor Scraper (excludes blades)	\$150.00	per day
Pressure Washer (does not include cost of technician per hour)	\$95.00	per day
Towable Hot Water Pressure Washer (does not include cost of technician per hour)	\$315.00	per day
Water Jetting Trailer (does not include cost of plumber per hour)	\$350.00	per hour
Diesel Generator 20KW	\$265.00	per day
Honda 6500-Watt Generator	\$89.00	per day
Invertor Generator 2000-Watt	\$53.00	per day
Big Portable generator	\$400.00	per day
4000W Narrow Horizontal/Mast Light Tower	\$160.00	per day
19' Electric Scissor Lift	\$350.00	per day
Skid Steer Loader	\$455.00	per day
Sky Track Boom Forklift	\$645.00	Per day
35' Towable Boom Lift	\$450.00	per day
Mini Excavator	\$425.00	per day
Metal Shelving Rental Per Unit	\$25.00	per week
Jack Hammer	\$131.00	per day
Small Jack Hammer	\$72.00	per day
28" Traffic Cone	\$2.00	per day
48" Narrow Traffic Cone	\$4.00	per day
Barricade II High-Intensity A-Frame	\$8.00	per day
Tread Stays (per piece)	\$15.00	per day
Video Pipe/HVAC Vent Inspection (does not include cost of technician/plumber per hour)	\$225.00	per hour
Plate Compactor (does not include technician per hour)	\$91.00	per day
2 Ton Bottle Jack	\$10.00	per day
12 Ton Bottle Jack	\$11.00	per day
20 Ton Bottle Jack	\$25.00	per day
Magnetic Annular Cutter Drill (does not include technician per hour)	\$100.00	per day
Evaporative Cooling Unit	\$67.00	per day
1 Ton Portable A/C Unit	\$200.00	per day
2 Ton Portable A/C Unit	\$325.00	per day
3 Ton Portable A/C Unit	\$415.00	per day
Air duct cleaning machine (does not include cost of technician per hour, antimicrobial \$19 per vent/return)	\$300.00	per day
20' Storage Container - 1 st Month and Each Additional Month	\$775.00 / \$275.00	per 4 weeks
40' Storage Container - 1 st Month and Each Additional Month	\$850.00 / \$350.00	per 4 weeks
12 Yard Dumpster (In Norman/OKC) / 12 Yard Dumpster (Out of OKC)	\$550.00/\$650.00	per 2 weeks
Construction Fencing – Per Panel	\$8.00	per day
Office Trailer (Powered by others) (Setup Fee + Weekly Fees)	\$1500 / \$450	set up / per week

Initials _____ Date _____

Antimicrobial Treatment		
Antimicrobial Spray (Normal Size Room)	\$75.00	per room
Antimicrobial Spray (Large Room)	\$95.00	per room
Antimicrobial Spray (XL Room)	\$150.00	per room
Material & Other		
Materials / Additional Rental Equipment Not Listed on This Contract	TBD / Market Value	
Fees (Applied to Total Invoice Amount)		
Fees: 10% Overhead, 10% Profit	20%	

Cavins Group reserves the right to hire an engineer and/or architect if needed under this contract for emergency repairs or re-build. The owner or company will be responsible for paying us for the cost incurred in full. Additionally, while Cavins Group is an IICRC certified firm, we do reserve the right to deviate from IICRC standards as needed on a case-by-case basis and by signing this contract, you give us permission to bill in full per the contract and agree to pay even if the insurance company does not pay the full amount invoiced.

We bill for all material used and for drive time. We bill a minimum of one hour on all service calls. Time is billed in quarterly hour increments.

Payment is due at the conclusion of the service call. We take credit cards, checks, and cash. Payment by credit card will result in a 4.0% increase in cost each time.

Description of Services

Signature: _____ Date: _____

CONTRACTUAL TERMS AND CONDITIONS

- 1. Authorization.** Property Owner/Agent ("Owner") has retained Cavins Group ("Contractor") to perform services upon the Property and to furnish the materials, equipment, and labor necessary to provide said services ("Services"). Owner hereby authorizes Contractor to continue with providing said Services as described above, and any added services authorized by the Owner and agrees to make full payment per the terms in this Agreement. Payments must be paid upon completion and not to exceed 30 days. If it's an insurance claim, you are responsible for paying us and your insurance company can reimburse you. It's important to understand insurance companies try to settle to save money on the loss. Cavins will not accept any settlements from the insurance company or the customer. The customer is responsible for paying the full cost of the project per the contract even if the insurance company does not pay the contract in full. You, as the customer, are also responsible for the deductibles. Cavins will not absorb any deductibles. If the customer decides to hire 3rd party public adjuster, Cavins will not absorb any costs for that. A 7% late fee will be added to your bill after 30 days of non-payment and will recur every 30 days until paid in full. You the consumer also give us permission to use any pictures for advertising on our website by signing this document.
- 2. Unrelated Conditions/Work.** Owner acknowledges and agrees that Contractor is not responsible for addressing or correcting damage, conditions, or areas unrelated to those Services agreed to be provided.
- 3. Special/Fragile/Valuable Items.** Owner agrees to take full responsibility for special, fragile, or valuable items of personal property, and that Contractor shall not be liable for mysterious disappearances or damage to any such items. Contractor highly recommends that Owner take care to protect any such items as soon as possible, preferably prior to the start of work (especially jewelry, cash, weapons, medications, etc.).
- 4. Information Needed.** Owner shall provide Contractor with complete available information about known relevant or potentially relevant facts about the history of all structures erected upon, and the conditions present in and around, the Property. Owner is responsible for telling Contractor of the known existence of hazardous substances (Including chemicals, lead, asbestos, etc.) or areas of potential danger.
- 5. Access and Security.** Owner agrees to provide access to the property for Contractor's employees, agents, subcontractors, and their vehicles and equipment as required to properly perform the Services and, where applicable, to manage the Services. Owner will supply areas for storage of equipment, materials, and debris. Owner will supply all water, electricity, and other utilities necessary for Contractor to perform the Services. Contractor will take reasonable measures to avoid any damage to lawns, flower gardens, and other items found on the property caused by access to the worksite by vehicles, equipment, service techs, etc. However, Owner understands and agrees that it is not possible to guard against all damage to grass, lawns, bushes, flower gardens, etc., and as such agrees to release Owner of liability for non-malicious acts that cause such damage.
- 6. Limit of Liability.** Contractor's liability is limited to the total amount paid for the Services. Owner agrees to release, hold harmless, defend (pay attorneys' fees, expert fees, arbitration costs and court costs) and indemnify Contractor from any and all damages, claims or actions that arise from: (a) conditions that pre-existed the specific loss or event Contractor was hired to address; (b) the premature removal of equipment or termination of Services against Contractor's recommendations; (c) any refusal to allow Contractor to perform any Services or procedures Contractor recommends; and (d) any mysterious disappearances of personal property. Any disputes concerning this Authorization or Services performed hereunder will be subject to jurisdiction in the District Court in and for Cleveland County State of Oklahoma.
- 7. Landscaping/Driveway, etc.** Cavins will make reasonable attempts to avoid damage to landscaping, driveways, yards, etc. where possible, but Cavins cannot guarantee no such damage will occur, and expressly disclaims and disavows any guaranties to that effect.
- 8. Worksite.** Customer hereby authorizes Contractor to commence and complete the usual and customary services necessary on the Worksite as may be required in the Contractor's judgment to complete the Services and will allow access to work areas for workers and vehicles and will allow areas for storage of materials and debris.
- 9. Force Majeure.** If performance of this Contract or any obligation under this Contract is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event.
- 10. Governing Law and Venue.** This Contract shall be construed in accordance with the laws of the State of Oklahoma. Any material disputes will be decided by the District Court in and for Cleveland County, State of Oklahoma.
- 11. Waiver of Contractual Right.** Failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party's right to subsequently enforce provisions of this Contract.
- 12. Increase in Material Costs/Pricing.** Due to extreme volatility in materials costs at this time, Cavins reserves the right to pass along price increases greater than 3% of the costs of said materials, measured by the costs of materials at the time this contract was drafted. Such increases will be noted on the final invoice and will be applied without a need for change orders. Pricing is based on up-to-date local market, labor, fuel, insurance, materials, equipment. We do not use xactimate pricing and do not recognize xactimate as an up-to-date pricing system for our local market.
- 13. Court/Legal Fees.** After 60 days from the time all work is completed and billed, all invoices not paid will be turned over to collection and the lien process will be started. If a payment plan is needed, please make arrangements before the 60-day mark for the plan to be accepted. At least 35% of the entire invoice must be paid up front. You as the customer are responsible for all collection costs whether the claim goes to court or not. This includes filing fees, lawyer costs, and court costs. If we must produce court documentation or be a witness, there will be additional cost of administrative fees of \$350.00 an hour and witness testimony fees of \$350.00 an hour. If we must collect payment, you the customer are responsible for all court costs for both parties and will have to pay all legal costs back to Cavins.
- 14. Insurance Claims:** If there is an insurance claim, all documentation can be sent to the customer's insurance company. Cavins Group does not utilize work logs as they do not include drive time, administrative costs, and logistics/procurement time. In lieu of work logs, Cavins Group will provide job tickets, daily reports, and subcontractor invoices upon request; however, this will incur additional administrative hourly fees per the contract. Any equipment that is left at the site will be monitored every day to ensure proper clean-up/remediation. If we are not allowed on site every day to monitor equipment, then we can't guarantee proper clean-up/remediation and it can slow the process down which may result in out-of-pocket expenses to the customer. If the equipment is turned off by the customer that could slow the process down which may result in out-of-pocket expenses to the customer. If the customer places the equipment outside or in unsecured areas the customer will be responsible for any stolen or damaged equipment. We are not responsible for any damage if the customer decides to stop or short-cut the drying process. Also, your insurance company is not allowed to come after us to collect any money in any way, shape, or form for their claim. If they do, you're responsible for covering any legal costs incurred by our company, Cavins Construction, as the owner of the property.
- 15. Environmental Training:** Cavins has (3) environmental trainers, Gary Cavins – senior trainer, Jessica Von Tungeln – general trainer, and Cathy Lai – assistant trainer. We reserve the right to train our employees in house on fire, water loss, mold, and crime scene clean up. By signing this contract, you are approving this training and accepting this training on your job.

Cavins defines water remediation technician in its contract and its job duties as the following: Water extraction, set up/take down equipment, assisting in moisture readings, removing of contents, setting up containment if needed, setting up any specialty equipment, and any demo necessary during drying or water extraction process.

Cavins Group reserves the right to hire plumbers, HVAC, electrical, roofer, welder, rental equipment, engineer and/or architect if needed under this contract for emergency repairs or re-build. The owner or company will be responsible for paying us for the cost incurred in full. By signing this contract, you give us permission and agree to pay. We bill additionally for all material used and for drive time. We bill a minimum of one hour on all service calls. Time billed in quarterly hour increments. Payment is due at the conclusion of the service call. We take credit cards, checks, and cash. Payment by credit card will result in a 4.0% increase cost to take payment by credit card each time.

Customer understands the above-described list of services to be provided, etc., and authorizes Cavins Group to continue with the work and to invoice for the services to be provided, including any added services authorized by the Customer. The customer's signature indicates their receipt of an agreement to the Contractual Terms and Conditions.

Customer: _____

Date: _____



**CUSTOMER ACCEPTANCE OF
WORK**

Property Owner/Agent: _____

Worksite Address: _____

I, the undersigned Property Owner/Agent for the above-described worksite, state as follows:

1. The services Cavins Group provided for the above-described worksite, including all approved Change Order/Modifications, have been completed to the best of my knowledge and belief and any return trips after the technicians departure will constitute additional charges.
2. The services Cavins Group provided for the above-described worksite are in substantial compliance with the agreement of the parties.
3. The services performed by Cavins Group are accepted and final payment is due.

Owner/Agent (Must be at least 18 years old)

Signature – Property Owner OR Agent (circle one)

Print Name and Title

Date

8. New requests for Fiscal Year Ending 2024

Support from the City of Norman is imperative in assisting us to achieve our mission, including providing accessible visual arts programming for underserved groups, such as adults with disabilities and youth from disadvantaged socioeconomic circumstances. The City of Norman has generously provided operational support consistently to help sustain our service to the Norman community. In recent years, the Firehouse Art Center has requested \$60,000 from the City of Norman for operational expenses. However, due to COVID-19, State funding for the arts has been cut dramatically and we are not expecting additional Federal relief funds. As such, the Firehouse Art Center requests \$120,000 for operational expenses for the fiscal year ending 2024. After discussing renovations with the Parks and Recreation department, we understand that the City of Norman has an additional \$150,000 allocated for our building. We would like to identify what renovations need to be made and prioritize making arrangements for those renovations to be made this year. Without the support of the City of Norman, the Firehouse Art Center's programming would not be possible. Thank you for your continued generosity!

9. Charges and Fees for Services Provided

Children's Classes

- **Art After School:**
\$105.00 for 8 weeks/10 hours of visual arts education
- **Children's Summer Art Program:**
\$105.00 for 1 week/10 hours of visual arts education
OR
\$210.00 for 2 weeks/20 hours of visual arts education
- **Youth and Teen Program:**
\$176.00 for 8 weeks/16 hours of arts education

Adult Classes

- **Drawing:** \$176.00 for 8 weeks/16 hours of lessons
 - **Painting:** \$176.00 for 8 weeks/16 hours of lessons
 - **Jewelry:** \$228.00 for 8 week/24 hours of lessons
 - **Glass:** \$176.00 for 8 week/16 hours of lessons
- Classes may have additional material and/or technical fees.*



CITY OF NORMAN, OK
CITY COUNCIL FINANCE COMMITTEE MEETING
Municipal Building, Executive Conference Room, 201 West Gray, Norman,
OK 73069
Thursday, March 16, 2023 at 4:00 PM

MINUTES

It is the policy of the City of Norman that no person or groups of persons shall on the grounds of race, color, religion, ancestry, national origin, age, place of birth, sex, sexual orientation, gender identity or expression, familial status, marital status, including marriage to a person of the same sex, disability, retaliation, or genetic information, be excluded from participation in, be denied the benefits of, or otherwise subjected to discrimination in employment activities or in all programs, services, or activities administered by the City, its recipients, sub-recipients, and contractors. In the event of any comments, complaints, modifications, accommodations, alternative formats, and auxiliary aids and services regarding accessibility or inclusion, please contact the ADA Technician at 405-366-5424, Relay Service: 711. To better serve you, five (5) business days' advance notice is preferred.

PRESENT

Mayor Larry Heikkila
Councilmember Ward 3 Kelly Lynn

ABSENT

Councilmember Ward 6 Elizabeth Foreman

OTHERS PRESENT

Councilmember Ward 4 Helen Grant
Councilmember Ward 7 Stephen Holman
Anthony Francisco, Director of Finance
Kim Coffman, Budget Manager
Jacob Huckabaa, Budget Technician
Dannielle Risenhoover, Administrative Tech IV
Shawn O'Leary, Director of Public Works
Mike White, Fleet Program Manager
Rick Jackson, Deputy Police Chief
Major Jamie Shattuck, Police Patrol Bureau
Joyce Green, GIS Services Manager
Brenda Hall, City Clerk
Andy Couch, Executive Director & Curator for Fire House Art Center

CALL TO ORDER

Mayor Heikkila welcomed everyone to the meeting. The meeting began at approximately 4:00 PM.

AGENDA ITEMS

1. DISCUSSION REGARDING THE FYE 2024 CITY OF NORMAN BUDGET.

Anthony Francisco discussed the Budget Reports. Three outside agencies are requesting additional General Fund financial support from the City of Norman in FYE 2023-2024. These agencies are Performing Arts Studio, Moore-Lindsay Historical Museum, and the Firehouse Art Center. Board Members were aware of the City's previous financial contributions to these agencies and informed of their requests for additional funding as follows:

- \$2200 requested by Performing Arts Studio
- \$3000 requested by Moore-Lindsay Historical House Museum, and
- \$60,000 requested by Firehouse Art Center.

Andy Couch, Executive Director & Curator for Firehouse Art Center, spoke to members regarding the Center's request for funds. Couch stated that Firehouse Art Center is requesting additional funds primarily due to the "cut to the arts in terms of grant funds received." He also stated that the Center is focused on providing more opportunities for children, adults and veterans. Included in Couch's plan for the Center is adding ceramics, printmaking, exhibits, and clay making. Councilmember Holman asked Mr. Couch if the additional request for funds is a one-time request or is it an on-going request. Couch's reply was, "I would hope that this would be this every year, but I am going to do my best to bring in new foundations to the Firehouse and individual donors." Couch does believe that the Center needs to host fundraisers to gain revenue.

Councilmembers Grant and Holman both showed support in granting the outside agencies request for additional funding out of the General Fund for FYE24.

Francisco highlighted the "Critical Vehicle Replacement Report" issued by the City of Norman Fleet Maintenance Division. This report lists vehicles that are more cost effective to replace than maintain. In the general governmental area alone, the report indicates that \$10.2 million in fleet is in critical need of replacement. A previous Fleet study revealed that the City of Norman should be spending approximately \$6 million per year replacing vehicles. Francisco stated, "Our full allocation of the 27% for capital outlay is about \$4 million for everything. As a management team we usually allocate about half of that \$4 million toward fleet replacements." Francisco pointed out how few vehicles would be replaced with this money. With police vehicles clearly qualifying for the use of seizure & restitution funds, discussion was had regarding using approximately \$1.4 million in this fund to help replace police vehicles. This would help replace approximately 17 police vehicles; thus, Francisco asked the Finance Committee is they would like to use seizure and restitution money for the replacement of police vehicles?

Councilmember Holman suggested that seizure and restitution funds be used in a more diversified way, such as for all vehicles, not just police vehicles; however, City Attorney Kathryn Walker's legal recommendation was that seizure and restitution funds be used for police & law enforcement purposes due to the direct source of the funds and the law becoming less clear when moving away from the police & law expenditures. The topic of spending seizure and restitution funds on police vehicles will be presented to City Council for further discussion at the time the City Manager's proposed budget is presented to the Council.

Items submitted for the record:

1. Fiscal Year 2024 Budget Report – Critical Fleet Replacement List

* * * * *

2. CONTINUED DISCUSSION REGARDING FLOCK SAFETY CAMERA SOLUTIONS FOR THE COMMUNITY.

Major Jamie Shattuck with Norman Police Department (NPD) discussed NPD's desire to install about 10 "Flock" cameras on Norman's main city streets. Shattuck reports that Flock cameras capture a photograph of the back of all vehicles and vehicle tags as they drive by. Photographs remain stored in a cloud database that NPD could access for up to 30 days. The Flock camera system would help NPD utilize vehicle descriptions and tag numbers to help identify and track vehicles reported in a crime, wanted people and or missing persons. Shattuck stated that Flock would not be used to ticket people or raise revenue. Mayor Heikkila requested that this item be forwarded to City Council for further discussion before it is considered as a NPD budget item.

3. DISCUSSION REGARDING MONTHLY REVENUE AND EXPENDITURE REPORTS.

Anthony Francisco discussed the Monthly Revenue and Expenditure Reports. He stated that the sales tax is up 5.7% for March and the sales tax for the Public Safety, Norman Forward, and Transit Funds are all up as well.

Mayor Heikkila asked about the timing and funding for moving Fire Station 5. Francisco stated that the timing and funding relate to when the City pays off the existing debt for the existing radio system and the Emergency Communications Operations Center, which is about 3.5 years from now. Francisco stated that if Council wanted to identify some other sources of funding for this debt they could do so, noting that the General Fund balance is in excess of the mandated reserve.

Concerned about the line maintenance budget, Councilmember Grant requested a report on the City's monthly and year-to-date costs for water line repairs.

Items submitted for the record:

1. Monthly Revenue and Expenditure Reports

ADJOURNMENT

Chairman Heikkila adjourned the meeting at approximately 5:10 PM.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 07/11/2023

REQUESTER: Jason Olsen, Director of Parks and Recreation

PRESENTER: Jason Olsen, Director of Parks and Recreation

ITEM TITLE: CONSIDERATION OF AWARDING, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF K-2324-23: BETWEEN THE NORMAN VISITORS AND CONVENTION BUREAU AND THE CITY OF NORMAN FOR THE PURPOSE OF ENCOURAGING, PROMOTING, AND FOSTERING CONVENTION AND TOURISM DEVELOPMENT IN THE CITY.

BACKGROUND: The City of Norman contracts annually with the Norman Convention and Visitors Bureau (VisitNorman) to administer the share of funds collected pursuant to the Norman Transient Guest Room Tax Ordinance set aside specifically for the purpose of encouraging, promoting, and fostering convention and tourism development in the City. On May 9, 2023, the voters approved the guest room tax to be increased from 5% to 8% allowing the creation of the Norman Sports Commission, or NormanSports. In 2016, the City allocated \$80,000 to VisitNorman \$30,000 of which was used to work with the Huddle Up Group to research expanding sports tourism in Norman by creating a sports commission. Huddle Up provided a strategic plan for the best structure for a new sports commission and resources to sustain and grow Norman's economic development through sports. The increased funding from the guest room tax will allow for the sports commission to be funded and continue VisitNorman's mission to encourage convention and tourism development in Norman.

DISCUSSION: The contract between the City and the Norman Convention and Visitors Bureau originated in fiscal year 1992-93 (FYE 93) and has been amended six times since then. This latest proposed version consolidates the various amendments to the original contract into a clean new contract between the parties.

The current contract addresses the increased guest room tax rate approved by the May 9, 2023 vote, expands the voting Board members to address additional community interests, and clarifies VisitNorman's actions on behalf of the City in exchange for an allocation of Guest Room Tax revenue.

RECOMMENDATION:

Staff recommends approving K-2324-23.

promotional programs, servicing conventions including all normal convention support services and equipment, represent local business, civic and hotel interests in negotiating with associations and other convention groups to preclude unreasonable demands and assist in the development and promotion of local activities and attractions designed to enhance City's tourist desirability. This shall include administrative tasks required for national and state grant programs such as the State's Quality Events program.

- A. It is agreed that Visit Norman's operation under this Agreement shall be in accordance with the City's Code of Ordinances and applicable state law and its sole purpose shall be the promotion of convention and tourism within the City. The Visit Norman Board of Directors shall consist of total of nineteen (19) voting members, and four (4) Ex-Officio members, to be made up as follows:

- i. Nineteen (19) voting members of the Board of Directors as follows:

- a) Thirteen (13) Directors, each as elected by the Visit Norman Board of Directors, and as chosen generally from organizations and businesses within Norman that are significantly affected by convention and tourism activities in Norman, such as follows:

- (1) The University of Oklahoma Athletic Department;
- (2) The Norman Public Schools;
- (3) The Norman Chamber of Commerce;
- (4) The Norman Arts Council;
- (5) The Norman hotels and hospitality industry;
- (6) The Norman restaurant and entertainment industry; and/or
- (7) The Norman sports community and industry.

- b) Two (2) Directors, each as appointed by the Mayor of the City of Norman, and as chosen generally from organizations and businesses within Norman that are significantly affected by convention and tourism activities in Norman, such as:

- (1) The University of Oklahoma; and/or
- (2) Organized athletic groups.

- c) Four (4) Directors, each as elected by the Visit Norman Board of Directors, and as chosen generally from the Norman community to serve in "at-large" capacities.

- ii. Four (4) Ex-Officio representatives as follows:

- a) The Mayor of the City of Norman; or a City Councilmember of the City of Norman as appointed by the Mayor to serve in this role;
- b) The City Manager of the City of Norman, or another City of Norman employee as designated by the City Manager to serve in this role;

- A. Visit Norman agrees to devote its best efforts to the City's interest and to endeavor in every way to make the promotion of the City as a convention and tourism center successful. Visit Norman understands and agrees that the establishment of objective criteria by which to judge Visit Norman's performance is necessary and an important part of this Agreement. As part of its reports to the City Council and in any event no less than semi-annually, Visit Norman shall provide Council with the information set forth herein.
- B. Visit Norman shall report to the City no less than approximately semi-annually, with information that provides the City with a reasonably good understanding of the activities that Visit Norman has undertaken since the prior reporting, through efforts to encourage, promote, and foster the convention and tourism development of the City. The information will provide to the City with knowledge as to the Visit Norman's work in areas such as, but not limited to, the following:
- i. Convention and Sports Activities and Performance Measures;
 - ii. Marketing and Communications Activities and Performance Measures;
 - iii. Group Tour Activities and Performance Measures;
 - iv. Funding efforts for Tourism and Promotion (such as the State of Oklahoma Quality Events program); and
 - v. The total return on investment, with such figures as may be related to visitor spending, convention sales and marketing/communications.
- C. Visit Norman shall furnish quarterly financial reports that include revenue and expense reports compared to budget and balance sheets covering the period and the year-to-date. The year-end financial report submitted by Visit Norman to the City shall include an audited financial statement for the previous year. Said audited financial statement shall be furnished by Visit Norman to the City as soon as reasonably possible after the close of the previous fiscal year.

3. **Funding**

- A. The parties hereto agree that of the sums collected from the Norman Transient Guest Room Tax, the City of Norman shall retain Four Percent (4%) to reimburse the City for its administrative costs involved in administering the tax and administering the contract. Of the remaining Ninety-Seven Percent (97%), 59.375% shall be paid to Visit Norman as compensation for its services rendered during the term of the Agreement. Of the remaining tax collected, 15.625 % shall be set aside for the Norman Parks Department.
- i. Of the revenues received by Visit Norman from the Norman Transient Guest Room Tax Ordinance, 15.79% shall be dedicated to the promotion of sports tourism in Norman, and improvements to Norman sports facilities.
- B. The City agrees to pay to Visit Norman the funds received in monthly increments during the terms of this Agreement. Prior to May 1 of each year, Visit Norman shall prepare and submit to the City Council a detailed plan of work and integrated budget for Ninety-Five Percent (95%) of the estimated revenues of the next fiscal

WITNESS our hands the ____ day of _____, 2023, at Norman, Oklahoma.

NORMAN CONVENTION AND VISITORS BUREAU, INC.

By: _____
<name>, President

ATTEST:

Corporate Secretary

APPROVED this ____ day of _____, 2023, by the Norman City Council.

ATTEST: Larry Heikkila, MAYOR

Brenda Hall, City Clerk

APPROVED as to form and legality this ____ day of _____, 2023.

CITY ATTORNEY



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 07/11/2023

REQUESTER: Jason Olsen, Director of Parks and Recreation

PRESENTER: Jason Olsen, Director of Parks and Recreation

ITEM TITLE: CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-26: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND TYLER FUQUA CREATIONS IN THE AMOUNT OF \$62,000 FOR THE DESIGN AND CREATION OF A SCULPTURE TO BE PLACED AT THE REAVES PARK FUNDED THROUGH THE NORMAN FORWARD PUBLIC ARTS FUND.

BACKGROUND:

The City of Norman and the Norman Arts Council (NAC) have partnered in projects to install art in public places within the City of Norman. Through this partnership, the NAC has purchased art pieces, and the City provides a location for the piece(s) within public spaces owned by the City of Norman.

With the adoption of NORMAN FORWARD, the City committed to expending an amount not to exceed 1% of the aggregate construction costs of major facilities and community park improvements costs on public art at those facilities and parks. Because of the City's positive relationship with the NAC and the NAC's commitment to the sense of community fostered by public art, the NAC has agreed to expand the partnership with the City of Norman to assist with the selection, location, and installation of public art purchased with Norman Forward sales tax revenue.

Under the terms of the approved Services Agreement, Contract K-1516-132, and all amendments thereto, the NAC will be the administrator for selecting, locating, and installing public art purchased with Norman Forward sales tax funds. The NAC has administered the selection of public art through four phases: (a) Phase I: Project Development, including research into similar projects and assembly of a Project Team to evaluate the public art opportunities; (b) Phase II: Selection Process, including project announcement and advertising, "blind jury" review of the submission, and ultimate selection of and contracting with an artist; (c) Phase III Execution and Installation, including coordination with the City for permitting and approvals during fabrication and installation of the selected artwork; and (d) Phase IV: Public Engagement and Education, including design and installation appropriate markers and other means of creating public awareness and appreciation for each work of art through press releases, social media, and other appropriate channels, as well as the care and maintenance of each work of art.

Under the terms of the Services Agreement, the City of Norman has funded public art installed at or as a part of Norman Forward sales tax-funded projects up to 1% of construction costs for the Central Library, East Library, Westwood Family Aquatic Center, and Westwood Tennis, Ruby Grant Park, Andrews Park, and have planned the future installation of artwork at the Young Family Athletic Center ("YFAC"), Saxon Park, Reaves Park, Griffin Park, and the Senior Wellness Center. These costs (the "Norman Forward Public Arts Fund" or "NFPAF"), aggregated together, were initially estimated to be \$1.2 million.

Of the NFPAF, at least 90% shall be allocated to art selection, artist fees, fabrication, installation, and maintenance. The remaining amount, up to 10% of the total NFPAF, is paid to NAC as an administrative fee. The City will make the administrative fee available to NAC as projects come forward. The NAC will submit quarterly reports detailing progress, including funds received and expended. The Services Agreement is for an initial one-year term. It renews automatically for subsequent one-year terms so long as Norman Forward revenues remain for the purchase and installation of public art.

DISCUSSION:

Reaves Park, located at 2501 Jenkins Ave, has reached the point where an artist has been selected, and a final contract with the chosen Artist is proposed for City Council consideration.

The Selection Panel Advisory Board and the Norman Arts Council Board began the artist selection process; the Board recommended the retention of artist Tyler FuQua of Tyler FuQua Creations to build and install a robot sculpture at the site.

The Artist is responsible for the sculpture, the delivery, installation, and securing of the work in a foundation/footer designed by a licensed engineer. At the same time, the City will be responsible for the concrete decking and any associated landscaping.

The sculpture is proposed to be completed and installed by October 31, 2023. In addition, before implementing any changes to the sculpture, the Artist must obtain approval from the City of Norman. The total cost of this contract is \$62,000, \$25,000 of which is payable upon delivery of the signed contract and issuance of an Artist's invoice, \$18,500 of which is due upon substantial completion of the robot sculpture, and the final \$18,500 is due upon final acceptance of the work by the City.

Final acceptance will be determined solely by the City of Norman. The City of Norman retains the right to subsequently remove the work if it presents a safety hazard or cannot be reasonably restored to its original structural or aesthetic integrity.

Norman Forward Public Arts Project, Construction (account 51795500-46101; project NFP100) has adequate funds available to cover the award of this contract.

RECOMMENDATION:

Based upon the foregoing, City Staff recommends that Council approve Contract K-2324-26 with Tyler FuQua Creations for the fabrication and installation of artwork at Reaves Park.

- D. The permanent location for the work shall be in Reaves Park, at 2501 Jenkins Ave, Norman, Oklahoma.
- E. The Artist shall perform all services and furnish all supplies, materials and equipment necessary for the design, execution, fabrication, transportation and installation of the Work. The Owner will make equipment for installation available.
- F. The Owner shall make known its specifications to the Artist prior to the rendering of their services.
- G. The Owner in consultation with the Artist shall determine the arrangement and placement of the final Work.
- H. The Artist shall be responsible for the delivery, installation, and securing of the Work on a concrete base prepared, by the Owner, at the site in Norman, Oklahoma.
- I. The Artist shall coordinate, with the Norman Arts Council, on outreach program design, including number, duration, form, and delivery type.

II. Execution of the Work

- A. The Artist shall complete the fabrication of the work in substantial conformity with the design as recommended by the Norman Arts Council Board and approved by the Owner
- B. Prior to implementation of any significant changes in the Work, the Artist shall present to the Owner in writing, for further review and approval, a thorough description of such proposed changes. A significant change is any change affecting the scope, intent, design, color, size, material or location of the Work not permitted by, or not in substantial conformity with, the approved design. Owner must approve the proposed changes prior to continued work by the Artist.
- C. In performance of the Work described herein, the Artist shall comply with all applicable State and local laws, rules and regulations.
- D. The Artist shall complete the Work by October 15, 2023. Should the work be ready for delivery prior to October 1, 2023, the Artist shall keep the work safely stored at its studio or other location. The installation of the the

work will be at a date mutually agreeable between the Artist and the Owner, but no later than October 31, 2023.

- E. The Owner shall notify the Artist of construction delays resulting in delays in site preparation prior to the scheduled delivery date or installation date. A new date shall be agreed upon by the Owner and Artist for completion, delivery and installation of the Work.
- F. The Artist shall notify the Owner in writing when fabrication of the Work is completed and the Artist is ready to deliver the Work and install it on the site.
- G. Within forty-five (45) days after installation of the Work, and prior to final payment, the Artist shall make available to the Owner high quality digital images of the completed Work .
- H. The Artist shall furnish the Owner with a full written narrative description of the Work.
- I. The Artist shall provide the Owner written instructions for appropriate maintenance and preservation of the Work.
- J. Final acceptance shall be determined solely by the Owner and shall constitute the acknowledgement that the Work has been satisfactorily completed and installed according to the terms of this Agreement.
- K. Ownership of the Work shall pass to the Owner (City of Norman) upon final acceptance.

III. Warranties and Copyright

- A. The Artist represents and warrants that:
 - i. The Work is solely the result of the artistic and creative efforts of the Artist;
 - ii. The Work is unique and original and does not infringe upon any copyright;
 - iii. The Work has not been accepted for sale elsewhere; and
 - iv. The Work is free and clear of any liens from any source whatever.
- B. The Artist represents and warrants that:
 - i. The Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and

- ii. Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist; and
 - iii. The warranties described in this section shall survive for a period of one (1) year after the final acceptance of the Work. The Owner shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the Owner, and at no cost to the Owner, reasonably and promptly cure the breach of any such warranty, which is curable by the Artist and which cure is consistent with professional conservation standards. This includes making repairs to the Work or re-fabricating the Work arising out of defects consisting of "inherent vice" or qualities accelerating deterioration of the Work which appear for a period of one (1) year after the installation and which the Artist shall correct.
- C. The Artist retains all rights under the Copyright Act of 1976 under 17 U.S.C. § 101 *et seq.*, Visual Artists Rights Act of 1990 (VARA) 17 USC §106A, and all other rights in and to the Work except ownership and possession, except as such rights may be limited by this Agreement. The Artist shall not make any additional exact duplicate reproductions of the final Work, nor shall the Artist grant permission to others to do so except with the written permission of the Owner. The Artist grants to the Client and Owner and its assigns an irrevocable license to make photographic or graphic reproductions of the Work for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity and catalogs or other similar publications, if the Artist is duly credited, except where the Work is merely an incidental feature of a photograph. A plaque provided by the Owner, identifying the title, date, and Artist, shall be placed on or near the Work. The Artist shall have the right to use photographs of the completed Work as an example of his work and in books or brochures he may publish.

IV. Fee for Services

- A. The total purchase price of creation, preparation and completion of the final Work shall be \$62,000. This fee does not include the cost to Owner for preparation of the site for installation. Owner shall not provide any additional compensation for any alterations or revisions in the final Work which substantially depart from the approved preliminary models and specifications and which cause the Artist an unusual and unanticipated expense.

- B. The Artist shall receive payments from the Client to the Artist to be paid in the amount of \$62,000 as follows:
 - i. \$25,000 upon delivery of signed contract by the Owner and Artist and the issuance of Artist's invoice;
 - ii. \$18,500 upon documentation of the half-way milestone of completion of the Work;
 - iii. \$18,500 upon final acceptance of the Work by Owner.

- C. Artist's lack of performance during either of the payment stages listed above shall initiate a 30-day period to cure the deficiency and/or lack of performance upon receipt of written notice from the Owner which provides a statement addressing Owner's dissatisfaction with Artist's performance as well as what steps the Artist may take to cure the inadequate performance. The Artist must cure the deficiency or take reasonable steps towards curing the deficiency within the 30-day period. Upon failure of the Artist to do so, the Owner may pursue any remedies available to them against the Artist at law and in equity, including, but not limited to, the right to terminate this Agreement and reimbursement from Artist for all funds expended by Owner thus far including costs to remove the base or foundation.

- D. Artist shall provide proof of completion of the Work by submitting at least ten pictures of the Work from various angles which tend to clearly show the Artist's progression during the stages of fabrication to completion. Additionally, Artist shall submit Form A along with these documents.

V. Funding

- A. Owner guarantees and warrants that it will produce funds in the amount of \$62,000 as required for completion of the Work.

VI. Alteration and De-accession Right

- A. The Owner agrees that it will not consent to intentional alteration, modification, change, destruction of or damage to the Work by the Owner without attempting to consult the Artist.

- B. The Artist shall notify the Owner of changes in their address. The failure to do so, if such failure prevents the Owner from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce that which requires the express approval of the Artist. The Owner shall make

reasonable efforts to locate the Artist when matters arise relating to the Artist's rights.

- C. The Owner may remove the Work from the City of Norman collection if it determines that the Work represents a safety hazard in its present condition or cannot reasonably be restored to its original structural or aesthetic integrity due to technical difficulties or expense disproportionate to the value of the Work. The Owner shall notify the Artist of such a decision to de-access the Work. Such notification shall be made before the de-accession, whenever possible. The Owner has no responsibility to relocate, restore, or replace the Work if it is misplaced, damaged or stolen.

VII. Insurance

The Artist, as independent contractor, is responsible for any requirements pertaining to Workers' Compensation insurance and employee liability insurance, and shall obtain and maintain insurance satisfactory to covering comprehensive general liability, and all risks of loss, damage to, or theft of the Work while it is being made, transported, or installed by the Artist. The Artist shall deliver to the Owner a copy of this insurance prior to beginning work. In addition, the City of Norman will provide insurance to cover loss, damage to, or theft of the Work once installed under the City of Norman's current policy covering the construction of Reaves Park.

VIII. Indemnity

Upon execution of this document, but prior to transfer of ownership, Artist agrees to defend, indemnify and hold harmless Owner, its agents and employees, from and against legal liability for all claims, losses, damages and expenses to the extent such claims, losses, damages or expenses are caused by Artist, its agents or employees' negligent acts, errors or omissions. Artist shall indemnify the City of Norman, Oklahoma up to one hundred thousand dollars (\$100,000.00) for any claim arising out of this Agreement. Artist further waives any rights against the City for any and all injuries or damages alleged to have arisen during the term of this Agreement.

IX. Default

If either party defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all court ordered costs and expenses, including

reasonable attorney's fees, incurred by the other party in enforcing its rights arising under this Agreement,.

X. Binding

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their agents, successors, and assigns.

XI. Integration

This Agreement represents the entire and integrated Agreement between the parties. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may only be changed by a written amendment executed by all parties.

XII. Ownership of Documents and Models

Upon final acceptance, all studies, drawings, designs, maquettes and models prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist unless agreed by all parties.

XIII. Notice

Notice of any breach or other correspondence related to this contract shall be by email or regular mail to the following contacts:

Artist:

Tyler FuQua
Title: Creative Director
Tyler FuQua Creations
Address: 503-708-9956
Email: tyfu@me.com

City:

Jason Olsen
Title: Director of Parks and Recreation
225 N. Webster Ave.

Norman, OK 73070
Email: Jason.Olsen@normanok.gov

XIV. Modification

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by all parties hereto.

XV. Severability

Any provision of this contract which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States, State of Oklahoma or City of Norman shall be considered null and void. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent the contract is capable of execution.

ARTIST


Tyler FuQua, Creative Director
Tyler FuQua Creations
24645 SE Brevi Lane, Eagle Creek, OR 97022
Phone number 503-708-9956

Before me, the undersigned, a Notary Public in and for said County and State, on this 15th day of June, 2023, personally appeared Tyler FuQua and N/A, to me known to be the identical person(s)/(company title) person who executed the foregoing and acknowledged to me that he executed the same as a free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year last above written.



Kristyn Jo Anderson

Notary Public

My Commission Expires: August 5, 2023

County of Multnomah, State of Oregon

CITY OF NORMAN

APPROVED this _____ day of _____, 2023, by the Norman City Council.

Larry Heikkila, MAYOR

ATTEST:

Brenda Hall, City Clerk

APPROVED as to form and legality this 10th day of July, 2023.

Mr. Poole
CITY ATTORNEY

SCHEDULE I

[to be included]

OFFICIAL STAMP
/N JO ANDERSON
PUBLIC - OREGON
SSION NO: 990268
PIRES AUGUST 05, 2023

State of Oregon Notarial Certificate (ORS Ch. 194.280, 194.285)

Witnessing or Attesting a Signature

State of OREGON

County of MultnomahSigned (or attested) before me on (date) 15th of June, 20 23by (name(s) of individual(s)) Tyler FuquaKristyn Jo Anderson

Notary Public - State of Oregon

Official StampDocument Description

This certificate is attached to page 89 of a contract (title or type of document), dated June 15, 20 23, consisting of 10 pages.

OFFICIAL STAMP
KRISTYN JO ANDERSON
NOTARY PUBLIC - OREGON
COMMISSION NO. 990268
SION EXPIRES AUGUST 05, 2023

KR
NO1
CO
MY COMMISSION

Proposed schedule for Reaves Park Robot Sculpture:

July - Receive first round of funding and order main structure materials after getting approval from engineer. Begin to fabricate key components (elbows, knees, shoulders, hips, etc.) Once those are done, begin to attach them to the larger parts (arms, legs, pelvis, etc).

August - Continue to assemble main body part and begin work on head, and hand and head accessories.

September - Get in contact with the local schools and begin heart chamber design process. Finish body details and order the base plate. Hopefully by the end of September we will have the heart chamber design selected and can begin fabrication of that piece. Continue with details of the accessories, etc.

October - finish construction of the robot. Reach out to community to select the numbering of the robot. Complete all fabrication by 10/15. Ship robot out around 10/27 for a 10/31 delivery and installation.

Form A

I, Tyler Fuqua, hereby declare that the accompanying documents truthfully and accurately depict the most current status of the Work. I further declare that I produced and created the Work pictured in the accompanying documents.

Artist/ Project Manager

Date

[Signature] 6/15/23
 Address: 24645 SE Brex Ln
East Creek, OR
97022

State of Oregon

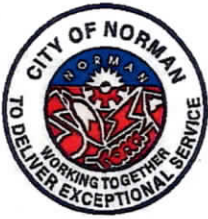
County of Multnomah



Sworn to and subscribed before me this 15th day of June, 2023.

Kristyn Jo Anderson
 Notary Public

My commission expires: August 5, 2023



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 07/11/2023

REQUESTER: Jason Olsen, Director of Parks and Recreation

PRESENTER: Jason Olsen, Director of Parks and Recreation

ITEM TITLE: CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-24: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND PROJECTIONE LLC dba PROJECT ONE STUDIO IN THE AMOUNT OF \$89,000 FOR THE DESIGN AND CREATION OF A SCULPTURE TO BE PLACED AT THE GRIFFIN PARK FUNDED THROUGH THE NORMAN FORWARD PUBLIC ARTS FUND.

BACKGROUND:

The City of Norman and the Norman Arts Council (NAC) have partnered in projects to install art in public places within the City of Norman. Through this partnership, the NAC has purchased art pieces, and the City provides a location for the piece(s) within public spaces owned by the City of Norman.

With the adoption of NORMAN FORWARD, the City committed to expending an amount not to exceed 1% of the aggregate construction costs of significant facilities and community park improvements costs on public art at those facilities and parks. Because of the City's positive relationship with the NAC and the NAC's commitment to the sense of community fostered by public art, the NAC has agreed to expand the partnership with the City of Norman to assist with the selection, location, and installation of public art purchased with Norman Forward sales tax revenue.

Under the terms of the approved Services Agreement, Contract K-1516-132, and all amendments thereto, the NAC will be the administrator for selecting, locating, and installing public art purchased with Norman Forward sales tax funds. The NAC has administered the selection of public art through four phases: (a) Phase I: Project Development, including research into similar projects and assembly of a Project Team to evaluate the public art opportunities; (b) Phase II: Selection Process, including project announcement and advertising, "blind jury" review of the submission, and ultimate selection of and contracting with an artist; (c) Phase III Execution and Installation, including coordination with the City for permitting and approvals during fabrication and installation of the selected artwork; and (d) Phase IV: Public Engagement and Education, including design and installation appropriate markers and other means of creating public awareness and appreciation for each work of art through press releases, social media, and other appropriate channels, as well as the care and maintenance of each work of art.

RECOMMENDATION:

Based upon the foregoing, City Staff recommends that Council approve Contract K-2324-24 with PROJECTIONE LLC for the fabrication and installation of artwork at Griffin Park.

- E. The Artist shall perform all services and furnish all supplies, materials and equipment necessary for the design, execution, fabrication, transportation and installation of the Work. The Owner will make equipment for installation available.
- F. The Owner shall make known its specifications regarding specific location, mounting, installation and other issues related to the finished product's delivery and installation, to the Artist prior to the rendering of their services.
- G. The Owner in consultation with the Artist shall determine the arrangement and placement of the final Work.
- H. The Artist shall be responsible for the delivery, installation, and securing of the Work on a concrete base prepared, by the Owner, at the site in Norman, Oklahoma.
- I. The Artist shall coordinate, with the Norman Arts Council, on outreach program design, including number, duration, form, and delivery type.

II. Execution of the Work

- A. The Artist shall complete the fabrication of the work in substantial conformity with the design as recommended by the Norman Arts Council Board and approved by the Owner
- B. Prior to implementation of any significant changes in the Work, the Artist shall present to the Owner in writing, for further review and approval, a thorough description of such proposed changes. A significant change is any change affecting the scope, intent, design, color, size, material or location of the Work not permitted by, or not in substantial conformity with, the approved design. Owner must approve the proposed changes prior to continued work by the Artist.
- C. In performance of the Work described herein, the Artist shall comply with all applicable State and local laws, rules and regulations.
- D. The Artist shall complete the Work by March 15, 2024. Should the work be ready for delivery prior to March 1, 2024, the Artist shall keep the work safely stored at its studio or other location. The installation of the work will be at a date mutually agreeable between the Artist and the Owner, but no later than March 31, 2024.
- E. The Owner shall notify the Artist of construction delays resulting in delays in site preparation prior to the scheduled delivery date or installation date.

A new date shall be agreed upon by the Owner and Artist for completion, delivery and installation of the Work.

- F. The Owner shall always grant a reasonable extension of time to the Artist in the event that there is a delay on the part of the Client in performing its obligations under this Agreement or in completing the Project, or if conditions beyond the Artist's reasonable control such as, but not limited to, acts of nature; pandemic, national, state, or local quarantine or stay at home order, war or warlike operation; superior governmental regulation or control; public emergency render timely performance of the Artist's services impossible or unexpectedly burdensome. Failure to fulfill contractual obligations due to conditions beyond either party's reasonable control will not be considered a breach of contract; provided that such obligations shall be suspended only for the duration of such conditions.
- G. The Artist shall notify the Owner in writing when fabrication of the Work is completed and the Artist is ready to deliver the Work and install it on the site.
- G. Within forty-five (45) days after installation of the Work, and prior to final payment, the Artist shall make available to the Owner high quality digital images of the completed Work
- H. The Artist shall furnish the Owner with a full written narrative description of the Work.
- I. The Artist shall provide the Owner written instructions for appropriate maintenance and preservation of the Work.
- J. The Artist shall notify the Owner in writing when all services have been completed. Final Acceptance will be effective as of the earlier to occur of (i) the date of the Client's written notification of Final Acceptance or (ii) the thirtieth (30th) day after the Artist has sent the written notice to the Client of completion, unless the Client, upon receipt of such notice and prior to the expiration of the 30-day period, gives the Artist written notice specifying and describing the services which have not been completed. Final acceptance shall be determined solely by the Owner and shall constitute the acknowledgment that the Work has been satisfactorily completed and installed according to the terms of this Agreement.
- K. Ownership of the Work shall pass to the Owner (City of Norman) upon final acceptance.

III. Warranties and Copyright

- A. The Artist represents and warrants that:

- i. The Work is solely the result of the artistic and creative efforts of the Artist;
 - ii. The Work is unique and original and does not infringe upon any copyright;
 - iii. The Work has not been accepted for sale elsewhere; and
 - iv. The Work is free and clear of any liens from any source whatever.
- B. The Artist represents and warrants that:
- i. The Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and
 - ii. Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist; and
 - iii. The warranties described in this section shall survive for a period of one (1) year after the final acceptance of the Work. The Owner shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the Owner, and at no cost to the Owner, reasonably and promptly cure the breach of any such warranty, which is curable by the Artist and which cure is consistent with professional conservation standards. This includes making repairs to the Work or re-fabricating the Work arising out of defects consisting of "inherent vice" or qualities accelerating deterioration of the Work which appear for a period of one (1) year after the installation and which the Artist shall correct.
 - iv. Except as otherwise specifically provided, no other warranty or representation, either express or implied, is included or intended in the Artist's proposals, reports, deliverables, and/or communications. The warranties in this Section are conditional and shall be voided by the failure of the Client to maintain the Work in accordance with the Artist's specifications, including the Maintenance Manual, and the applicable conservation standards. If the Client fails to maintain the Work in good condition, the Artist, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Work as the Artist's creation and request that all credits be removed from the Work and reproductions thereof until the Work's condition is satisfactorily repaired. THE ARTIST DISCLAIMS ANY WARRANTIES ARISING OUT OF THE CLIENT'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR ANY DAMAGES OR LOSSES TO THE ARTWORK ARISING OUT OF VANDALISM, INTENTIONAL DAMAGES OR OTHER ACTS OUTSIDE THE REASONABLE CONTROL OF THE PARTIES.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE ARTIST MAKES NO WARRANTIES TO THE CLIENT, WRITTEN OR ORAL, STATUTORY OR EXPRESS OR IMPLIED, INCLUDING

WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THE CLIENT'S EXCLUSIVE REMEDY AND THE ARTIST'S ENTIRE LIABILITY ARISING FROM OR IN CONNECTION WITH THE SERVICES AND THE ARTWORK (INCLUDING WITHOUT LIMITATION FOR BREACH OF WARRANTY OR INFRINGEMENT) SHALL BE, AT THE ARTIST'S SOLE OPTION, THE MODIFICATION OR REPLACEMENT OF THE SERVICES OR WORK OR A REFUND OF ALL OR PART OF THE FEES FOR THE SERVICE PERFORMED.

This Section will survive termination or expiration of this Agreement for any reason.

- C. The Artist retains all rights under the Copyright Act of 1976 under 17 U.S.C. § 101 *et seq.*, Visual Artists Rights Act of 1990 (VARA) 17 USC §106A, and all other rights in and to the Work except ownership and possession, except as such rights may be limited by this Agreement. The Artist shall not make any additional exact duplicate reproductions of the final Work, nor shall the Artist grant permission to others to do so except with the written permission of the Owner. The Artist grants to the Client and Owner and its assigns an irrevocable license to make photographic or graphic reproductions of the Work for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity and catalogs or other similar publications, if the Artist is duly credited, except where the Work is merely an incidental feature of a photograph. A plaque provided by the Owner, identifying the title, date, and Artist, shall be placed on or near the Work. The Artist shall have the right to use photographs of the completed Work as an example of his work and in books or brochures he may publish.

IV. Fee for Services

- A. The total purchase price of creation, preparation and completion of the final Work shall be \$89,000. This fee does not include the cost to Owner for preparation of the site for installation. Owner shall not provide any additional compensation for any alterations or revisions in the final Work which substantially depart from the approved preliminary models and specifications and which cause the Artist an unusual and unanticipated expense.
- B. The Artist shall receive payments from the Client to the Artist to be paid in the amount of \$89,000.00 as follows:

- i. \$44,500.00 within thirty (30) days, upon delivery of signed contract by the Owner and Artist and the issuance of Artist's invoice;
- ii. \$22,250.00 within thirty (30) days, upon documentation of the 50% milestone of completion of fabrication of the Work;
- iii. \$11,125.00 within thirty (30) days, upon documentation of the 100% milestone of completion of fabrication of the Work;
- iv. \$11,125.00 within thirty (30) days, upon final acceptance of the Work by Owner.

- C. Artist's lack of performance during either of the payment stages listed above shall initiate a 30-day period to cure the deficiency and/or lack of performance upon receipt of written notice from the Owner which provides a statement addressing Owner's dissatisfaction with Artist's performance as well as what steps the Artist may take to cure the inadequate performance. The Artist must cure the deficiency or take reasonable steps towards curing the deficiency within the 30-day period. Upon failure of the Artist to do so, the Owner may pursue any remedies available to them against the Artist at law and in equity, including, but not limited to, the right to terminate this Agreement and reimbursement from Artist for all funds expended by Owner thus far including costs to remove the base or foundation.
- D. Artist shall provide proof of completion of the Work by submitting at least ten pictures of the Work from various angles which tend to clearly show the Artist's progression during the stages of fabrication to completion. Additionally, Artist shall submit Form A along with these documents.

V. Funding

- A. Owner guarantees and warrants that it will produce funds in the amount of \$89,000.00 for the completion of the Work.
- B. If any payment from the Owner is past due, the Artist will promptly notify the Owner and the Artist may immediately cease all services until full payment has been made and the Schedule and/or completion date shall be adjusted accordingly. The Artist has no obligation to provide services unless the Owner is in good standing and no amounts are owed to the Artist.

VI. Alteration and De-accession Right

- A. The Owner agrees that it will not consent to intentional alteration, modification, change, destruction of or damage to the Work by the Owner without attempting to consult the Artist.
- B. The Artist shall notify the Owner of changes in their address. The failure to do so, if such failure prevents the Owner from locating the Artist, shall be deemed a waiver by the Artist of the right subsequently to enforce that

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their agents, successors, and assigns.

XI. Integration

This Agreement represents the entire and integrated Agreement between the parties. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may only be changed by a written amendment executed by all parties.

XII. Ownership of Documents and Models

Upon final acceptance, all studies, drawings, designs, maquettes and models prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist unless agreed by all parties.

XIII. Notice

Notice of any breach or other correspondence related to this contract shall be by email or regular mail to the following contacts:

Artist:

Project One Studio
Adam Buente, Owner
Address: 3151 Kirkbride Way, Ste. C
Indianapolis, IN 46222
812-480-6006
Email: adam@p1-studio.com

City:

Jason Olsen
Title: Director of Parks and Recreation
225 N. Webster Ave.
Norman, OK 73070
Email: Jason.Olsen@normanok.gov

XIV. Modification

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by all parties hereto.

XV. Severability

Any provision of this contract which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States, State of Oklahoma or City of Norman shall be considered null and void. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent the contract is capable of execution.

ARTIST


 PROJECTIONE LLC d/b/a Project One Studio
 Adam Buente, Owner
 Address: 3151 Kirkbride Way, Ste. C
 Indianapolis, IN 46222
 812-480-6006
 Email: adam@p1-studio.com

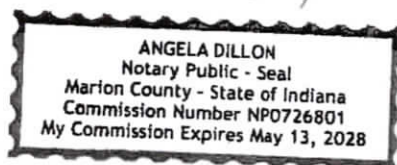
Before me, the undersigned, a Notary Public in and for said County and State, on this 21st day of June, 2023, Adam Buente, Owner AD personally appeared AD, to me known to be the identical person(s)/(company title) Owner who executed the foregoing and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year last above written.



Notary Public

My Commission Expires: 05/13/2028



CITY OF NORMAN

APPROVED this ____ day of _____, 2023, by the Norman City Council.

Larry Heikkila, MAYOR

ATTEST:

Brenda Hall, City Clerk

APPROVED as to form and legality this 5th day of July, 2023.

Car Roale
CITY ATTORNEY

[The remainder of this page is intentionally left blank]

SCHEDULE I

I. Estimate of Project Schedule

- A. Design Development / Engineering: within sixty (60) days, upon delivery of signed contract by the Owner and issuance of Artist's first payment
- B. Fabrication: within four (4) months, upon approval of Engineered Drawings
- C. Installation: within 14 days, upon approval of site preparation conditions and weather permitting. (Installation can be pushed into early spring 2024 if necessary)

Form A

I, ADAM BUENTE, hereby declare that the accompanying documents truthfully and accurately depict the most current status of the Work. I further declare that I produced and created the Work pictured in the accompanying documents.

Artist/ Project Manager

Date

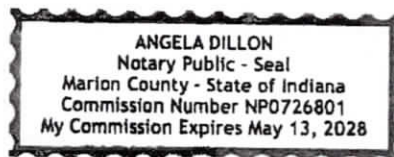
[Signature] 6/21/23
 Address: 3151 KIRKBRIDE WAY, STE C.
INDIANAPOLIS, IN 46222

State of Indiana
 County of Marion

Sworn to and subscribed before me this 21st day of June, 2023.

[Signature]
 Notary Public

My commission expires: 05/13/2028



File Attachments for Item:

37. CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-25: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND SKUNK CONTROL IN THE AMOUNT OF \$100,000 FOR THE DESIGN AND CREATION OF A SCULPTURE TO BE PLACED AT THE NORMAN SENIOR WELLNESS CENTER FUNDED THROUGH THE NORMAN FORWARD PUBLIC ARTS FUND.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 07/11/2023

REQUESTER: Jason Olsen, Director of Parks and Recreation

PRESENTER: Jason Olsen, Director of Parks and Recreation

ITEM TITLE: CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF CONTRACT K-2324-25: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND SKUNK CONTROL IN THE AMOUNT OF \$100,000 FOR THE DESIGN AND CREATION OF A SCULPTURE TO BE PLACED AT THE NORMAN SENIOR WELLNESS CENTER FUNDED THROUGH THE NORMAN FORWARD PUBLIC ARTS FUND.

BACKGROUND:

The City of Norman and the Norman Arts Council (NAC) have partnered in projects to install art in public places within the City of Norman. Through this partnership, the NAC has purchased art pieces, and the City provides a location for the piece(s) within public spaces owned by the City of Norman.

With the adoption of NORMAN FORWARD, the City committed to expending an amount not to exceed 1% of the aggregate construction costs of major facilities and community park improvements costs on public art at those facilities and parks. Because of the City's positive relationship with the NAC and the NAC's commitment to the sense of community fostered by public art, the NAC has agreed to expand the partnership with the City of Norman to assist with the selection, location, and installation of public art purchased with Norman Forward sales tax revenue.

Under the terms of the approved Services Agreement, Contract K-1516-132, and all amendments thereto, the NAC will be the administrator for selecting, locating, and installing public art purchased with Norman Forward sales tax funds. The NAC has administered the selection of public art through four phases: (a) Phase I: Project Development, including research into similar projects and assembly of a Project Team to evaluate the public art opportunities; (b) Phase II: Selection Process, including project announcement and advertising, "blind jury" review of the submission, and ultimate selection of and contracting with an artist; (c) Phase III Execution and Installation, including coordination with the City for permitting and approvals during fabrication and installation of the selected artwork; and (d) Phase IV: Public Engagement and Education, including design and installation appropriate markers and other means of creating public awareness and appreciation for each work of art through press releases, social media, and other appropriate channels, as well as the care and maintenance of each work of art.

Based upon the foregoing, City Staff recommends that Council approve Contract K-2324-25 with Skunk Control for the fabrication and installation of artwork at the Norman Senior Wellness Center.

- E. The Artist shall perform all services and furnish all supplies, materials and equipment necessary for the design, execution, fabrication, transportation and installation of the Work.
- F. The Owner shall make known its specifications to the Artist prior to the rendering of their services.
- G. The Owner in consultation with the Artist shall determine the arrangement and placement of the final Work.
- H. The Artist shall be responsible for the delivery, installation, and securing of the Work on a concrete base prepared, by the Owner, at the site in Norman, Oklahoma.
- I. The Artist shall coordinate, with the Norman Arts Council, on outreach program design, including number, duration, form, and delivery type.

II. Execution of the Work

- A. The Artist shall complete the fabrication of the work in substantial conformity with the design as recommended by the Norman Arts Council Board and approved by the Owner
- B. Prior to implementation of any significant changes in the Work, the Artist shall present to the Owner in writing, for further review and approval, a thorough description of such proposed changes. A significant change is any change affecting the scope, intent, design, color, size, material or location of the Work not permitted by, or not in substantial conformity with, the approved design. Owner must approve the proposed changes prior to continued work by the Artist.
- C. In performance of the Work described herein, the Artist shall comply with all applicable State and local laws, rules and regulations.
- D. The Artist shall complete the Work by September 30, 2023. Should the work be ready for delivery prior to September 1, 2023, the Artist shall keep the work safely stored at its studio or other location. The installation of the the work will be at a date mutually agreeable between the Artist and the Owner, but no later than October 31, 2023. The Artist shall notify the Owner of delivery delays due to, but not limited to, materials supply delays, shipping delays, and travel delays.
- E. The Owner shall notify the Artist of construction delays resulting in delays in site preparation prior to the scheduled delivery date or installation date. A new date shall be agreed upon by the Owner and Artist for completion, delivery and installation of the Work.
- F. The Artist shall notify the Owner in writing when fabrication of the Work is completed and the Artist is ready to deliver the Work and install it on the site.

- G. Within forty-five (45) days after installation of the Work, and prior to final payment, the Artist shall make available to the Owner high quality digital images of the completed Work.
- H. The Artist shall furnish the Owner with a full written narrative description of the Work.
- I. The Artist shall provide the Owner written instructions for appropriate maintenance and preservation of the Work.
- J. Final acceptance shall be determined solely by the Owner and shall constitute the acknowledgement that the Work has been satisfactorily completed and installed according to the terms of this Agreement.
- K. Ownership of the Work shall pass to the Owner (City of Norman) upon final acceptance.

III. Warranties and Copyright

- A. The Artist represents and warrants that:
 - i. The Work is solely the result of the artistic and creative efforts of the Artist;
 - ii. The Work is unique and original and does not infringe upon any copyright;
 - iii. The Work has not been accepted for sale elsewhere; and
 - iv. The Work is free and clear of any liens from any source whatever.
- B. The Artist represents and warrants that:
 - i. The Work, as fabricated and installed, will be free of defects in material and workmanship, including any defects of "inherent vice" or qualities which cause or accelerate deterioration of the Work; and
 - ii. Reasonable maintenance of the Work will not require procedures substantially in excess of those described in the maintenance recommendations to be submitted by the Artist; and
 - iii. The warranties described in this section shall survive for a period of one (1) year after the final acceptance of the Work. The Owner shall give notice to the Artist of any observed breach with reasonable promptness. The Artist shall, at the request of the Owner, and at no cost to the Owner, reasonably and promptly cure the breach of any such warranty, which is curable by the Artist and which cure is consistent with professional conservation standards. This includes making repairs to the Work or re-fabricating the Work arising out of defects consisting of "inherent vice" or qualities accelerating deterioration of the Work which appear for a period of one (1) year after the installation and which the Artist shall correct.

- C. The Artist retains all rights under the Copyright Act of 1976 under 17 U.S.C. § 101 *et seq.*, Visual Artists Rights Act of 1990 (VARA) 17 USC §106A, and all other rights in and to the Work except ownership and possession, except as such rights may be limited by this Agreement. The Artist shall not make any additional exact duplicate reproductions of the final Work, nor shall the Artist grant permission to others to do so except with the written permission of the Owner. The Artist grants to the Client and Owner and its assigns an irrevocable license to make photographic or graphic reproductions of the Work for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media publicity and catalogs or other similar publications, if the Artist is duly credited, except where the Work is merely an incidental feature of a photograph. A plaque provided by the Owner, identifying the title, date, and Artist, shall be placed on or near the Work. The Artist shall have the right to use photographs of the completed Work as an example of his work and in books or brochures he may publish.

IV. Fee for Services

- A. The total purchase price of creation, preparation and completion of the final Work shall be \$100,000. This fee does not include the cost to Owner for preparation of the site for installation. Owner shall not provide any additional compensation for any alterations or revisions in the final Work which substantially depart from the approved preliminary models and specifications and which cause the Artist an unusual and unanticipated expense.
- B. The Artist shall receive payments from the Client to the Artist to be paid in the amount of \$100,000 as follows:
- i. \$40,000 upon delivery of signed contract by the Owner and Artist and the issuance of Artist's invoice;
 - ii. \$30,000 upon documentation of the half-way milestone of completion of the Work;
 - iii. \$30,000 upon final acceptance of the Work by Owner.
- C. Artist's lack of performance during either of the payment stages listed above shall initiate a 30-day period to cure the deficiency and/or lack of performance upon receipt of written notice from the Owner which provides a statement addressing Owner's dissatisfaction with Artist's performance as well as what steps the Artist may take to cure the inadequate performance. The Artist must cure the deficiency or take reasonable steps towards curing the deficiency within the 30-day period. Upon failure of the Artist to do so, the Owner may pursue any remedies available to them against the Artist at law and in equity, including, but not limited to, the right to terminate this Agreement and reimbursement from Artist for all funds expended by Owner thus far including costs to remove the base or foundation.

Upon execution of this document, but prior to transfer of ownership, Artist agrees to defend, indemnify and hold harmless Owner, its agents and employees, from and against legal liability for all claims, losses, damages and expenses to the extent such claims, losses, damages or expenses are caused by Artist, its agents or employees' negligent acts, errors or omissions. Artist shall indemnify the City of Norman, Oklahoma up to one hundred thousand dollars (\$100,000.00) for any claim arising out of this Agreement. Artist further waives any rights against the City for any and all injuries or damages alleged to have arisen during the term of this Agreement.

IX. Default

If either party defaults in any of the covenants or agreements contained herein, the defaulting party shall pay all court ordered costs and expenses, including reasonable attorney's fees, incurred by the other party in enforcing its rights arising under this Agreement.

X. Binding

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their agents, successors, and assigns.

XI. Integration

This Agreement represents the entire and integrated Agreement between the parties. It supersedes all prior and contemporaneous communications, representations, and agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may only be changed by a written amendment executed by all parties.

XII. Ownership of Documents and Models

Upon final acceptance, all studies, drawings, designs, maquettes and models prepared and submitted under this Agreement shall be returned to the Artist and shall belong to the Artist unless agreed by all parties.

XIII. Notice

Notice of any breach or other correspondence related to this contract shall be by email or regular mail to the following contacts:

Artist:

Nick Athanasiou,
Title: Creative Director
Skunk Control

Address: 254 Hyde Street Yarraville, Victoria, Australia, post code 3013.

Email: nick@skunkcontrol.com.au

City:

Jason Olsen
 Title: Director of Parks and Recreation
 225 N. Webster Ave.
 Norman, OK 73070
 Email: Jason.Olsen@normanok.gov

XIV. Modification

No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by all parties hereto.

XV. Severability

Any provision of this contract which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States, State of Oklahoma or City of Norman shall be considered null and void. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent the contract is capable of execution.

ARTIST



Nick Athanasiou, Creative Director
 Skunk Control
 Address 254 Hyde Street Yarraville, Victoria, Australia, post code 3013.
 Phone number +61 04999 75865

Before me, the undersigned, a Notary Public in and for said County and State, on this 30th
 day of June, 2023, personally appeared
 _____ and
 _____, to me known to be the identical
 person(s)/(company title) Sole Director who executed the foregoing grant

of easement and acknowledged to me that _____ executed the same as _____ free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and seal the day and year last above written.



Notary Public

 My Commission Expires: _____

LINDA PARIC
Notary Public
An Australian Legal Practitioner
within the meaning of the
Legal Profession Uniform Law (Victoria)

CITY OF NORMAN

APPROVED this _____ day of _____, 2023, by the Norman City Council.

Larry Heikkila, MAYOR

ATTEST:

Brenda Hall, City Clerk

APPROVED as to form and legality this 7th day of July, 2023.



CITY ATTORNEY

SCHEDULE I

[to be included]

Form A

I, _____, hereby declare that the accompanying documents truthfully and accurately depict the most current status of the Work. I further declare that I produced and created the Work pictured in the accompanying documents.

Artist/ Project Manager

Date

Address: _____

State of _____
County of _____

Sworn to and subscribed before me this _____ day of _____, 202__.

Notary Public

My commission expires: _____.

SCHEDULE I

Production to Installation Schedule. subject to change depending on availability and/or delays associated with freight, material availability and other unforeseen issues.

1. Design, Drawings and testing (through to mid-July 23)
2. Structural Engineering tick off (Australia) (3rd to final week of July 23)
3. Completion of Shop drawings (final week of July 23)
4. Glass and Steel cutting/ pole bending (through to end of July 23)
5. Glass bending/curving and internal optical filter lamination (2nd week of August through to 1st week of September 23)* this will depend on the angle of glass curvature
6. Pre-Welding set up (2nd week of August)
7. Welding (3rd through to 4th week of August)
8. Sand blasting and powder coating (4th week of Aug 23 through to 1st week of Sept 23)
9. Assembly and Packaging 2nd week of September
10. Freight to site (3rd week of September)

File Attachments for Item:

39. CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2324-14: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AND NORMAN MUNICIPAL AUTHORITY, APPROPRIATING \$32,778 FROM THE WESTWOOD FUND BALANCE FOR A LEAK REPAIR AT THE WESTWOOD FAMILY AQUATIC CENTER.

Resolution

R-2324-14

A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AND NORMAN MUNICIPAL AUTHORITY, APPROPRIATING \$32,778 FROM THE WESTWOOD FUND BALANCE FOR A LEAK REPAIR AT THE WESTWOOD FAMILY AQUATIC CENTER.

- § 1. WHEREAS, the City has been transferring \$35,000 per year from the NORMAN FORWARD Fund to the Westwood Fund for the Westwood Pool Maintenance Reserve; and
- § 2. WHEREAS, at the end of this fiscal year, there will be \$187,771 in the reserve; and
- § 3. WHEREAS, the NORMAN FORWARD program has always anticipated funding this reserve for major maintenance of the pool; and
- § 4. WHEREAS, this funding is needed to pay for an emergency repair leak on the lap pool gutter pipe.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AND NORMAN MUNICIPAL AUTHORITY:

- § 5. That the following transfer of unused funds be approved for the reason as stated above.

<u>Account Name</u> (Gaining Account)	<u>Losing Account</u>	<u>Gaining Account</u> <u>Number</u>	<u>Amount</u>
Westwood Park Fund	Westwood Fund 29-29000	Westwood Park Fund 29970133-44299	\$32,778

PASSED AND ADOPTED this 11th day of July, 2023

ATTEST:

Mayor/Chairman

City Clerk/Secretary

