

File Attachments for Item:

17. CONSIDERATION OF ACCEPTANCE, REJECTION, AMENDMENT AND/OR POSTPONEMENT OF K-2223-130: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND HEALTHY LIVING CENTER NORMAN, L.L.C. FOR THE PURPOSE OF PROVIDING FOR THE LEASE AND MANAGEMENT OF THE CITY'S ADULT WELLNESS AND EDUCATION CENTER TO BE LOCATED AT 602 NORTH FINDLAY AVENUE AND BUDGET APPROPRIATION AS OUTLINED IN THE STAFF REPORT.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 05/23/2023

REQUESTER: Jason Olsen, Director of Parks and Recreation

PRESENTER: Kathryn Walker, City Attorney

ITEM TITLE: CONSIDERATION OF ACCEPTANCE, REJECTION, AMENDMENT AND/OR POSTPONEMENT OF K-2223-130: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND HEALTHY LIVING CENTER NORMAN, L.L.C. FOR THE PURPOSE OF PROVIDING FOR THE LEASE AND MANAGEMENT OF THE CITY'S ADULT WELLNESS AND EDUCATION CENTER TO BE LOCATED AT 602 NORTH FINDLAY AVENUE AND BUDGET APPROPRIATION AS OUTLINED IN THE STAFF REPORT.

BACKGROUND:

Norman voters approved the Norman Forward Quality of Life Projects Sales Tax of 2015, which provided a one-half (1/2) percent sales tax dedicated to fund several quality-of-life projects, including a Senior Wellness Facility (the "Facility"). The City approved a contract with Frankfurt-Short-Bruza Associates ("FSB") in August 2019 for the design of the facility. Initially, FSB was developing designs for a facility within the \$7.6 million Norman Forward amended allocation; with proposed additional phases to be added should funding become available in the future. On October 29, 2020, Council allocated an additional \$4.8 million towards the Facility project with funds that were freed up after the City received federal Coronavirus Aid, Relief and Economic Security Act reimbursements for other unrelated previously budgeted expenses.

After the increase in funding, the City approved an amendment to FSB's contract to accommodate the design and construction of the facility in a single phase on an approximately 4.7-acre site in the southeast corner of the Norman Regional Hospital System's Porter Avenue Wellness Village Campus. In November 2020, Staff released a Request for Proposals related to the facility's operation. Interviews were later conducted, and the City proceeded with negotiations with Healthy Living & Fitness, Inc., an operator of one of the City of Oklahoma City's Senior Wellness Centers.

Council approved a Memorandum of Understanding with Healthy Living & Fitness, Inc. on April 13, 2021, to develop a contractual relationship related to the operation of the Senior Wellness Facility. Since then, Healthy Living representatives have participated in the Norman Forward Senior Center Ad Hoc Advisory Group meetings, and have been in ongoing negotiations with the City for a final lease and management agreement.

DISCUSSION:

Contract K-2223-130 is the lease and management agreement between the City and Healthy Living Center Norman, LLC; a Limited Liability Corporation created by Healthy Living & Fitness, Incorporated for the operation of the Norman facility. The facility will be used as a Senior Wellness Center and be open and available to the public.

The Operator will operate, manage and maintain the Property for a five (5) year term, with the possibility of up to three (3) additional five-year terms. Because the "Adult Wellness and Education Center (AWE)" is not anticipated to be a revenue generator in the same way as Young Family Athletic Center, a subsidy from the City is provided under the contract. The subsidy in the first 5-year term will not exceed \$125,000 annually, representing the current annual Senior Recreation Center budget, minus personnel who will be moved to other functions once the facility opens. The types of subsidized assistance anticipated during the first five years of operation are as follows:

- **Utility Assistance:** The City will cover a specified portion of the utility costs at a decreasing rate over the first three (3) years of operation. (100% the first year, 60% the second year, 30% the third year).
- **Janitorial Services:** The City will provide janitorial services during the first three (3) years of operation.
- **Lawn and Landscaping Services:** The City will provide all lawn and landscaping services during the first five (5) years of operation
- **Pool Maintenance:** The City will provide all pool maintenance during the first five (5) years of operation.

Additionally, to assist with start-up expenses, the City will provide \$100,000 within 30 days of the execution of this agreement by both parties. This amount is recommended to be appropriated from General Fund balance in Fiscal Year 2023. The Operator will be responsible for all routine maintenance and general repair costs of the facilities and equipment in or on the Leased Premises provided that the City will be responsible for certain capital items (furniture, fixture, or equipment valued at over \$5,000 with an expected life of more than one year).

The agreement may be terminated for failure to perform any duty or obligation under the agreement by providing 60 days written notice. Within the first 30 days, the defaulting party will have the opportunity to correct the default. It may also be terminated at either party's discretion upon 120 days prior written notice to the non-terminating party.

The City will own all assets, including any additions or modifications that the Operator obtains permission to construct that cannot be removed without damage to the premises. If the lease expires or terminates, the Operator will provide the City with any data related to facility users. The Operator may sublease the Leased Premises only upon the City Manager's written permission and if any lessee complies with the contract provisions and the facility maintains its intended purpose and use.

Exhibit B of the Agreement sets forth the programming and services the Operator intends to offer at the facility. The Operator will set forth times, types of classes, and services offered within

these categories and will work to obtain community and user input to determine what additional programs and services may be offered. Per the agreement, the facility will be open to members at least 65 hours a week, excluding weeks with federal holidays, and operating hours will include at least four consecutive hours on one weekend day.

The Operator will determine reasonable user fees, including a sliding scale fee schedule based on income levels, available user fee assistance, etc. The initial fee schedule is attached to the Agreement as Exhibit C. Fees may be increased a maximum of two times each calendar year. Any changes to the fee schedule will be presented to the Board of Parks Commissioners, and its recommendation on the proposed changes will be provided to the City Manager for his or her review and approval. The Operator will retain all membership fees to fund the management and operation of the facility.

The Operator will be required to provide quarterly and annual reports that provide information about the services offered, the utilization of those services, financial reports, etc. The City has the right to audit the programs, services, and financial records of the Operator or any tenant as long as notice is provided at least five business days in advance and the audit does not interfere with operations. The Operator is required to follow both Federal law and City ordinances related to non-discrimination. Policies and procedures in keeping with First Amendment jurisprudence for governmental entities related to viewpoint discrimination must be adopted and implemented.

The Operator will be required to maintain a variety of insurance related to its occupation and operation of the facility and will be required to name the City of Norman as an additional insured.

Approval of this contract signifies an important step towards opening the Adult Wellness and Education Center later this year. With an agreement in place, Healthy Living can start marketing the AWE Center, building its membership base and preparing for opening day. This agreement was previously reviewed in draft form by the Norman Forward Senior Center Ad Hoc Advisory Group and the Norman Forward Citizen's Financial Oversight Board.

RECOMMENDATION No. 1:

Staff recommends approval of K-2223-130.

RECOMMENDATION No. 2:

Staff recommends appropriation of \$100,000 from General Fund Balance (Account 10-29000) to Senior Citizen Center Rentals & Leases-Other Rentals (Account 10770323-44599).

LEASE AND MANAGEMENT AGREEMENT

This Lease and Management Agreement is entered into on the ____ day of _____, 2023, by and between the City of Norman, Oklahoma, a municipal corporation, referred to herein as the “City”, and, Healthy Living Center Norman, LLC an Oklahoma company, hereinafter referred to as “Operator”, for the purpose of developing a contractual relationship related to the lease and management of the City’s planned Senior Wellness Center

WHEREAS, Norman voters approved the Norman Forward Quality of Life Projects Sales Tax of 2015, providing a one-half (1/2) percent sales tax dedicated to fund a number of Quality of Life projects, including a Senior Wellness Facility; and

WHEREAS, the City approved a contract with Frankfurt-Short-Bruza Associates (“FSB”) in August 2019 (K-1920-40) for Professional Design Services for the Facility; and

WHEREAS, in addition to \$7.6 million budgeted for construction of the Facility, the City allocated an additional \$4.8 million with the adoption of Resolution R-2021-63 on October 29, 2020; and

WHEREAS, after the increase in allocated funding allowed for larger scope of Facility design and construction, the City approved an amendment to FSB's contract in accommodate the design and construction of the Facility in a single phase, rather than multiple phases over time, on a 4.7 acre site in the southeast corner of the Norman Regional Hospital's Porter Avenue Wellness Village Campus; and

WHEREAS, in November 2020, after soliciting proposals pursuant to a Request for Proposals related to the operation of the Facility, and subsequent interviews, the City opted to enter into negotiations with Operator, for the ultimate lease and management of the Facility.

WHEREAS, on April 13, 2021, the City entered into an MOU (K-2021-109) with the Operator for the purpose of developing a contractual relationship related to the lease and management of the City's planned Senior Wellness Facility; and

WHEREAS, also on April 13, 2021, the City entered into a contract (K-2021-115) with Crossland Construction Company for Construction Management at Risk Services for the Senior Wellness Center Project; and

WHEREAS, the City acquired the 4.7 acre site located in the southeast corner of Norman Regional Hospital's Porter Avenue Wellness Village Campus in May 2022; and

WHEREAS, the City finds it appropriate, desirable, and in the public interest to enter into this Agreement in order to provide for the successful management, operation and administration of the Senior Wellness Facility to be managed and operated by Healthy Living & Fitness, Inc.

NOW, THEREFORE, in consideration of the foregoing, and the mutual covenants and agreements contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I

Grant, Term of Lease and Certain Definitions

- 1.1 **Leasing Clause.** Upon and subject to the terms and provisions contained herein, the City does hereby lease, demise, and let unto Operator, and Operator does hereby take and lease from City, the Leased Premises, to have and to hold the Leased Premises, together with all the rights, privileges, easements, and appurtenances belong to or in any way pertaining to the Leased Premises, for the term and subject to the provisions hereinafter provided.
- 1.2 **Term.**
 - a) The initial term of this Lease shall be for a period commencing on the Effective Date and terminating on the 5th anniversary of the Operational Date, unless earlier terminated in accordance with the provisions of this Agreement.
 - b) The term of the Lease may be renewed for up to three (3) additional five-year terms upon written acceptance of the Parties.
- 1.3 **Certain Definitions.** The following terms and phrases shall have the meaning set forth in this Section 1.3.
 - a) **Capital Item.** Any furniture, fixture, or equipment that costs \$5,000 or more and has an expected life of more than one year.
 - b) **City Manager.** The City Manager of the City of Norman or such other City employee as may be designated by the City Manager to provide oversight and implementation of this agreement.
 - c) **Effective Date.** The date first set forth above in the introductory paragraph of this Lease.
 - d) **Event of Default.** Has the meaning set forth in Section 7.5.
 - e) **Facility.** The various buildings, facilities, and improvements located on the Land which are used as the Senior Wellness Facility.
 - f) **Force Majeure.** Any unforeseeable causes beyond a Party's control and without such Party's fault or negligence, including, but not limited to, acts of God, acts of

the public enemy, acts of any federal, state, or local government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, and unusually severe weather or unforeseen environmental or archaeological conditions requiring investigation/mitigation pursuant to federal, state, or local laws.

- g) Land. The certain tract of land comprising the Senior Wellness Facility, situated in the City of Norman, described in Exhibit A and made a part hereof for all purposes.
- h) Leased Premises. The Land, together with all buildings, fixtures, facilities and other improvements located on or affixed to the Land.
- i) Operational Date. The date the Senior Wellness Facility is substantially complete and upon which the Operator's operation and management duties and obligations provided hereinafter shall begin.
- j) Parties. The City of Norman and Healthy Living Center Norman, LLC.
- k) Partner. A business or entity that the Operator has contracted with to provide goods or services to benefit the users of the Facility.
- l) Project Manager. The Parks and Recreation Director of the City of Norman or such other City employee as may be designated by the Parks and Recreation Director to manage the construction and operation of the Facility.
- m) Subcontractor. Any business or entity that the Operator has contracted with to perform services for the Operator.
- n) Sublease. A lease and/or license granted by the Operator of all or any portion of the Operator's leasehold estate in the Facility or the Leased Premises.
- o) Tenant. Any business or entity that has a sublease with the Operator.
- p) Utility Costs. Costs related to electric, gas, sanitation, and water usage attributable to the Facility.

ARTICLE II

Obligations During Planning and Construction

2.1 City Obligations during Planning and Construction

- a) The City will design and construct the Senior Wellness Facility using funds made available for such purpose, including Norman Forward Sales Tax proceeds and other funding that may be made available for the project from time to time.
- b) The City will ensure Operator is provided the opportunity to participate in all planning and construction meetings as needed.

2.2 Operator Obligations during Planning and Construction

- a) Operator will participate in all planning and construction meetings when requested by the Project Manager.
- b) The Executive Director will attend City Council meetings, meetings of the Board of Park Commissioners, meetings of the Norman Forward Senior Center Ad Hoc Advisory Group, and meetings of the Norman Forward Sales Tax Citizen's Financial Oversight board when requested by the Project Manager. The Executive Director has binding authority on items not requiring full board approval.
- c) During planning and construction, Operator will use reasonable efforts to secure and contract with all Subcontractors, Tenants, and Partners it believes are necessary to manage and operate the Leased Premises as of the Operational Date.
- d) During planning and construction, Operator will use reasonable efforts to hire and train all staff and coordinate and train all volunteers necessary to manage and operate the Leased Premises as of the Operational Date.

ARTICLE III

Leased Premises

3.1 Demise

The City hereby leases and demises the Leased Premises to Operator, and the Operator hereby accepts the Leased Premises, provided premises are complete and built to plans and specifications and that all items are in working order, and agrees to be bound by the covenants, provisions, and terms set forth in this Agreement. Operator expressly acknowledges and warrants that neither Operator nor its Partners or Subcontractors shall prohibit or inhibit lawful public access, and use of, the Leased Premises except to the extent permitted by this Agreement.

3.2 Consideration

- a) The Parties agree that in consideration for the City's leasing the Leased Premises to the Operator, Operator will provide operation, management and maintenance of the Leased

Premises pursuant to this Agreement and at no cost to the City except as expressly set forth herein.

- b) The Operator further agrees and consents to accept and bear sole financial responsibility for the proper and adequate funding of the start-up, management, and operation of the Leased Premises, including but not limited to, utility bills, employee salaries and Facility marketing, except as otherwise provided herein including, but not limited to, those items in section 6.1.
- c) In consideration of the Operator's agreement to provide all necessary operating capital as well as acceptance of the financial risk, which the City acknowledges shall constitute substantial consideration of which the City is the beneficiary, the City agrees that Operator is entitled to receive and shall retain all net revenues (if any) from memberships, food and beverage concessions, events, special programs, and sponsorship sales realized through the Operator's operation of Leased Premises in the manner and at the quality anticipated by this Agreement. All such net revenues shall be reinvested into the programs, operation, maintenance, and management of the Leased Premises and shall be accounted for separately from any other facilities owned or managed by Operator.

3.3 "As-Is" Condition of Leased Premises

Upon the Operational Date of this Agreement, the Leased Premises shall be accepted by Operator in its "as-is" condition. Operator acknowledges that the City has not made any representations whatsoever in connection with the condition of the Leased Premises, or any portion thereof. Throughout construction of the Leased Premises, the City will conduct all necessary inspections and after completion, it will be inspected to ensure compliance with the plans and specifications and then presented to the City Council for final acceptance. The City shall not be liable for any latent, or patent defects in the Leased Premises, or any portion thereof. Any warranties provided to the City with the original construction of the Facility, the Facility furniture, fixtures or equipment, or other Facility Capital Items will be held and maintained by the City; however the Operator may request repairs or replacements it believes are covered under the warranty provisions pursuant to the procedures set forth in Section 6.2 herein.

3.4 Purpose and Use

The Leased Premises are to be used as the City of Norman's Senior Wellness Facility and shall be open and available to the public. The Leased Premises as a whole may not be converted for any other use, and restrictions or incompatible uses which would exclude its use as senior wellness facility are prohibited. It is understood by the Parties it is permissible to rent some areas of the Leased Premises by members of the public for temporary exclusive use pursuant to the terms of this Agreement.

The Parties agree that nothing in this Agreement shall be construed as preventing the City from entering the Leased Premises at any time during the Term of this Agreement for the purpose of satisfying the obligations of the City or to ensure compliance with this Agreement.

Additionally, the Facility may be reserved for City functions or events at no cost to the City up to four (4) times per calendar year in accordance with the Rental/Booking Policies and Procedures. City's use of the Facility is on a per year basis only and shall not accumulate or accrue from year to year. City may schedule one of the four events for a weekend. The right of the City to reserve the Facility shall be on a first come, first served basis with other events and uses. Operator shall not be required to move or rescheduled an already scheduled event in order to accommodate a City function or event. City use herein will not prohibit Operator's use of those portions of the Facility not being utilized by City. City will provide its own security and clean up for City functions or events. Use by the City will not interfere with normal operations of the Center.

3.5 Ownership of Assets

All property, improvements (including Operator Improvements), associated with the operation and management of the Leased Premises are solely the property of the City unless otherwise provided in this Agreement or any amendments thereto. Facility equipment provided initially provided upon Operational Date or any equipment purchased to replace such Facility equipment shall be considered the property of the City. Additional equipment, above the inventory provided, which is not replacement equipment shall remain the property of the Operator. Upon termination or expiration of this Agreement all modification or improvements to the Leased Premises that cannot be removed without damage to the Leased Premises, whether constructed by the City, Trust, or Operator shall become property of the City. Notwithstanding the foregoing, the ownership of data processing programs and software and personal property purchased and owned by Operator shall remain with Operator. Additionally, any personal property or equipment provided by a Partner or Subcontractor of Operator shall remain with such Partner or Subcontractor.

Membership data and information are property of the Operator. However, the City shall have access to membership data with the exception of information governed by state and federal statutes for up to two (2) years after the termination or expiration of this Agreement.

3.6 Subleases

Operator shall be permitted to enter into subleases of the Leased Premises with one or more Tenants with written permission of the City Manager, whose approval shall not be unreasonably withheld, provided that Operator and Tenant fully comply with all provisions and requirements of this Agreement and the Leased Premises remains sufficiently open and available for its intended purpose and use. Operator shall cause

all subleases to contain such provisions as may be necessary to cause said Tenant to abide by and conform to the requirements in this Agreement. Operator shall provide the City Manager with notice of any sublease including, but not limited to, the name, address, telephone number, fax number, email, and name of the contact person for purposes of notices or other communications.

3.7 Furniture, Fixtures and Equipment

The Leased Premises includes furniture, fixtures, and equipment ("FF&E") necessary for the operation of a senior wellness facility. A list of FF&E provided in the Facility will be provided to the Operator no later than the Operational Date and all items agreed upon by both parties. Operator must maintain as a minimum, the same quantity of FF&E provided as of the Operational Date throughout the Initial Term and any Renewal Term of this Agreement. Operator must maintain an inventory list of FF&E which includes the date each item is purchased and who owns each item listed as further detailed in Section 4.3(C). Operator is responsible for the maintenance of all FF&E in accordance with Section 6.1 of this Agreement. For clarity, FF&E are not considered to be Capital Items as described in Sections 1.3(a) and 6.2.

3.8 Non-Discrimination for Use of the Leased Premises

- a) Operator agrees that it will not discriminate by segregation or otherwise on the basis of race, color, religion, ancestry, national origin, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex in furnishing or refusing to furnish, to such person or persons the use of the Leased Premises, and the improvements thereon, including any and all services, privileges, accommodations and activities provided thereby.
- b) Operator shall make its accommodations and/or services available to the public on fair and reasonable terms without unjust discrimination on the basis of race, color, religion, ancestry, national origin, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex; provided, however, nothing herein shall require the furnishing to the general public of the use of any facilities or accommodations customarily furnished by Operator solely to its employees, clients, and invitees.
- c) Operator is required to adopt and implement policies and procedures that prevent and discourage any staff, volunteer, agent, or tenant from discriminating against speech on the basis of viewpoint, including but not limited to proselytizing a particular religion, prohibiting advertising based solely upon the content, or only allowing artwork of one political view.

- d) In the event of Operator's noncompliance with this nondiscrimination clause, in addition to other remedies set forth in this Agreement, the City may immediately terminate this Agreement despite any requirement provided in Agreement.
- e) Operator agrees to insert the above nondiscrimination clauses in any subleases, subcontracts or contracts by which said Operator grants a right or privilege to any person, firm, company, entity or corporation to render accommodations, work, product and/or services to the public on or from the Leased Premises. The above nondiscrimination clause is not required in rental agreements for the rental of space to parties not providing goods or services to the members on the Leased Premises.

ARTICLE IV

Operation

4.1 Agreed Conditions Relating to Facility Operations

- a) Within 30 days of the Effective Date of this Agreement, City will provide \$100,000 in initial funding to assist Operator with funding items that will be needed at the Facility prior to the opening date such as membership software, accounting software, and other soft costs related to the opening of the Facility.

- b) Days and Hours of Operation

The Parties agree that the Facility will be open to the members at least sixty-five (65) hours a week, excluding weeks with federal holidays, and that those operating hours must include at least four (4) consecutive hours on one weekend day. Operator shall have the right to close portions of the building on Saturdays. The Operator has the discretion to determine the specific operating hours but shall make reasonable efforts to accommodate the needs of the community. This condition may be changed upon written approval of the Operator and the City Manager.

- c) Programming and Services

The Operator agrees to provide the ongoing programming consistent with those provided in Exhibit B. The Operator is expected to offer additional programs and services as the Operator deems appropriate to meet the needs of the members. The specific times, classes, or services offered shall be determined solely by the Operator. The Operator may modify regularly offered programs and services as demand by members dictates. Reductions in the number of programs or services provided in Exhibit B must be communicated to the City Manager or his or her designee at least ten (10) days prior to such changes being implemented. The

Operator is responsible for all costs associated with the Programs and Services and any supplies necessary.

d) Fees to Members

The Operator must establish a reasonable fee schedule for the members of the Facility that will provide sufficient funding with which to operate and maintain the Facility as required herein. The fee schedule shall include a sliding scale fee structure that accounts for adjustments based upon the economic need of those members who would otherwise be unable able to use the Facility. A copy of the initial fee schedule is attached hereto as Exhibit C.

The Parties further agree that the fee schedule for members may only be increased twice each calendar year. All proposed changes to the fee schedule, including changes to the sliding scale structure, are subject to City approval as provided herein. Proposed changes must first be presented to the Board of Parks Commissioners for its consideration. The Board of Parks Commissioners shall make a recommendation thereon, which shall be provided to the City Manager. All proposed changes must be provided to the City Manager for review and approval prior to implementation whose approval shall not be unreasonably withheld.

e) Security for Leased Premises

The City will provide adequate exterior lighting and security cameras in all public areas prior to the Operational Date.

Operator will provide all other security measures necessary for the safe and secure operation, management, and maintenance of the Leased Premises. Operator is to determine what measures are necessary and must take all reasonable actions to ensure the Leased Premises is safe and secure.

e) Distribution or Sale for Public Consumption of Alcoholic Beverages. Operator is permitted, in connection with specific events or activities at the Facility, to permit the distribution or sale of alcoholic beverages for on premise consumption.

4.2 Approval of Policies and Procedures

Operator must prepare and follow policies and/or procedures that address vital and routine functions associated with the management and operation of the Leased Premises. Within 180 days of the Effective Date, Operator will provide all policies or procedures pertaining to such subjects to the City Manager for review. Such policies or procedures must be approved by the City Manager, whose approval will not be unreasonably withheld. The policies should include the following subject matters:

- a) Facility Use
- b) Prohibition Against Abuse of Program Participants
- c) Claims Reporting and Investigation - as relates to formal complaints and related incidents arising from providing services to members of the Leased Premises.
- d) Facility Rental/Booking Policies.
- e) Finance and Accounting Procedures.
- f) Safety Procedures - including but not limited to protocols for user safety, emergency response procedures, communication, and other policies and procedures having an impact on the safety of members and staff.

All material changes in, additions to and other modifications of the approved Policies and Procedures, as from time to time proposed and presented by Operator, shall be subject to review by the City Manager.

4.3 Reporting Requirements

- a) Quarterly Report.

On or before the 15th day of each quarter of any calendar year for which the Operator is managing the Leased Premises, the Operator will provide a report to the City Manager, which will include the following for the previous quarter:

- 1. An operating statement and balance sheet;
- 2. The number of members enrolled at the Facility;
- 3. Attendance statistics;
- 4. Rental Data; and
- 5. Any other additional information reasonably requested by the City Manager.

- b) Annual Report.

Operator will provide an annual report to the City Manager, which details the outcomes and performance measures listed below. Operator will also make a presentation summarizing this report to the Board of Parks Commissioners.

- 1. A financial report containing the budgeted and actual Operating Revenues and Operating Expenses for the previous calendar year

2. Outcome and Performance Measures including, but not limited to, the following data points:

- A. The percent of members satisfied with the programs and services offered at the Facility.
- B. The percent of members satisfied with the Facility.

3. Inventory List of FF&E

4. A report providing the maintenance logs for all Capital Items for the previous year.

5. Any other additional information reasonably requested by the City Manager.

c) Inventory Report

The Operator shall conduct an initial inventory of all assets immediately following the Commencement Date. Said inventory shall include, but may not be limited to, any and all personal computers, furniture, fixture, and equipment, including office and maintenance equipment, and any other item utilized in the regular operations of the Leased Premises. The list shall not require paper products, office supplies, and general cleaning products. This initial inventory shall be submitted to the City Manager within forty-five (45) days of the Operational Date.

The Operator shall maintain a running inventory of City-owned Facility furniture, fixtures, and equipment, including those acquired or disposed of directly by the City, or any other party. The inventory shall be agreed to annually in writing and shall be available for inspection at any time by the City Manager or his designee. Unless otherwise agreed in writing such assets remain the sole property of the City. Upon termination of this Agreement, the City and the Operator shall mutually conduct an exit inventory. In the event the exit inventory reveals any discrepancy for which the Operator is responsible, the Operator shall perform an appropriate adjustment or payment to the City for the replacement value of the asset, less reasonable depreciation, to the satisfaction of the City Manager or his designee. Any adjustments and/or payments which may be required by the Operator as a result of any discrepancy resulting from such exit inventory shall be made within a reasonable amount of time, not to exceed sixty (60) days.

All Operator's equipment, supplies, and purchases are exempt from inventory reports.

4.4 Records and Audits

a) Record Retention

Operator shall keep and preserve the specified records pursuant to the Records Retention Schedule attached hereto as Exhibit D, or longer if required by law. Retention of any other records is left to the discretion of the Operator.

b) Audits

An authorized representative of the City, including but not limited to an Auditor engaged for such purpose, shall have the right to interview any current or former employee and shall have unrestricted access to books and records and any and all information, materials and data of every kind and character that may in the judgment of the City authorized representative have any bearing on, or pertain to, any matters, rights, duties or obligations under this Agreement during reasonable business hours after the provision of ten (10) days advanced notice, to the extent necessary to adequately permit evaluation and verification of Operator's compliance with terms of this Agreement.

The City shall have the right at any time, and from time to time, to cause nationally recognized independent auditors to audit all of the books of Operator relating to Operating Revenues and Operating Expenses, including, without limitation, cash register tapes, credit card invoices, duplicate deposit tapes and invoices. Such audit shall be at no expense to the Operator and Operator shall be furnished copies of the final audit report and recommendations made because of the audit conducted.

c) Rights of the City Manager

The City Manager may, upon ten (10) calendar days' notice to Operator, suspend or modify any rule, policy, procedure or term that has resulted, or will result, in the ouster of the public from the Leased Premises. Ouster is defined as the wrongful exclusion of the public from the property. In addition, the City Manager may, from time to time, inspect the Facility and review the activities on, and use of, the Leased Premises, to confirm, to the City Manager's reasonable satisfaction, compliance with the provisions of this Agreement and the policies and procedures referenced herein.

ARTICLE V

Management of Leased Premises

5.1 Business Management

The Operator is organized as an Oklahoma not-for-profit corporation and agrees that it will meet all statutory requirements for operation as a not-for-profit corporation. Failure to comply with its obligation will be treated as material breach of this Agreement and despite any notice requirements herein, the City may terminate this Agreement immediately.

5.2 Employees and Volunteers

a) Operator's Employees

The Operator shall employ competent, qualified, and licensed, if necessary, employees. The positions listed below must be filled with an employee or qualified volunteer of Operator. Positions other than those listed below may be staffed as Operator deems necessary and appropriate. If at any time during the Term of this Agreement the City Manager believes that there is a performance problem with the Branch Manager, the City Manager shall give written notice to Operator (specifying in reasonable detail the nature and extent of such problem), and Operator shall, within fifteen days of such notice, meet with the City Manager to discuss such problem and any steps that may be appropriate to address such problem.

Branch Manager

Fitness Coordinator

Program Coordinator

Volunteer Coordinator

Maintenance (duties shall not include those items described in Section 6.1.d.2 and 6.1.d.3)

Operator employees shall not be considered employees of the City for any purpose. The sole responsibility for supervision, daily direction and control, training, and setting and paying compensation and any employee benefits, including workers' compensation benefits, shall be the obligation of the Operator. All costs related to employees shall be the responsibility of the Operator.

b) Background Checks

Operator is required to perform a background check, at Operator's expense, on all employees and volunteers working at least ten (10) hours per week at the Facility.

c) Employment Policies and Procedures

Operator must provide a copy of all employee policies and/or procedures to be used at the Leased Premises to the City Manager within 180 days of the Effective Date of this Agreement.

Operator shall, within fifteen days of such notice, meet with the City Manager to discuss such problem and any steps that may be appropriate to address such problem.

5.4 Subcontractors

Within 180 days after the Effective Date of this Agreement, the Operator agrees to provide to the City Manager a list of any Subcontractors the Operator intends to engage to perform services related to this Agreement. The Operator is required to update this list as additional Subcontractors are engaged to perform work or provide services at the Facility. Notwithstanding the approval of any Subcontractor hired by the Operator, the Operator shall be solely responsible for the fees of such Subcontractor, the services performed by such Subcontractor, and monitoring such Subcontractor.

All service-related subcontracts entered into by the Operator after the Effective Date of this Agreement for a term longer than one (1) year shall contain a clause that allows the City Manager, in the event that this Agreement is terminated, to terminate the subcontractor agreement, with or without cause, upon thirty (30) days written notice. The Parties agree that this termination provision is not required in any ticketing, telephone, HVAC maintenance or fire suppression systems agreement.

The Operator shall contract with competent, qualified, and licensed, if necessary, Subcontractors. If at any time during the Term of this Agreement the City Manager believes that there is a performance problem with a Subcontractor, the City Manager shall give written notice to Operator (specifying in reasonable detail the nature and extent of such problem), and Operator shall, within fifteen days of such notice, meet with the City Manager to discuss such problem and any steps that may be appropriate to address such problem.

5.5 Social Media and Website Use for Facility.

The parties acknowledge that the Operator has purchased a website domain for the Facility with the address of www.healthylivingnorman.com. Such domain shall only be used in furtherance of the purposes of the Facility as set forth herein. The Operator may also set up sites for the Facility on various social media platforms. In the event of termination of this Agreement, the Operator agrees to provide the current login and password, as well as all administrative privileges for such sites to the City Manager or his/her designee.

5.6 Rental of the Leased Premises

a) Rentals During Operating Hours.

The Operator may rent any portion of the Facility space during hours of operation on a first come, first serve basis according to the approved Facility Rental/Booking Policies provided previously scheduled programming or services are not reduced

as a result of such rental or booking. Operator may charge and collect a reasonable rental fee that is listed in the Fee Structure included in the approved Facility Rental/Booking Policies. The Operator may also charge a fee for parking during events at a rate not-to-exceed such amount as may be included on the approved Fee Structure for parking.

b) After Hours Rentals

The Operator may rent rooms, as well as any other location or amenity in the Facility or on the Leased Premises, after hours of operation on a first come, first serve basis according to the approved Facility Rental/Booking Policies. Operator may charge and collect a reasonable rental fee which is listed in the Fee Structure included in the approved Facility Rental/Booking Policies. Operator will have at least one staff person present for after-hour rentals.

c) General Requirements for Rental of the Facility

All rentals must be subject to completion of a Rental Agreement. The Facility Rental/Booking Policies of the Operator will not allow any reservations or bookings for the Facility or part of the Facility to be made more than one (1) year in advance from the date the reservation is made. Any reservation or booking made six months or more in advance will require a deposit that will become non-refundable if the reservation or booking is cancelled less than 90 days from the date of the reservation.

If the Facility, or parts of the Facility, is rented or leased for civic, cultural or educational purposes of any kind, the Facility Rental/Booking Policies will require that the Facility be made available for all types of civic, cultural, or educational purposes.

5.6 Vending, Catering, and Merchandise

Operator shall have exclusive right to manage and operate vending, catering, concession sales and merchandising within the Leased Premises.

5.7 Sponsorship Agreements

a) Naming Rights of the Facility

Naming rights of the Facility as a whole shall only be granted by the City in accordance with its Citizens Recognition Policy. Such policy shall not apply to naming rights for rooms, amenities, programs, or events inside the Facility, which shall be granted in accordance with the provisions in this Section 5.7.

b) Sponsorship Agreement for Naming Rights within the Facility or Operator Events

The Operator retains the ability to enter into sponsorship agreements for naming rights of rooms, amenities, or programs inside the Facility, as well as events held in the Leased Premises, subject to the approval of the City Manager, whose approval shall not be unreasonably withheld, and may retain all proceeds of such agreements.

c) Sponsorship Agreements for Advertising within the Facility

The Operator retains the ability to enter into sponsorship agreements for advertising inside the Facility subject to the approval of the City Manager, whose approval shall not be unreasonably withheld, and may retain all proceeds of such agreements.

d) The Parties agree that all exclusive advertising and sponsorship agreements entered into by Operator associated with the Leased Premises shall not prohibit advertising/signage for a competitor's products for a special event that is required to display such competitive temporary signage on the Leased Premises pursuant to a contractual obligation. Exceptions will be made for named areas of the facility.

5.8 Customer Service

The Operator shall deploy strategies and tactics to ensure a high quality customer service experience for all guests and members. Such tactics may include, but are not limited to, the utilization of a professional secret shopper, a queue management system, and guest feedback and customer survey systems.

ARTICLE VI

Maintenance, Replacement and Modifications

6.1 General Maintenance and Replacements

- a) Except and unless otherwise provided herein, the Operator shall be responsible for all routine maintenance, general repair, and replacement costs of the furniture, fixtures, and equipment in or on the Leased Premises. The Operator shall be responsible for the cost of any and all supplies necessary for the operation and maintenance of the Leased Premises.
- b) Routine maintenance shall include, but shall not be limited to, regular ground and lawn maintenance, regular custodial services, security, painting, repairs, periodic servicing and maintenance of the water features (including pumps, water quality, and related mechanical work), and all solid waste removal costs. Routine

maintenance shall not include maintenance and repair to electrical systems, the HVAC units, or plumbing systems.

- c) The Leased Premises is and at all times shall be accessible and compliant with the Americans with Disabilities Act of 1990.
- d) City Contribution to Operational and Maintenance Costs. Subject to annual appropriation, the City will contribute funding for the following operational and maintenance costs in an amount not to exceed \$125,000 in any given year:
 - 1. Utility Assistance: The City will pay 100% of all utility costs during the first 12 months after the Operational Date, 60% of all utility costs during the second 12 months after the Operational Date, and 30% of all utility costs during the third 12 months after the Operational Date, after which the Operator will be responsible for all utility costs.
 - 2. Janitorial Services: The City will provide for janitorial services for the Facility for the first 3 years after the Operational Date.
 - 3. Lawn and Landscaping Services: The City will provide all lawn and landscaping services during the first 5 years after the Operational Date.
 - 4. Pool Maintenance: The City will provide all pool maintenance during the first 5 years after the Operational Date.
 - 5. Repair and Replacement of Capital Items

The City will repair or replace any Capital Item, , provided the Operator has maintained such items according to the maintenance standards provided by the City. If funds are not immediately available, the City Manager or his or her designee will request an adequate appropriation of funds to repair or replace Capital Items as set forth herein.

The Operator shall submit any requests for Capital Item repairs or replacements to the City Manager and must include the estimated cost of repair and replacement cost of each Capital Item. The Operator must also include with the request, a copy of the maintenance record for each Capital Item included. The City Manager, or his designee, will decide whether a request for Capital Item repairs or replacements is approved and in what manner the repair or replacement may be conducted. This procedure shall also be used for any requests for repairs or replacement of items covered by any Facility related warranties held by the City.

6. Fitness Equipment. The City will select, in consultation with the Operator, and provide all fitness equipment in the Facility and will maintain such equipment in accordance with specifications provided by the manufacturer.

6.2 Additions, Modifications, or Renovations

- a) The Operator may only make additions, modify, or renovate the Leased Premises upon written approval of the City Manager.
- b) Upon receiving such approval and prior to beginning construction, the Operator shall submit all plans and specifications to the City Engineer for review and approval.
- c) After receipt of approval by the City Engineer of plans and specifications, the Operator shall also be required to obtain all building permits, other permits and licenses as required by municipal, state or federal law.
- d) The Operator shall submit the construction contract and bonds for the additions, modifications, or renovation of Leased Premises to the City Engineer for approval.
- e) The Operator must notify the City Engineer of the commencement of any construction at least ten (10) days before beginning of any construction. The Operator is responsible for and shall barricade or secure any unsafe area pending such construction. Within thirty (30) days of completion of any construction, the Operator shall obtain an unqualified Certificate of Completion from the Operator's licensed architect or engineer for each additions, modifications, or renovation of Leased Premises and provide such Certificate to the City Engineer with a request for a final inspection. Within forty-five (45) days of the completion of any construction, the Operator shall provide a complete set of "as- built" drawings to the City Engineer for approval, including, but not limited to, structures, plumbing, heating, ventilating, air conditioning, mechanical and electrical systems, as may be necessary to document all construction. Each addition, modification, or renovation of Leased Premises shall be submitted to the City Council for final acceptance after receipt of the "as- built" drawings and final inspection by the City Engineer.

All construction contracts with third-parties for any construction must require the above provision be followed. Nothing herein shall be deemed to affect or waive any obligation of the Operator or its agents, subleases, tenants, or employees to obtain approval of plans by the City Engineer or to obtain any required permits. Nothing herein shall be deemed to affect or waive any inspection of any activity, improvement or facility as required by City ordinances, or state law or federal law.

6.3 Emergency Repairs

The Operator may act, with the consent of the City Manager, in situations in which emergency supplies, materials, equipment or contractual services are necessary to maintain operations or are necessary for the immediate preservation of the peace, health, or safety of the general public, including spending and committing funds held in operating accounts, even if such expenses are not budgeted, provided funds are available in the accounts for any purpose.

The Operator shall, in the event of such emergency prepare and retain adequate documentation concerning the circumstances surrounding the emergency and any and all funds relating to said emergency. Any emergency repair must comply with the City of Norman Purchasing Policies and Procedures.

Immediately following such action, the Operator and the City Manager shall determine whether any funds expended related to the emergency should be reimbursed as payment for the repair or replacement of Capital Items. If reimbursement is necessary, such reimbursement shall be paid by the City within sixty (60) days of approval of the request for reimbursement.

ARTICLE VII

Additional Terms

7.1 Indemnity

The Operator hereby agrees to release, defend, indemnify, and save harmless the City, its officers, agents, and employees, from and against (i) any and all loss of or damage to property OR injuries to or death of any person or persons, OR any and all claims, damages, suits, costs, expense, liability, actions, or proceedings of any kind or nature whatsoever, in any way caused by, resulting from, or arising out of the Operator's negligent acts, operations, errors or omissions or the Operator's use and occupancy of any portion of the Leased Premises, and (iii) any and all loss of or damage to property OR injuries to or death of any person or persons, OR any and all claims, damages, suits, costs, expense, liability, actions, or proceedings of any kind or nature whatsoever, in any way caused by, resulting from, or arising out of the negligent acts, operations, errors and omissions of the Operator's officers, employees, representatives, suppliers, invitees, subcontractors, Tenants or agents in connection with this Agreement.

The minimum insurance requirements set forth below shall not be deemed to limit or define the obligations of the Operator hereunder.

This section shall survive the expiration of the Agreement. Provided, however, the Operator shall not be liable hereunder for any loss solely occasioned by the negligence of the City or its officers, agents, and employees. This Indemnity provision does not apply to

Workers' Compensation claims by City employees. The Parties agree to give the others prompt notice, in writing, of any claims, suits, actions or proceedings.

7.2 Insurance

The Operator shall obtain insurance coverage as provided below with coverage to begin no later than the Operational Date. The Operator must provide, pay for, and maintain the types of insurance policies provided herein, in amounts of coverage not less than those set forth below. Certified, true and exact copies of all insurance policies required and endorsement pages shall be provided to the City on a timely basis if requested by City staff.

All insurance must be from responsible insurance companies which are authorized to do business in the State of Oklahoma and are acceptable to the Norman, Oklahoma, and shall be construed in accordance with the laws of Oklahoma.

Nothing in this Section shall define or limit the rights of any party to this Agreement under any other provision of this Agreement, including but not limited to any indemnification provision.

- a) Additional Insureds: All liability policies (except worker's compensation and employer's liability policies) shall provide that the City is named additional insureds without reservation or restriction.

All insurance coverage of the Operator shall be primary to any insurance or self-insurance program carried by the City.

All insurance policies shall include a severability of interest provision wherein claims involving any insured hereunder, except with respect to limits of insurance, interests shall be deemed separate from any and all other interest herein, and coverage shall apply as though each such interest was separately insured.

- b) Deductibles: All policies must be fully insured with any single policy deductible not exceeding \$25,000. All deductibles must be declared on the certificate of insurance. If no deductible is declared, the Operator is stating a deductible does not exist and thus a deductible is not approved or accepted.

Self-insured retentions will not be accepted unless accompanied by a bond or irrevocable letter of credit guaranteeing payment of the losses, related investigations, claim administration and defense expenses not otherwise covered by the Operator's self-insured retention.

- c) Policy Limits: The insurance coverage and limits required of the Operator under this Agreement are designed to meet the minimum requirements of the City. Such coverage and limits are not designed as a recommended insurance program for the Operator. The

Operator alone shall be responsible for the sufficiency of its own insurance program. Should the Operator have any question concerning its exposures to loss under this Agreement or the possible insurance coverage needed therefore, the Operator should seek professional assistance.

All policies shall be in the form of an "occurrence" insurance coverage or policy. If any insurance is written in a "claims-made" form, the Operator shall also provide tail coverage that extends a minimum of one year from the expiration of this Agreement.

The minimum amounts of such insurance policies and continuing coverage shall be:

1. Worker's Compensation and Employer's Liability Insurance. The Operator shall provide and maintain, during the term of the Agreement, worker's compensation insurance as prescribed by the laws of the State of Oklahoma and employer's liability Insurance in an amount not less than One Hundred Thousand Dollars (\$100,000.00) each for all its employees employed at the Facility and working on the Leased Premises, and in case any work is subcontracted, the Operator shall require the subcontractor similarly to provide worker's compensation and employer's liability insurance for all the subcontractor's employees, unless such employees are covered by the protection afforded by the Operator. In the event any class of employees engaged in work/services performed at the Facility or on the Leased Premises is not protected under such insurance heretofore mentioned, the Operator shall provide and shall cause each subcontractor to provide adequate insurance for the protection of the employees not otherwise protected.
2. Commercial General Liability Insurance. The Operator shall provide and maintain commercial general liability insurance coverage sufficient to meet the maximum cumulative liability of all parties to this Agreement under the Governmental Tort Claims Act, 51 O.S. § 151 et seq., (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein. Additionally, the Operator shall provide and maintain commercial general liability insurance coverage for property damage at a minimum of \$2,000,000.
3. Automobile Liability Insurance. If the Operator provides transportation in connection with the operation of the Leased Premises, the Operator shall provide and maintain comprehensive automobile liability insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles sufficient to meet the maximum cumulative liability of all parties to this Agreement under the Governmental Tort Claims Act, 51 O.S. § 151 et seq., (GTCA) and any amendment or addition thereto, unless otherwise specifically and expressly provided herein. Additionally, the Operator shall provide and maintain commercial general liability insurance coverage for property damage at a minimum of \$200,000.

4. Fidelity and Crime Insurance. Fidelity and Crime Insurance, which includes but is not limited to Burglary, Theft and Employee Dishonesty with a blanket limit of One Million Dollars (\$1,000,000), shall be provided. Such insurance shall also include coverage for money and securities, valuable papers. The City of Norman shall be named as loss payee to the extent damages to City property are covered under the policy.
- d) Certificates: The insurance coverage and limits required must be evidenced by properly executed certificates of insurance on the form furnished by The City or on forms approved by the Oklahoma Insurance Commissioner. Copies of these certificates must be provided to the City Manager prior to the Operational Date must be updated each year. The certificate(s) must be signed by the authorized representative of the insurance company(s) shown in the certificate(s). The certificate must include the Project number and Project description or name.
- e) Cancellation: There may be no termination, non-renewal, reduction in coverage, or modification of such insurance coverage.

The Operator authorizes the City to confirm all information so furnished as to the Operator's compliance with its bonds and insurance requirements with the Operator's insurance agents, brokers, surety and insurance carriers. The lapse of any insurance policy or coverage required by this Agreement is a breach of this Agreement for which the Operator shall be liable for damages, losses, and costs incurred by the City. Regardless of any termination clause included in this Agreement, the City may at its option suspend this Agreement until there is full compliance with this Section, or may cancel or terminate this Agreement and seek damages for the breach. The remedies in this paragraph shall not be deemed to waive or release any remedy available to the City. The City expressly reserves the right to pursue and enforce any other cause or remedy in equity or at law.

In the event of a reduction in any aggregate limit, the Operator shall immediately notify the City and shall make reasonable efforts to have the full amount of the limits appearing on the certificate reinstated. If at any time the City request a written statement from the insurance company(s) as to any impairments to or reduction of the aggregate limit, the Operator hereby agrees to promptly authorize and have delivered such statement to the City.

- f) Duration of Coverage. All insurance coverage required under this Agreement shall be maintained in full force and effect for the term of this Agreement and any renewals.

The requirements of the insurance provisions listed above shall survive the completion, expiration, cancellation or termination of this Agreement.

- 7.3 Emergencies. In the event of a declared local, state, or national emergency, the City will have the right to use the Facility, in cooperation with Operator, to address community needs that may arise from such emergency until the state of emergency has ended.
- 7.4 Participation on Board of Directors. Upon execution of this Agreement, the City Manager or his/her designee shall serve on Operator's Board of Directors in an ex-officio capacity.
- 7.5 Termination

This Agreement may be terminated as follows:

- a) Termination for Default.

Failure to perform any duty or obligation under this Agreement, through no fault of the other party, shall be considered an Event of Default resulting in termination of this Agreement. The non- defaulting party may initiate termination by providing sixty (60) days prior written notice which shall include thirty (30) days within which the defaulting party may correct the default. The remedies in this paragraph shall not be deemed to waive or release any remedy available to parties. The City expressly reserves the right to pursue and enforce any other cause or remedy in equity or at law.

- b) Discretionary Termination.

In addition to, and cumulative of, the City's rights and remedies under other provisions of this Agreement, the City shall have the right to terminate this Agreement, and all the provisions hereof, at any time, with or without cause, upon 120 days prior written notice to Operator of the City's intention to exercise its right of discretionary termination under this Section. Such discretionary termination may only be exercised upon a majority vote of the City Council of The City of Norman.

The Operator shall have the right to terminate this Agreement, and all the provisions hereof, at any time, with or without cause, upon 120 days prior written notice to City of the Operator's intention to exercise its right of discretionary termination under this Section.

- c) Assignment and Assumption of Certain Contracts Upon Termination.

In the event of expiration or early termination of this Agreement, regardless of the reason for said termination, Operator shall immediately assign to the City any unfulfilled contracts and future booking engagements, and the City may assume the obligation to perform such contracts and booking engagements thereafter.

- ## 7.6 Encumbrances, Liens, and Claims

At all times during the Term of this Agreement, the Operator shall pay for all labor performed, and all products, equipment and materials furnished for, the construction, alteration, renovation or maintenance of all the Leased Premises. The Operator is not responsible for issues resulting from defects in design or construction. The Operator shall keep the Leased Premises free and clear of any and all claims attaching to real property including but not limited to liens and encumbrances (collectively referred to in this Section as "liens" or "encumbrances"). Further, the Operator shall pay each and every judgment made or given against the Leased Premises, or any part thereof, or against the City, on account of any above described lien or encumbrance, unless otherwise stated to the contrary herein. The Operator shall, at its sole cost and expense, defend, indemnify and hold the City harmless from every lien or encumbrance, and every action on account of any and all such liens and encumbrances, or obligation for labor, products, equipment or materials incurred during any Term of this Agreement, whether by the Operator or any Tenant, including, by way of illustration and not of limitation, laborer's, mechanic's and materialman's liens, and any other liens and encumbrances not specifically enumerated herein, but which are not liens or encumbrances as a result of the City or Trust's action. Nothing contained herein shall, in any way, prejudice the Operator's right to contest any final judgment or decree prior to payment thereof.

As long as the Operator is using its best efforts and is actively pursuing, in good faith, the removal of claims, liens and encumbrances, the failure of the Operator to immediately remove liens and encumbrances from the Leased Premises shall not be deemed an Event of Default. Provided, however, should the Operator fail to "bond off," remove or challenge in a court of appropriate jurisdiction any lien or encumbrance within thirty (30) days of attachment, the City may pay and satisfy such lien or encumbrance and Operator, within thirty (30) days of demand, pay to the City the said sum in full.

Operator shall require a similar prohibition in all contracts, leases, and subleases to protect the City, Trust, and Leased Premises from liens and encumbrances.

This provision shall survive the termination, expiration, cancellation or nonrenewal of this Agreement.

7.7 Notices

All notices or demands required or permitted to be given or made under this Agreement shall be in writing and shall be hand delivered with signed receipt or mailed by first-class registered or certified mail, postage prepaid, addressed to the parties at the following addresses. Addresses may be changed by either party giving ten days prior written notice thereof to the other party.

The City:
Darrel Pyle, City Manager
The City of Norman

201 W. Gray St.
Norman, Oklahoma 73069

With copy to:
Kathryn Walker, City Attorney
The City of Norman
201 W. Gray St.
Norman, Oklahoma 73069

The Operator:

Healthy Living Center Norman
Attn: Claire Dowers-Nichols, Executive Director
11501 N. Rockwell Avenue
Oklahoma City, Oklahoma 73162

7.8 Applicable Law

This Agreement shall be governed, construed and enforced in accordance with the laws of the State of Oklahoma. The laws of the State of Oklahoma shall be applied to every interpretation, action, enforcement or other legal or equitable proceeding involving this Agreement, and any duty, right, interest, covenant, obligation and activity under this Agreement.

7.9 Compliance with Laws, Ordinances, Specifications and Regulations

The Operator shall comply with all federal, state, and local statutes, laws, standards, codes, ordinances, rules and regulations, and all subsequent amendments and additions thereto, pertaining, in any manner, to the operations, construction, maintenance, activities and/or services provided or permitted by this Agreement. The Operator shall protect, defend, indemnify and forever hold harmless the City from and against any penalty, fine, damage, expense, cost or charge imposed, assessed or incurred for any violation or breach of any such statutes, laws, standards, codes, ordinances, rules or regulations occasioned by the negligence, acts or omissions of the Operator or any Tenant, Subcontractor, Partner, or user of the Leased Premises, or any portion thereof.

7.10 Assignment

Inasmuch as this Agreement is a personal service agreement which relies on the personal integrity, financial standing and unique ability and expertise of the Operator to assist in the operation and management of the Leased Premises, it has been agreed by Parties that the Operator may not assign its interest or obligations in said Agreements without prior written consent of the City.

7.11 Severability

If any provision of this Agreement or the application thereof to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby.

7.12 Amendment

This Agreement may only be amended in a writing approved by the Operator and the City Council of The City of Norman and the Trustees of the Norman Municipal Authority.

7.13 Execution in Counterparts

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

7.14 Descriptive Headings

The headings of the Sections of this Agreement are inserted or annexed for convenience of reference only and shall not affect the meaning, construction, interpretation or effect of said Section of this Agreement.

7.15 Survival of Representations

All written representations and covenants of the Parties contained in this Agreement shall survive the non-renewal, termination, cancellation or expiration of this Agreement.

7.16 Parties Bound

This Agreement shall be binding upon and inure to the benefit of all Parties. This Agreement is solely for the benefit of the Parties and their successors in interest, and none of the provisions hereof are intended to create a third-party beneficiary or benefit third parties.

7.17 Force Majeure

Except as otherwise herein expressly provided, if any Party shall be delayed or hindered in, or prevented from, the performance of any obligation hereunder, as a result of any Force Majeure, and, provided that the Party delayed, hindered or prevented from performing notifies the other Party both of the commencement and the expiration of such delay, hindrance or prevention (each notice being required within ten (10) business days of the respective event), then the performance of such obligation shall be excused for the period of such delays, hindrance or prevention and the period for the performance of such

obligation shall be extended by the number of days equivalent to the number of days of the impact of such delay, hindrance or prevention. Failure to so provide the foregoing notice will result in waivers of both excuse in performance and extension of time to perform under this paragraph with respect to any such delay, hindrance or prevention.

As used herein, a "Force Majeure event" shall mean a labor dispute, act of God, natural disaster, national emergency, civil disobedience or disturbance, riot, terrorism, threat of terrorism, restraint by court order, and similar occurrences beyond the reasonable control of the Party that makes the Party's material obligations under this Contract in a timely manner impractical or impossible and which, in all cases, are not foreseeable or a result of the negligence or willful misconduct of, or in the reasonable control of, the Party.

7.18 Construction and Enforcement

In the event of ambiguity in any of the provisions of this Agreement, this Agreement shall not be construed for or against any party on the basis that such party did or did not author the same.

7.19 Venue of Actions

The Parties agree that if any legal action is brought pursuant to this Agreement, such action shall be instituted in the District Court of Cleveland County.

7.20 No Partnership Created

The Parties expressly agree that the relationship hereby created is that of independent contractors and no other relationship is created or deemed to be created between the Parties. This Agreement specifically does not create any partnership or joint venture between the Parties, or render any party liable for any of the debts or obligations of any other party.

[remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties have caused this Lease and Management Agreement to be executed and effective as of the date set forth above.

HEALTHY LIVING CENTER NORMAN

BY:

 dotloop verified
05/16/23 9:39 AM CDT
DRIF-WP8B-Y85H-7NZY

Signature

ATTEST:

Corporate Secretary

President of the Board

Title

CITY OF NORMAN, OKLAHOMA

BY:

Mayor

ATTEST:

City Clerk

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

City Attorney

EXHIBIT A

A tract of land being part of Lot 3A, LOT LINE ADJUSTMENT NO. 1103 recorded in Book 3168, Page 421 of Block 4 AND all of Lots 1 and 2, Block 4 AND part of Lot 22, all of Lots 23 and 24, Block 1, NORMAN HIGH SCHOOL ADDITION recorded in Book 1 of Plats, Page 32(57) AND all of Lots 1 through 12, part of Lots 13 through 24, Block 1, NORTHEAST ADDITION recorded in Book 1 of Plats, Page 92, together with part of the east-west alley lying in said Blocks as vacated by JOURNAL ENTRY OF JUDGEMENT Case No. C-88-1968T AND part of Rich Street as vacated by JOURNAL ENTRY OF JUDGEMENT Case No. CJ-2000-935-BH recorded in Book 3189, Page 918 and JOURNAL ENTRY OF JUDGEMENT Case No. CJ-2002-2210-L recorded in Book 3543, Page 379 AND an unplatted part of the Northwest Quarter of Section 29, Township 9 North, Range 2 West of the Indian Meridian, Cleveland County, being more particularly described as follows;

COMMENCING at the northwest corner of said Northwest Quarter;

THENCE South 00°09'01" East, along the west line of said Northwest Quarter, a distance of 1,681.19 feet to a point of intersection with the south line of said Block 4 extended;

THENCE North 89°26'27" East, along said extended line and the south line of said Block 4, a distance of 655.82 feet to the POINT OF BEGINNING;

THENCE North 00°33'33" West a distance of 408.84 feet;

THENCE North 89°26'27" East a distance of 27.51 feet;

THENCE North 44°26'27" East a distance of 92.14 feet;

THENCE North 89°26'27" East a distance of 282.90 feet to a point on the east line of said Block 1, NORTHEAST ADDITION, being a point on the west right of way line of Findlay Avenue;

THENCE South 00°09'01" East, along the east line of said Block 1, said line extended to the centerline of said vacated Rich Street and said west right of way line, a distance of 309.00 feet;

THENCE North 89°26'27" East, along said vacated Street centerline, a distance of 8.00 feet to a point on the west right of way line of said Findlay Avenue;

THENCE South 00°09'01" East, along said west right of way line, a distance of 165.00 feet to a point of intersection with the south line of said Block 4 extended;

THENCE South 89°26'27" West, along said extended line and the south line of said Block 4, a distance of 380.18 feet to the POINT OF BEGINNING.

Said described tract of land contains an area of 174,618 square feet or 4.0087 acres, more or less.

The basis of bearings for this legal description was the Oklahoma State Plane Coordinate System (NAD83 -South Zone) using a bearing of South 89°26'27" West as the south line of Block 4 of NORMAN HIGH SCHOOL ADDITION.

EXHIBIT B PROGRAMMING AND SERVICE CATEGORIES

Physical fitness programs to include activities such as the following:

- Group fitness classes (land and water formats)
- Weight training
- Swimming
- Walking
- Pickleball

Wellness focused programs to include activities such as the following:

- Healthy cooking
- Support groups
- Smoking cessation
- Health screenings
- Wellness presentations

Lifelong learning programs to include activities such as the following:

- Technology classes
- Foreign language classes
- Educational seminars

Social programs to include activities such as the following:

- Card games
- Community service projects
- Interest groups

Art and creativity programs to include activities such as the following:

- Pottery classes
- Painting classes
- Creative writing classes
- Music classes and groups
- Drama group

Healthy Living Center Norman, LLC. reserves the right to survey members and prospective members and to modify the programming to fit the needs indicated by survey results. The above programming is intended to be the base programming offered and will be expanded based on the use of members.

EXHIBIT C

INITIAL FEE SCHEDULE

The initial membership fee will be \$35 for an individual and \$60 for a married couple.

A sliding scale fee will be in place for those below 200% of the federal poverty guideline (established by the US Department of Health and Human Services)

- The membership fee for those with a household income of 100% up to 199% of the published poverty level will \$15 per individual
- The membership for those with a household income below 100% of the published poverty level will be \$10 per individual

EXHIBIT D

RECORD RETENTION SCHEDULE

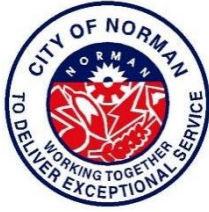
The purpose of this schedule is to define the retention period for documents vital to the operation of the Facility.

Records and documents of the Operator shall be retained as follows:

- | | |
|--|---------------------------|
| • Corporate Legal Documents | Permanently |
| • Financial Records – AP Vouchers, Bank Statements, etc. | 7 years |
| • Audit Reports & Tax Returns | Permanently |
| • Contracts, Notes and Leases | 7 years after expiration |
| • Payroll records | 7 years |
| • Employee personnel files | 7 years after termination |
| • Waivers | 7 years |
| • Incident Reports | 7 years |

File Attachments for Item:

10. CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF THE FINAL ACCEPTANCE OF CONTRACT K-1819-132: BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND FLINTCO L.L.C., FOR THE REAVES PARK RENOVATION CONSTRUCTION PROJECT AND FINAL PAYMENT OF \$291,713.01.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 6/13/2023

REQUESTER: James Briggs, Park Development Manager

PRESENTER: Jason Olsen, Director of Parks and Recreation

ITEM TITLE: CONSIDERATION OF APPROVAL, ACCEPTANCE, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF THE FINAL ACCEPTANCE OF CONTRACT K-1819-132: BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND FLINTCO L.L.C., FOR THE REAVES PARK RENOVATION CONSTRUCTION PROJECT AND FINAL PAYMENT OF \$291,713.01.

BACKGROUND:

In October 2015, Norman residents passed the Norman Forward initiative, which funds various quality-of-life projects through a ½ % sales tax increase over 15 years. Included in the Norman Forward initiative is a project to improve Reaves Park, which would result in all youth baseball and softball being played at Reaves. Once the other sports facilities had moved, this project would allow all of Griffin Park to be reconstructed as a soccer-only facility. In addition to baseball/softball improvements at Reaves Park, this project made improvements to the park's festival area and improved the park's infrastructure with new utility lines, streets, and parking.

The architect for the renovation of the Reaves Park project was awarded in a separate contract to Halff Associates (Halff) in March 2020.

Also included in the 2015 Norman Forward initiative was a project to build new adult softball fields and youth football fields at a new "Community Sports Park" on land that was to be purchased by the City. The Community Sports Park project was set up with a total budget of \$2.5 million, which was inadequate to deliver the stand-alone project initially envisioned for the adult softball and youth football programs. Additional funding was proposed in a General Obligation Bond issue considered on August 25, 2020, which was unsuccessful. As a result, the citizen Ad Hoc Groups for the Community Sports Park, Ruby Grant Park, and Reaves Park Complexes determined that the adult softball improvements could be incorporated as part of the Reaves Park project and the youth football improvements could be included as part of the Ruby Grant Park project.

On February 9, 2019, City Council approved Contract K-1819-132 with Flintco, L.L.C. (Flintco) to provide construction management at-risk (CMaR) services for the Reaves Park Renovation and Griffin Park Phase III projects. The initial contract amount of \$55,000 was approved to provide pre-construction services for both projects, including plan review, design assistance, bidding services, and value engineering.

Amendment Number 1 to Contract 1819-132 was awarded to Flintco on July 23, 2019, for \$789,352 for the Griffin Park Phase III Construction. The budget for Reaves Park included the funding necessary to construct a new Park Maintenance facility at the North Base complex.

On September 20, 2021, Council approved Amendment 2 to CMaR Contract 1819-132 with Flintco Construction Company, which awarded work at Reaves Park in the amount of \$7,452,086 for all material, labor, associated costs, fees, contingency, and all other items shown in the G.M.P. Budget. The work included all site grading, demolition of old facilities such as the park maintenance area, tree removal as-needed, excavation of a detention pond, upgrades, and new installation of site utilities (water service, sewer lines, electric service, stormwater, etc.), and construction of a new park road and parking lots with lighting, improved festival infrastructure, four youth baseball fields with concession and restroom facilities, L.E.D. field lighting, covered bleachers and dugouts and extensive spectator paths and amenities.

DISCUSSION:

On February 18, 2023, a final punch walk was done for the Reaves Park improvement project with the Owner, Architect, and Contractor. At that time, all final costs were confirmed for the project, including all instances where the project contingency was utilized to cover expenses associated with the project conditions and all weather delays encountered over the 17 months it took to perform the work.

In April of 2023, the awarded G.M.P. for the Reaves Park Renovation project was converted to a contract Lump Sum once all final costs had been determined. This allowed Flintco to prepare their final project billing based on said Lump Sum. That final project cost was determined to be \$7,426,364.75. This amount includes all unspent project contingency amounts. It is slightly lower than the original G.M.P. Flintco used this amount to get all final accounting done, pay their final costs, and receive all savings from the project back to the City in a final payment request.

RECOMMENDATION:

It is recommended that City Council accept the NORMAN FORWARD Reaves Park Renovation Construction Project as complete and approve the final payment in the amount of \$291,713.02 to Flintco, L.L.C. Funding is available in the Norman Forward Reaves Park Improvements Project, Construction (account 51792205-46101; project NFB006) and the Community Sports Park Project, Construction (account 51794442-46101; project NFB005).



APPLICATION FOR PAYMENT

**For Period Ending:
April 30, 2023**

REAVES PARK SPORTS COMPLEX

**Norman, Oklahoma
2501 Jenkins Ave**





2302 South Prospect
Oklahoma City, OK 73129
Office: (405) 670-6568
Fax: (405) 670-6568

APPLICATION(S) FOR PAYMENT

CITY OF NORMAN
Purchasing Division
Post Office Box 370
Norman, Oklahoma 73070

AFFIDAVIT

State of Oklahoma) P. O. No. _____
County of Cleveland) Invoice No. 19
Amount \$291,713.01

IN ACCORDANCE WITH OKLAHOMA STATUTES TITLE 74. SECTION 3110. AND TITLE 62. SECTION 310.9. THIS FORM MUST BE COMPLETED AND SUBMITTED BEFORE ANY INVOICE OVER \$25,000 CAN BE PROCESSED FOR PAYMENT.

The undersigned person (architect, contractor, supplier, engineer, or supervisory official), of lawful age, being duly sworn, on oath says that this (invoice, claim or contract) is true and correct and that s(he) is authorized to submit the invoice pursuant to a contract or purchase offer. Affiant further states that the (work, services, or materials) as shown by this invoice have been (completed or supplied) in accordance with the plans, specifications, orders or requests furnished the affiant. Affiant further states that s(he) has made no payment, given or donated or agreed to pay, give or donate, either directly or indirectly, to any elected official, officer or employee of the City of Norman, of money or thing of value to obtain payment of the invoice or procure award of this contract or purchase order pursuant to which an invoice is submitted.

Flintco, LLC

Company Name



Elton Lewis

By: Architect, Contractor, Supplier, Engineer, or Supervisory Official

Subscribed and sworn to before me this 16 day of May, 20 23

Kelly D. Horton

Notary Public (or Officer having power to Administer Oaths)

My Commission expires 12/20/2024

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE 1 OF 3 PAGES

Item 10.

TO OWNER: City of Norman
201 West Gray, Bldg. A
Norman, Oklahoma 73069

PROJECT: Reaves Park Sports Complex
Norman, OK

APPLICATION NO: 19- Final/Ret

PERIOD TO: 30-Apr-2023

Distribution to:

☒ OWNER
☒ ARCHITECT
☒ CONTRACTOR

FROM CM: Flintco, LLC
2302 S. Prospect
Oklahoma City, OK 73129

VIA ARCHITECT: Halff, Associates
1111 N Lee Ave, Suit 400
Oklahoma City, OK 73103

FLINTCO PROJECT NO: 20011

Halff ASSOCIATES. PROJECT NO:

CONTRACT DATE: 10/4/21

CONTRACT FOR: Construction Management CM is the Constructor.

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.

Continuation Sheet, AIA Document G703, is attached.

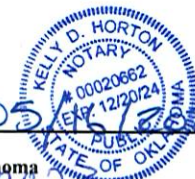
The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the Work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

CONTRACTOR: Flintco, LLC.

1. ORIGINAL CONTRACT SUM	\$	7,452,086.00
2. Net change by Change Orders (Line 2a + 2b)		-1,828,803.13
2a. Approved Changes		-25,721.25
2b. Owner Direct Pay		-1,803,081.88
3. CONTRACT SUM TO DATE (Line 1 + 2)	\$	5,623,282.87
4. COMPLETED & STORED TO DATE		
B. TOTAL COMPLETED & STORED TO DATE	\$	5,623,282.87
5. RETAINAGE:		
a. 0% of Completed Work	\$	0.00
(Columns D+E on G703)		
b. 0% of Stored Material	\$	0.00
(Columns G on G703)		
Total Retainage (Lines 5a + 5b or		
Total in Column J of G703)	\$	0.00
6. TOTAL EARNED LESS RETAINAGE	\$	5,623,282.87
(Line 4 Less Line 5 Total)		
7. LESS PREVIOUS CERTIFICATES FOR		
PAYMENT (Line 6 from prior Certificate)	\$	5,331,569.86 ***
8. CURRENT PAYMENT DUE	\$	291,713.01
9. BALANCE TO FINISH, PLUS RETAINAGE	\$	0.00
(Line 3 less Line 6)		

By:  Date: 05/16/2023
Phillip Gunderson

State of: Oklahoma County of: Oklahoma
Subscribed and sworn to before me this 16 day of May 2023
Notary Public: Kelly D. Horton
My Commission expires: 12/20/2024



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED \$ 291,713.01

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)
ARCHITECT: Halff, Associates

By: _____ Date: _____
James Hazzard

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$153,635.64	\$0.00
Total approved this Month		\$179,356.89
TOTALS	\$153,635.64	\$179,356.89
NET CHANGES by Change Order		(\$25,721.25)

*** Note: Incorporates \$13,850.55 Overpayment Made from the City of Norman to Flintco for the April 2022 Pay Application

AIA-G703 SOV





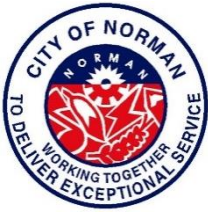






File Attachments for Item:

19. CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2223-145: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AND THE NORMAN MUNICIPAL AUTHORITY, REDUCING APPROPRIATIONS FROM THE NORMAN FORWARD FUND BALANCE BY \$4,228,415 AND RE-ALLOCATING SURPLUS FUNDS FROM COMPLETED PROJECTS.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 06/13/2023

REQUESTER: Jason Olsen, Director of Parks and Recreation

PRESENTER: Anthony Francisco, Finance Director

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2223-145: A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AND THE NORMAN MUNICIPAL AUTHORITY, REDUCING APPROPRIATIONS FROM THE NORMAN FORWARD FUND BALANCE BY \$4,228,415 AND RE-ALLOCATING SURPLUS FUNDS FROM COMPLETED PROJECTS.

BACKGROUND:

The Finance Department presented at the Capital Improvement Program Budget meeting with City Council on May 2, 2023, that the Norman Forward Fund balance was over-programmed for the FYE 2023 due to large, multi-year projects such as Young Family Athletic Center and the Adult Wellness and Education Center projects.

In the Fiscal Year Ending 2018, the City set aside \$125,000 through the Room Tax Fund for cost-matching improvements if the Firehouse Art Center could raise equal or exceeding funds for capital improvements at their facility. The Capital Fundraising plans from the Firehouse Art Center never materialized due to the Covid-19 Pandemic, and the fundraising attempts were put on hold by staff at the Firehouse Art Center.

DISCUSSION:

At the May 2, 2023, Capital Improvement Program Budget meeting with City Council, the Finance Department presented and discussed de-appropriation actions that would be needed in various Norman Forward Fund balance accounts for the Fund balance to remain positive at the end of the 2023 fiscal year. These funds would be effectively re-appropriated in July with the adoption of the fiscal year 2023-2024 budget including the projects.

In summary, due to a budgetary shortage in the Norman Forward Fund balance at the end of fiscal year 2022-2023, the actions recommend included the following:

Reduce 2022-2023 year-end fiscal appropriations in the Norman Forward Fund as follows:

- NFP106 Saxon Park - \$1,217,600
- NFP107 New Trail Development - \$970,541

- NFP104 New Neighborhood Parks - \$1,126,274
- NFB001 Griffin Park \$789,000

There is also the Room Tax Fund project Firehouse Arts Center that was initially set aside as matching capital improvement funding which never materialized that needs to be de-appropriated and permanently closed out:

- RT0027 Firehouse Arts Center - \$125,000

RECOMMENDATION ONE:

It is recommended that fiscal year 2022-2023 Norman Forward Fund appropriations be REDUCED (Fund Balance account 51-29000 increased) by \$4,103,415 by reducing fiscal year 2022-2023 allocations as follows:

Saxon Park**	Project NFP106	\$ 1,217,600
New Trail Development**	Project NFP107	\$ 970,541
New Neighborhood Parks**	Project NFP104	\$ 1,126,274
Griffin Park**	Project NFB001	\$ 789,000

RECOMMENDATION TWO:

It is recommended that Norman Room Tax appropriations be REDUCED (Fund Balance account 51-29000 increased) by \$125,000 by reducing fiscal year 2022-2023 allocations as follows:

Firehouse Art Center*	Project RT0027	\$ 125,000
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* Projects recommended to be closed out.

** Projects that are ongoing; funds recommended to be re-allocated in FYE 2024

Resolution

R-2223-145

A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA, AND THE NORMAN MUNICIPAL AUTHORITY, AND THE NORMAN UTILITIES AUTHORITY REDUCING APPROPRIATIONS FROM THE NORMAN FORWARD FUND BALANCE BY \$4,228,415 AND TO MOVE SURPLUS FUNDS FROM COMPLETED PROJECTS.

- § 1. WHEREAS, the City Finance Department presented an update to City Council on May, 2, 2023, stating that there was a budgetary shortage in the NORMAN FORWARD Fund balance; and
- § 2. WHEREAS, this shortage was due to large projects such as the Young Family Athletic Center and the Adult Wellness and Education projects; and
- § 3. WHEREAS, due to the budgetary shortage, a recommendation was given regarding the uses of projected surplus General Fund balances, along with the reduced appropriation actions that would be needed in various City funds which are as follows:

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

- § 4. That the following recommendations be made for the reasons as stated above:

It is recommended that Norman Forward Fund appropriations be reduced (account 51-29000 increased) by \$4,103,413 by reducing fiscal year 2022-2023 allocations as follows:

Saxon Park**	Project NFP106	\$1,217,600
New Trail Development**	Project NFB107	\$970,541
New Neighborhood Parks**	Project NFP104	\$2,003,573
Griffin Park**	Project NFB001	\$789,000

It is recommended that Norman Room Tax appropriations be reduced (account 51-29000 increased) by \$125,000 by reducing fiscal year 2022-2023 allocations as follows:

Firehouse Art Center*	Project RT0027	\$125,000
-----------------------	----------------	-----------

* Projects recommended to the closed out

** Projects that are ongoing; funds recommended to be re-allocated in FYE 2024

PASSED AND ADOPTED by the City Council, and the Norman Municipal Authority, and Norman Utilities Authority this 13th day of June, 2023.

ATTEST:

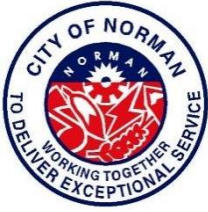
Mayor/Chairman

City Clerk/Secretary



File Attachments for Item:

20. CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2223-148: A RESOLUTION OF THE CITY OF NORMAN APPROPRIATING \$243,000 FROM THE CAPITAL FUND BALANCE TO BE USED FOR FURNITURE AND EQUIPMENT PURCHASES FOR THE ADULT WELLNESS AND EDUCATION CENTER PROJECT.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 06/13/2023

REQUESTER: Veronica Tracy, Recreation Manager

PRESENTER: Jason Olsen, Director of Parks and Recreation

ITEM TITLE: CONSIDERATION OF ADOPTION, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF RESOLUTION R-2223-148: A RESOLUTION OF THE CITY OF NORMAN APPROPRIATING \$243,000 FROM THE CAPITAL FUND BALANCE TO BE USED FOR FURNITURE AND EQUIPMENT PURCHASES FOR THE ADULT WELLNESS AND EDUCATION CENTER PROJECT.

BACKGROUND:

In October 2015, Norman citizens passed the NORMAN FORWARD initiative, funding various quality-of-life projects through a ½% sales tax increase over 15 years. The NORMAN FORWARD Initiative included authorization for a project to construct a new Senior Citizen's Recreation Center. After ongoing community input, the project's scope was expanded into a Senior Wellness Center, later named the Adult Wellness and Education Center (AWE).

The AWE will be located on City-owned land on the southeast corner of Norman Regional Health System's (NRHS) Porter Campus, off North Findlay Avenue. The new AWE will include an indoor heated saltwater pool with lap swimming, water walking, and hydrotherapy seating; an indoor walking track and training space; a fitness- classroom area; lounge and game rooms; both wet and dry craft areas; small prep and demonstration kitchen; and multipurpose rooms that can be used for eating, events, classes, theatrical plays, games, and much more.

Oklahoma City architectural and engineering (A/E) firm Frankfurt, Short, Bruza (FSB) was selected as the A/E consultant for this project in March 2018. FSB has completed the project's schematic design and construction documents and is assisting with construction administration through the project's completion.

The AWE was authorized in the NORMAN FORWARD initiative in 2015 but was unfunded at that time. The AWE was later funded through two Council actions: re-allocation of Norman Forward funds through securing the Griffin Parkland with a long-term land lease instead of a land purchase at the Griffin Park Soccer Complex (\$7.4 million); an allocation of \$4.8 million from federal Coronavirus Aid, Relief & Economic Security (CARES) Act reimbursements (Resolution R-2021-63); and a land exchange with the Norman Regional Hospital System where

the City received \$426,000 in cash and what was then appraised for \$1.2 million in property (718 N. Porter) for a total of a \$14 million budget for construction and design.

The AWE project is scheduled to open in late Fall of this year. The construction budget was negatively impacted by post-COVID-19 supply chain and cost issues throughout the project, resulting in a funding shortfall necessary to complete the project. The Parks and Recreation Department requests an appropriation to complete the final furniture and equipment purchases.

DISCUSSION:

The total approved project budget for the AWE is \$14 million. The project team has been closely tracking expenses. It has identified a \$243,000 budget shortfall due to a shortage for Furniture, Fixtures, and Equipment (FF&E), Audio Visual Equipment (A/V), and installation and equipment for Access Control at the AWE.

To finalize the project and open the facility with appropriate FF&E, A/V, Access Control, and fully equipped, staff proposes allocating \$243,000 from the Capital Fund balance (account 50-29000) to the AWE Project Fund.

RECOMMENDATION:

Staff recommends adopting Resolution R-2223-148 to appropriate \$243,000 from the Capital Fund balance (account 50-29000) to the Norman Forward Adult Wellness and Education Project Fund (NFP111 - 51793365-46101).

R-2223-148

A RESOLUTION OF THE COUNCIL OF THE CITY OF NORMAN,
OKLAHOMA, APPROPRIATING \$243,000 FROM THE CAPITAL
FUND BALANCE TO BE USED FOR FURNITURE AND
EQUIPMENT PURCHASES FOR THE ADULT WELLNESS AND
EDUCATION CENTER PROJECT.

- § 1. WHEREAS, in October 2015, the Norman citizens passed the Norman Forward initiative, funding various quality-of-life projects through a one-half percent sales tax increase over 15 years; and
- § 2. WHEREAS, the Senior Wellness Center was later renamed the Adult Wellness and Education Center was part of the projects that were authorized in 2015, but was unfunded at that time; and
- § 3. WHEREAS, the Adult Wellness Center became funded later by two actions made by the City Council; and
- § 4. WHEREAS, this project is scheduled to open in late Fall of 2023, but the construction budget was negatively impacted by post-Covid-19 supply chain and cost issues; and
- § 5. WHEREAS, this \$243,000 budget shortfall has been identified for the need of furniture, fixtures, equipment, audio visual equipment and installation and equipment for Access Control.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF NORMAN, OKLAHOMA;

- § 6. That the following recommendations be made for the reasons as stated above:

Account Name	Losing Account	Gaining Account	Amount
Norman Forward Adult Wellness and Education Project	50-29000	NFP111-51793365-46101	\$243,000

PASSED AND ADOPTED on this 13th day of June, 2023.

Mayor

ATTEST:

City Clerk

File Attachments for Item:

9. CONSIDERATION OF ACKNOWLEDGEMENT, APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF THE MAYOR'S APPOINTMENTS AS FOLLOWS:

ADA CITIZENS ADVISORY COMMITTEE

TERM: 05-28-23 TO 05-28-26: KELLI FREEMAN, WARD 6

TERM: 05-28-23 TO 05-28-26: WANDA FELTY, WARD 5

TERM: 05-28-23 TO 05-28-26: VICTOR LONG, WARD 4

TERM: 05-28-23 TO 05-28-26: TOM BURKE, WARD 2

TERM: 05-28-23 TO 05-28-26: CHRIS NANNY, WARD 1

TERM: 05-28-23 TO 05-28-26: MADISON PIERCE, WARD 2

BOARD OF PARKS COMMISSIONERS

TERM: 06-27-23 to 01-01-25: ELLEN USRY, WARD 5

ENVIRONMENTAL CONTROL ADVISORY BOARD

TERM: 06-27-23 to 10-27-23: DEBBIE SMITH, WARD 4

TERM: 06-27-23 to 10-27-25: VALERIE GREEN, WARD 5

GREENBELT COMMISSION

TERM: 07-13-23 to 07-13-26: KRISTINA WYCKOFF, WARD 1

TERM: 07-13-23 to 07-13-26: ANDREW HEWLETT, WARD 6

LIBRARY BOARD

TERM: 05-01-23 TO 05-01-26: JASON BINGHAM, WARD 8

TERM: 05-01-23 TO 05-01-26: JODY FOOTE, WARD 3

NORMAN ELECTION COMMISSION

TERM: 06-27-23 TO 09-01-25: DAVID GANDESBERY, WARD 1

NORMAN FORWARD CITIZENS FINANCIAL OVERSIGHT BOARD

TERM: 06-27-23 TO 12-22-25: ZACHARY SIMPSON, WARD 3

DEVELOPMENT OVERSIGHT COMMITTEE FOR TIF DISTRICT #2

TERM: 04-10-23 TO 04-10-26: GREG BURGE, WARD 8

TERM: 04-10-23 TO 04-10-26: ADRIAN FRANCISCO, WARD 6

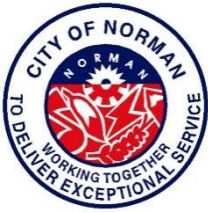
TREE BOARD

TERM: 05-14-23 TO 05-14-26 TORY TEDDER-LOFFLAND, WARD 2

TERM: 05-14-23 TO 05-14-26 WILL SPAIN, WARD 6

TERM: 05-14-23 TO 05-14-26 AMY BUTHOD, WARD 6

TERM: 05-14-23 TO 05-14-26 AUGUST BARKSDALE, WARD 4



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 06/27/2023

REQUESTER: Mayor Heikkila

PRESENTER: Brenda Hall, City Clerk

ITEM TITLE: CONSIDERATION OF ACKNOWLEDGEMENT, APPROVAL, REJECTION, AMENDMENT, AND/OR POSTPONEMENT OF THE MAYOR'S APPOINTMENTS AS FOLLOWS:

ADA CITIZENS ADVISORY COMMITTEE

TERM: 05-28-23 TO 05-28-26: KELLI FREEMAN, WARD 6

TERM: 05-28-23 TO 05-28-26: WANDA FELTY, WARD 5

TERM: 05-28-23 TO 05-28-26: VICTOR LONG, WARD 4

TERM: 05-28-23 TO 05-28-26: TOM BURKE, WARD 2

TERM: 05-28-23 TO 05-28-26: CHRIS NANNY, WARD 1

TERM: 05-28-23 TO 05-28-26: MADISON PIERCE, WARD 2

BOARD OF PARKS COMMISSIONERS

TERM: 06-27-23 to 01-01-25: ELLEN USRY, WARD 5

ENVIRONMENTAL CONTROL ADVISORY BOARD

TERM: 06-27-23 to 10-27-23: DEBBIE SMITH, WARD 4

TERM: 06-27-23 to 10-27-25: VALERIE GREEN, WARD 5

GREENBELT COMMISSION

TERM: 07-13-23 to 07-13-26: KRISTINA WYCKOFF, WARD 1

TERM: 07-13-23 to 07-13-26: ANDREW HEWLETT, WARD 6

LIBRARY BOARD

TERM: 05-01-23 TO 05-01-26: JASON BINGHAM, WARD 8

TERM: 05-01-23 TO 05-01-26: JODY FOOTE, WARD 3

NORMAN ELECTION COMMISSION

TERM: 06-27-23 TO 09-01-25: DAVID GANDESBERY, WARD 1

NORMAN FORWARD CITIZENS FINANCIAL OVERSIGHT BOARD

TERM: 06-27-23 TO 12-22-25: ZACHARY SIMPSON, WARD 3

DEVELOPMENT OVERSIGHT COMMITTEE FOR TIF DISTRICT #2

TERM: 04-10-23 TO 04-10-26: GREG BURGE, WARD 8

TERM: 04-10-23 TO 04-10-26: ADRIAN FRANCISCO, WARD 6

TREE BOARD

TERM: 05-14-23 TO 05-14-26 TORY TEDDER-LOFFLAND, WARD 2

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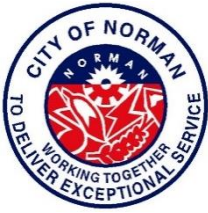
TERM: 05-14-23 TO 05-14-26 AMY BUTHOD, WARD 6

TERM: 05-14-23 TO 05-14-26 AUGUST BARKSDALE, WARD 4

Debbie Smith will fill the unexpired vacancy left by Ben Baranowski, who has resigned; Valerie Green will fill the unexpired vacancy left by Tom Fightmaster who has resigned; Debbie Smith will fill the unexpired vacancy left by Benjamin Baranowski, who resigned; David Gandesbery will replace Jane Purcell, who has resigned; Zachary Simpson will fill the unexpired vacancy left by Bree Montoya, who is no longer eligible to serve; Ellen Usry will fill the unexpired vacancy left by Allison May, who has resigned, August Barksdale will fill the unexpired vacancy left by Trey Gourley, who has resigned; and Kelli Freeman, Wanda Felty, Victor Long, Tom Burke, Chris Nanny, Madison Pierce, Kristina Wyckoff, Andrew Hewlett, Jason Bingham, Jody Foote, Adrian Francisco, Greg Burge, Tory Tedder-Loffland, Will Spain and Amy Buthod are reappointments. Debbie Smith, Valerie Green, David Gandesbery, Zachary Simpson, Ellen Usry, and August Barksdale are new appointments.

File Attachments for Item:

33. CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT AND/OR POSTPONEMENT OF CONTRACT K-2223-175: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN AND NORMAN REGIONAL HOSPITAL AUTHORITY FOR THE PURPOSE OF CREATING A CONTRACTUAL RELATIONSHIP RELATED TO CONSTRUCTION FUNDING AND SEPARATE OPERATION OF THE SPORTS AND HUMAN PERFORMANCE CENTER TO BE LOCATED WITHIN THE YOUNG FAMILY ATHLETIC CENTER.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 06/27/2023

REQUESTER: Kathryn Walker

PRESENTER: Kathryn Walker, City Attorney

ITEM TITLE: CONSIDERATION OF APPROVAL, REJECTION, AMENDMENT AND/OR POSTPONEMENT OF CONTRACT K-2223-175: A CONTRACT BY AND BETWEEN THE CITY OF NORMAN AND NORMAN REGIONAL HOSPITAL AUTHORITY FOR THE PURPOSE OF CREATING A CONTRACTUAL RELATIONSHIP RELATED TO CONSTRUCTION FUNDING AND SEPARATE OPERATION OF THE SPORTS AND HUMAN PERFORMANCE CENTER TO BE LOCATED WITHIN THE YOUNG FAMILY ATHLETIC CENTER.

BACKGROUND:

The original Norman Forward sales tax package approved by the voters in 2015 included a number of quality of life projects, including a multi-sport facility, envisioned to accommodate indoor sports including, but not limited to, basketball and volleyball, and an indoor aquatics facility. A total of \$22.5 million in Norman Forward sales tax was allocated to these projects. After exploring a number of locations for these facilities, City Council approved an agreement in November 2019 to locate these facilities in University North Park.

An ad hoc committee was appointed in June 2019 by Council for the Indoor Aquatic/Multi-Sport projects which worked closely with the project architect to develop plans for the facility. Like several other Norman Forward projects, the funding provided by the dedicated sales tax was insufficient to complete the facilities as envisioned by the Ad Hoc Committee.

Contract K-1920-82 and the 2019 Amended University North Park Tax Increment Finance District (TIF) Project Plan (adopted by Ordinance O-1920-24) called for the Indoor Aquatic/Multi-Sport projects (the "Recreation Facility") to be located in University North Park and set forth the purchase price for up to 12 acres of land for the projects. It also allocated TIF funds for the purchase of the property and \$2.7 million for supplemental construction funds for the Recreation Facility project. Contract K-1920-82 set out timelines for site identification, purchase and construction based on the best information available at the time.

In the fall of 2019, Staff was approached by Rayford Young, the father of National Basketball Association Atlanta Hawks player and Norman native Trae Young. Mr. Young expressed interest in partnering with the City to ensure the planned Multi-Sport facility would achieve the original vision of being an appropriate venue for both local league play, competitive league play,

and as a tournament host. Trae Young grew up in Norman, playing in City leagues, and later, more competitive leagues in the metro area. He and his family are committed to giving back to the community and to furthering youth sports in Norman. Council approved Contract K-1920-139, a Memorandum of Understanding that established a long-term relationship with the Trae Young Foundation (“Young”) related to the Multi-Sport facility including certain financial contributions over multiple years, totaling \$4 million.

The Purchase and Sale Agreement for the future site of the Indoor Aquatic/Multi-Sport project was approved on December 1, 2020. (Contract K-2021-65). Approval of this Agreement enabled the City to move forward with purchase of the property, platting, final design and ultimately bidding and construction of the project.

During the discussions about this facility, Norman Regional Health System (“NRHS”) expressed an interest in participating in the facility by funding and operating a Sports and Human Performance Center (the “Center”) within the facility. NRHS has engaged architects, who have been in communication with the City’s architects for this project, to include the design of the Center within the Facility. Council approved Contract K-2021-99, a MOU setting forth certain obligations related to construction funding and separate operation of the Center within the Facility, on February 9, 2021. The MOU has guided the parties throughout the negotiations of a final agreement.

DISCUSSION:

Contract K-2223-175 is an Agreement between the City and NRHS setting forth construction funding obligations as well as lease terms for the space in the Young Family Athletic Center (“YFAC”), in which NRHS intends to operate its Sports and Human Performance Center. Article 2 of the Agreement covers the construction funding and lease payments. NRHS is responsible for architecture and construction costs related to its portion of the building. Because it is 100% responsible for construction, a nominal rent is charged during the forty (40) year term of the Agreement. Construction costs have been split over three payments, the first two of which have already been remitted to the City. The final payment will include the remaining balance, less 10% retainage. Retainage and any other costs will be paid within 30 days of the Operational Date, defined as the date on which construction has been substantially completed and a certificate of occupancy has been issued.

NRHS will be responsible for paying its own separately-metered utilities as well as its proportionate share of any costs and expenses imposed on the property under covenants. NRHS has the right to alter its premises and make improvements as long as it doesn’t interfere with the development or use of the Facility primarily as an indoor aquatic and multi-sport facility. NRHS is also obligated to maintain the Leased Premises and is responsible for maintenance of the elevator leading to its space.

NRHS will be the exclusive healthcare partner of the Facility and Section 5.5(a) of the Agreement sets out of the marketing and promotion rights that NRHS has as the exclusive healthcare partner. NRHS is required to provide certain types of insurance in Article 6, and is required to pay a pro-rata share of the property insurance. In the event the facility is damaged, the City will undertake to repair it but if repairs cannot be completed within 365 days, NRHS has the option to terminate the Lease.

The remainder of the agreement addresses default and remedies, as well as standard representations, warranties, and special covenants.

RECOMMENDATION:

Staff recommends approval of Contract K-2223-175.

CONSTRUCTION FUNDING AND LEASE AGREEMENT
For the Multi-Sport and Indoor Aquatic Facility

This Construction Funding and Lease Agreement is entered into on the _____ day of _____, 2023, (the “Commencement Date”) by and between the City of Norman, Oklahoma, a municipal corporation, referred to herein as the "City" or the “Lessor”, and Norman Regional Hospital Authority, an Oklahoma Public Trust d/b/a Norman Regional Health System, hereinafter referred to as “Lessee”, for the purpose of creating a contractual relationship related to the construction funding and separate operation of the Sports and Human Performance Center (the “Center”) to be located within the City’s planned Multi-Sport and Indoor Aquatic Facility (the “Facility”).

WHEREAS, Norman voters approved the Norman Forward Quality of Life Projects Sales Tax of 2015, providing a one-half (1/2) percent sales tax dedicated to fund a number of Quality of Life projects, including \$22.5 million for the Facility; and

WHEREAS, the Norman City Council adopted the Norman University North Park Amended and Restated Project Plan (O-1920-24) and the ancillary Amended and Restated Master Operating and Development Agreement (K-1920-82) in November 2019, which together provided for the donation of two (2) acres and the sale of an additional ten (10) acres for the Facility to the City, funding for said purchase of land from existing tax increment revenues, and an additional \$2.7 million to be used as a construction enhancement for the Facility; and

WHEREAS, on June 18, 2020, the Lessor entered into an MOU (K-1920-139) with the Trae Young Foundation, Inc. to provide for additional funding and an ongoing relationship related to the Facility; and

WHEREAS, on December 1, 2020, the Lessor entered into a purchase and sale agreement (K-2021-65) with University Town Center, LLC to accept the donation of two (2) acres and to purchase ten (10) acres on which the Facility is to be constructed (the “Land”) and has since finalized the purchase of the land; and

WHEREAS, Lessee intends to participate with the Lessor in the Facility; and

WHEREAS, the Lessee and Lessor entered into an MOU (K-2021-99) on February 9, 2021 to develop a contractual relationship related to the construction funding and the separate operation of the Center to be located within the Facility (the “MOU”); and

WHEREAS, Lessee has provided space requirements and architectural renderings to FSB Architect and Engineers for the Center to be located within the Facility; and

WHEREAS, the Lessor has entered into an agreement with GE Johnson Construction Company (the “CM”) for Construction Manager at Risk Services, for which a pre-construction services fee has been determined to be \$85,000, with \$17,000 attributable to the NRHS Leased Premises; and

WHEREAS, once a guaranteed maximum price for the Facility has been determined, an amendment to the Lessor's contract with the CM will be presented to City Council for approval; and

WHEREAS, the Parties desire to formalize NRHS' occupancy of the NRHS Leased Premises and participation in construction funding on the terms set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the recitals set forth above and the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged and confessed by each of the parties hereto, the parties hereto have agreed and, intending to be legally bound, do hereby agree as follows:

ARTICLE 1

Grant, Term of Lease and Certain Definitions

1.1 Leasing Clause. Upon and subject to the terms and provisions contained herein, Lessor does hereby lease, demise and let unto Lessee, and Lessee does hereby take and lease from Lessor, the NRHS Leased Premises, to have and to hold the NRHS Leased Premises, together with all the rights, privileges, easements and appurtenances belonging to or in any way pertaining to the NRHS Leased Premises, for the term and subject to the provisions hereinafter provided.

1.2 Term. The term of this Lease shall be for a period commencing on the Commencement Date and terminating on the fortieth (40th) anniversary of the Operational Date unless earlier terminated in accordance with the provisions of this Lease.

1.3 Certain Definitions. The following terms shall have the meaning set forth in this Section 1.3:

(a) Base Rent. The lease payments for the NRHS Leased Premises provided in Article 2 hereof.

(b) Capital Item. Any furniture, fixture, or equipment that costs, or has a value of, \$5,000 or more and an expected life of more than one year. This does not include any furniture, fixture, or equipment installed for the sole benefit of Lessee, including, but not limited to, elevators providing access to the NRHS Leased Premises.

(c) City. The City of Norman, a municipal corporation of the State of Oklahoma.

(d) Commencement Date. The date first set forth above in the introductory paragraph of this Lease.

- (e) MOU. Has the meaning set forth in the Recitals.
- (f) Event of Default. Has the meaning set forth in Section 9.1.
- (g) Facility. The various buildings, facilities, and improvements located on the Land.
- (h) Force Majeure. Any unforeseeable causes beyond a Party's control and without such Party's fault or negligence, including, but not limited to, acts of God, acts of the public enemy, acts of any federal state or local government, acts of the other party, fires, floods, epidemics, quarantine restrictions, strikes, lockouts, freight embargoes, and unusually severe weather or unforeseen environmental or archaeological conditions requiring investigation/mitigation pursuant to federal, state or local laws.
- (i) Impositions. Taxes, assessments, and common area maintenance fees against the NRHS Leased Premises, as determined by the total square footage of the NRHS Leased Premises in proportion to the remainder of the Facility under the control of the Lessor that accrue during and are applicable to the Term.
- (j) Improvements. All buildings, structures, equipment, improvements, fixtures and Related Infrastructure from time to time connected, installed or situated on the Land, including all landscaping. Improvements shall not include minor capital maintenance items such as, but not limited to, carpeting, wall coverings, artwork, light fixtures, etc.
- (k) Land. The certain tract of land comprising the Multi-Sport and Indoor Aquatic Facility (as described in the MOU), situated in the City of Norman, described in Schedule One and made a part hereof for all purposes.
- (l) Lease. This Lease Agreement by and between Lessor, as lessor, and Lessee, as lessee, covering the NRHS Leased Premises.
- (m) Lease Year. Each successive 12-month period during the Term from and including the Commencement Date.
- (n) Lessee. Norman Regional Health System ("NRHS"), or any assignee thereof as provided in Section 8.1 hereof.
- (o) Lessor. The City of Norman, Oklahoma.
- (p) NRHS Leased Premises. The portion of the Facility, including any improvements therein, that are funded and/or separately owned by the NRHS, including the Center.
- (q) Operational Date. The date on which construction has been substantially completed of the Center and a certificate of occupancy has been issued by the City.
- (r) Plans. The Plans relating to the NRHS Leased Premises as developed in accordance with the MOU attached hereto as Exhibit A.

(s) Related Infrastructure. Any automobile parking areas, road, street, water or sewer facility, plaza, pedestrian circulation area or other on-site or off-site improvement that relates to and enhances the use, value or appeal of the Facility, including, without limitation, areas adjacent to the Facility and any items reasonably necessary to construct, improve, renovate or expand the Facility, excluding environmental remediation.

(v) Term. The term of this Lease as provided in Section 1.2 hereof.

ARTICLE 2

Construction Funding and Lease Payment

2.1 Construction Funding. Lessor agrees to construct the Leased Premises in accordance with the Plans. Lessee will fund all construction costs, including the cost of connection to the City's fiber, and any design costs incurred by the City's architect for the Facility, attributable to the NRHS Leased Premises, provided that designs and costs for the NRHS Leased Premises are subject to approval, in writing, by Lessee ("Construction Funding"). Construction costs and any design costs proposed to be funded by Lessee will be verified by the CM and at Lessee's option, a third party cost estimator secured by Lessee. The Parties acknowledge that at the time of the Commencement Date, the estimated costs attributable to the NRHS Leased Premises are \$6,966,500. Costs for the NRHS Leased Premises will be remitted by NRHS in accordance with the following payment schedule:

- (a) March 3, 2022: \$ 2,188,372 paid by Lessee.
- (b) June 30, 2023: \$ 2,273,314 to be paid by Lessee.
- (c) January 1, 2024: \$ Remaining balance to be paid by Lessee, less 10% in retainage to be held by Lessee until such time as the final payment is due.
- (d) 30 days after Operational Date: All remaining costs for Leased Premises, including retainage.

2.2 Base Rent. In recognition of the construction funding set forth in Section 2.1 herein, the base rent during the Term shall be deemed satisfied upon receipt of a one-time payment of ten dollar and no cents (\$10.00) within thirty (30) days of the execution by this Agreement by the Parties.

ARTICLE 3

Impositions and Utilities

3.1 Payment of Impositions. Except as provided elsewhere in this Article 3, Lessee shall pay all Impositions to the Lessor within 30 days of an invoice for same.

3.2 Contest of Impositions. If the levy of any of the Impositions shall be deemed by Lessee to be improper or excessive, Lessor agrees to provide any available documentation related to such Impositions that were used as the basis for determining the amount of the Imposition.

3.3 Certain Provisions Related to AV Taxes and Special Impositions. Lessor and Lessee acknowledge that the NRHS Leased Premises, presently are presumed to be exempt from ad valorem taxes under the laws of the State of Oklahoma as of the Commencement Date.

3.4 Utilities. Lessee shall pay all bills for utility service separately metered and/or billed and provided to the NRHS Leased Premises, excluding the utility services that are part of the cost of constructing the Facilities to be paid by Lessor.

3.5 Covenants. Lessee shall pay its proportionate share of any costs and expenses imposed on land under Covenants that are in effect from time to time.

ARTICLE 4

Improvements

4.1 Improvements, Removals and Replacements. Lessee shall have the right, at its option and expense (subject only to the express restrictions set forth in this Lease) to further develop any and all portions of the NRHS Leased Premises and to enhance the Improvements within the NRHS Leased Premises, and any minor capital items, such as carpeting, wall coverings, artwork, light fixtures, etc. located or within the NRHS Leased Premises for any lawful purposes, as long as such development does not materially interfere with the development or use of the Facility. Any fixtures, materials or equipment that are permanent in nature and installed in the NRHS Leased Premises automatically shall become the property of Lessor, unless prior to the installation thereof, Lessee shall have obtained from Lessor written acknowledgment that the same shall remain the property of Lessee, in which event Lessee may remove such fixtures, materials or equipment at any time (including, without limitation, upon the termination of this Lease), if such can be done without material damage to the remainder of the Improvements and Lessee agrees to repair any damage caused by such removal including the patching of holes and the painting thereof. Any furniture, fixtures, or equipment purchased by Lessee for the Center that is not of a permanent nature will remain the property of Lessee unless Lessor and Lessee agree otherwise in writing. Any Improvements purchased by Lessor or that are otherwise the property of Lessor may not be removed without the consent of Lessor and unless they are replaced with reasonably comparable Improvements. Lessor shall not construct any Improvements on the NRHS Leased Premises during the Term that interfere with the development or use of the Facility primarily as an indoor aquatic and multi-sport facility.

4.2 Right to Alter. Lessee shall have the right, at its sole cost and in its sole discretion (subject only to the express restrictions set forth in this Lease), to alter, add to, reconstruct, reconfigure, remodel or rebuild as often as and whenever Lessee deems proper or desirable, any of the Improvements within the NRHS Leased Premises. All fixtures, materials, and equipment installed by Lessee that are not permanent in nature, and not owned by or otherwise the property of Lessor, may be removed by Lessee at the expiration or earlier termination of this Lease if Lessee

so elects, and if not so removed at the expiration or earlier termination of the Lease, shall, at the option of Lessor, become the property of Lessor.

ARTICLE 5

Use of Premises

5.1 Use of NRHS Leased Premises. Lessee shall use the Center during the Term for the operation of a Sports and Human Performance Center for the benefit of the general public and users of Facility. Only Lessee, in its sole discretion, will determine the rates for services it provides in the NRHS Leased Premises.

5.2 Compliance with Laws. Lessee agrees not to use the NRHS Leased Premises for any use or purpose in violation of any valid and applicable law, regulation or ordinance of the United States, the State of Oklahoma, the City of Norman or other lawful governmental authority having jurisdiction over the NRHS Leased Premises, including, without limitation, the Americans with Disabilities Act of 1990, as amended.

- (a) Lessee's employment policies must include non-discriminatory provisions in compliance with federal and state laws, rules and regulations, including Title VII of the Civil Rights Act of 1964, and the City's Civil Rights Ordinance.
- (b) Lessee agrees that it will not discriminate on the basis of race, color, religion, ancestry, national origin, age, place of birth, disability, sex, sexual orientation, gender identity or expression, familial status, or marital status, including marriage to a person of the same sex in furnishing or refusing to furnish, to such person or persons the use of the NRHS Leased Premises, including any and all services, privileges, accommodations, and activities thereby. Lessee agrees that this non-discrimination requirement will be included in all subcontracts related to the operation of the Center and to the services provided by the Lessee, its employees, agents and tenants.
- (c) If the Leased Premises, or parts of the Leased Premises, is allowed to be rented or leased for civic, cultural or educational purposes of any kind, the rental policies and procedures will require that the Leased Premises be made available for all kinds of civil, cultural, or educational purposes.

5.3 Maintenance.

(a) Lessor shall keep the Facility and any Improvements, with the exception of the interior of the NRHS Leased Premises and any Improvements that only benefit Lessee, in a state of good repair on a regular and ongoing basis.

(b) Lessee shall keep the NRHS Leased Premises in a state of good repair on a regular and ongoing basis, provided that Lessor shall be responsible for the repair and/or replacement of Capital Items. Lessee also shall be responsible for all maintenance of any elevator(s) providing access to the NRHS Leased Premises. Upon termination of this

Lease, Lessee shall deliver up the NRHS Leased Premises then situated thereon in good condition, reasonable wear and tear, obsolescence, acts of God and loss by casualty excepted.

5.4 Operational Rights; Revenue. Lessee shall receive all revenues generated from and associated with the Center for the duration of the lease. Subject to the terms and provisions of this Lease, Lessee shall have full and exclusive control of the management and operation of the Center. Without limiting the generality of the foregoing during the term of this Lease, (i) Lessee shall have the sole right to grant and enter into licenses, rights, subleases, and any and all other agreements of any nature relating to the NRHS Leased Premises or the name thereof on such terms as Lessee deems appropriate, and (ii) Lessee shall own all revenues of any source generated by or from the NRHS Leased Premises or the operation or management or the name thereof.

5.5 Exclusive Partnership. During the term of this Lease, the Lessee shall be, for all intents and purposes, the exclusive healthcare partner of the Facility.

(a) Marketing and Promotion Rights: Lessee, as the exclusive healthcare partner of the Facility, will, at its option, provide athletic training services for large tournaments and sporting events, display banners and signage within basketball and volleyball courts, provide and promote VIP space within the Center for use by coaches, trainers and schools, indoor aquatics space and other areas of the Facility, sell (within the Center) medical equipment, clothing and other merchandise consistent with the mission of the Center, promote facility and sports and human performance center activities and service using multi-media communication channels, and host health and wellness events within the Facility subject to the provisions in Section 5.5(b) herein. Written approval of Lessee shall be required before Lessor, or any of its agents, enters into any advertising and/or sponsorship agreements with competitors of Lessee relating to the Facility and/or events held within the Facility. For purposes of this provision, a competitor shall include any person or entity which provides, anywhere within the State of Oklahoma, inpatient or outpatient hospital services, ambulatory surgery services, clinical orthopedic services, physical therapy services and/or athletic training services.

(b) Use of the Facility: Lessee may have access at no charge to all or any portion of the Facility during or after hours of operation on a first come, first serve basis according to Lessor's Facility Rental/Booking Policies, provided previously scheduled programming or services are not reduced as a result of such booking.

(c) Event Streaming: If transmission of video of events held at the Facility are allowed under the terms of any event agreement, such events may be streamed in the NRHS Leased Premises using Lessee's equipment.

ARTICLE 6

Insurance and Indemnity

6.1 Liability Insurance. Lessee agrees, at its sole expense, to obtain and maintain public liability insurance at all times during the Term hereof with reputable insurance companies

authorized to transact business in the State of Oklahoma for bodily injury (including death) and property damage with minimum limits of \$1,000,000 Combined Single Limit protecting Lessee against any liability, damage, claim or demand arising out of or connected with the condition or use of the NRHS Leased Premises. Such insurance shall include contractual liability, personal injury and advertising liability, and independent contractor liability. Such insurance coverage must be written on an “occurrence” basis. It may be maintained by any combination of single policies and/or umbrella or blanket policies.

6.2 Workers’ Compensation Insurance. Lessee agrees, at its sole expense, to obtain and maintain workers’ compensation insurance, as required by applicable law, during the Term.

6.3 Property Insurance. At all times during the Term of this Lease, Lessor and Lessee shall maintain property insurance as set forth herein. Lessor will ensure the Construction Manager maintains a Builder’s Risk policy. Upon completion of construction, Lessor shall maintain building and contents insurance on the Facility, including the NRHS Leased Premises. Lessee shall pay a pro-rata portion of the cost of such policy, based upon the percentage of the Facility included within the NRHS Leased Premises. Lessee shall, at its sole expense, keep all equipment and other personal property included in the NRHS Leased Premises insured against “all risk” of loss for full replacement cost coverage, to include direct loss by fire, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, boiler and machinery and flood. Coverage must be written by reputable insurance companies authorized to transact business in the State of Oklahoma.

6.4 Policies. All insurance policies Lessee is required to maintain pursuant to this Article 6 shall provide for at least thirty (30) days written notice to Lessor before cancellation and certificates or copies of policies of insurance shall be delivered to Lessor. Lessor and Lessee hereby waive all claims, rights of recovery and causes of action that either party or any party claiming by, through or under such party by subrogation or otherwise may now or hereafter have against the other party or any of the other party’s present and future subsidiaries, affiliates, partners, officers, directors, employees, direct or indirect stockholders, agents, other representatives, successors and assigns for bodily injury (including death) to persons, or loss or damage to property of Lessor and Lessee whether caused by the negligence or fault of Lessor and Lessee or their partners, directors, officers, employees, agents or representatives or otherwise, to the extent that the injuries, losses or damages are covered by the proceeds of insurance policies maintained by either party.

6.5 Adjustment of Losses. Except for the proceeds relating to the contents policy required to be maintained by Lessee (which proceeds shall be paid solely to Lessee), any loss under any insurance policy required under Section 6.3 hereof shall be made payable to Lessor for the benefit of Lessee and Lessor, to the end that Lessor shall be entitled to collect all money due under such insurance policies payable in the event of and by reason of the loss of or damage to the Facility, to be applied pursuant to Article 7, below. The adjustment of losses with the insurer shall be made by Lessor.

6.6 Operational Liability. Lessor shall be responsible for all liability related to the operation of the Facility, except for liability related to the NRHS Leased Premises, which shall be Lessee's sole responsibility.

ARTICLE 7

Casualty

7.1 Repair in the Event of Casualty. In the event the Facility shall be damaged during the Term, Lessor, to the extent covered by the insurance obtained by Lessor in accordance with Section 6.3, above, shall promptly proceed to repair, restore, replace, or rebuild the Facility to substantially the same condition in which the same were immediately prior to such damage or destruction.

7.2 Lessee Termination Right. Notwithstanding the foregoing, in the event Lessee determines in good faith that repairs and restoration of the Facility cannot be substantially completed within 365 days of such damage, Lessee shall have the option to terminate this Lease by written notice to Lessor.

7.3 Right to Insurance Proceeds. In the event Lessee terminates this Lease pursuant to Section 7.2, and Lessor elects not to restore the Facility as required by Section 7.1, Lessee shall be entitled to its pro rata portion of any insurance proceeds received by Lessor, based upon the percentage of the Facility included within the NRHS Leased Premises.

ARTICLE 8

Assignment and Subletting

8.1 Assignment. During the Term, Lessee shall continuously own and operate the NRHS Leased Premises and shall not sell, convey or assign any of the leasehold estate created hereby without the express written consent of Lessor, except the following: (i) Lessee may, without the consent of the Lessor, assign or transfer this Lease, or any interest herein to any entity owned or controlled by NRHS or its successors or assigns or a financially qualified third party subject to the reasonable approval of Lessor, provided such entity expressly assumes all the covenants and obligations of NRHS herein, subject to the reasonable satisfaction of the Lessor; or (ii) the granting of a mortgage lien to any lender providing NRHS financing for the Center. Upon any such assignment, the assignee shall execute and deliver to Lessor a written assumption, in form and substance reasonably satisfactory to Lessor, of all of the obligations of Lessee pertaining to the NRHS Leased Premises and accruing under this Lease after such assignment.

8.2 Subletting.

(a) Lessee shall have the right at any time, without the consent of Lessor, to sublease all or any portion of the NRHS Leased Premises to any third party; provided, however, that no such subletting or assignment shall relieve Lessee of any of its obligations hereunder unless otherwise agreed in writing by Lessor, and all subleases shall be subject to the terms and provisions of this Lease.

(b) No Sublessee shall have any right to sublease or otherwise assign or encumber its interest in the Leased Premises.

8.3 General Provisions. Lessee shall, in connection with any assignment or sublease, provide notice to Lessor of the name and address of any assignee or Sublessee, together with a complete copy of the assignment agreement or sublease.

ARTICLE 9

Default of Lessee

9.1 Lessee shall be in default if any of the following events ("Events of Default") shall occur: (a) the failure on the part of Lessee to pay 100% of the Construction Funding, as set forth in Section 2.1, when due and the continuation of such failure for ten (10) days after Lessor has provided to Lessee a written notice of such failure; (b) any breach by Lessee of any covenant of Lessee under this Lease other than the failure to pay Construction Funding when due, and such breach has not been cured within thirty (30) days from and after the date notice of such breach is given by Lessor to Lessee; provided, however, no Event of Default shall exist if Lessee shall have commenced to remove or to cure such breach and shall be proceeding with reasonable diligence to completely remove or cure such breach (provided such breach must be cured within 120 days after such notice); (c) the making of any general assignment for the benefit of creditors by Lessee; (d) the filing of a voluntary petition in bankruptcy or a voluntary petition for an arrangement or reorganization under the United States Federal Bankruptcy Act (or similar statute or law of any foreign jurisdiction) by Lessee; (e) the appointment of a receiver or trustee for all or substantially all of Lessee's interest in the Leased Premises or its leasehold estate hereunder if not removed within 120 days; or (f) the entry of a final judgment, order or decree of a court of competent jurisdiction adjudicating Lessee to be bankrupt, and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal therefrom.

9.2 Upon the occurrence and during the continuance of an Event of Default, Lessor shall have all remedies available at law or in equity, including, without limitation, termination, injunction and specific performance. All remedies of Lessor under this Lease shall be cumulative, and the failure to assert any remedy or the granting of any waiver of any event of default shall not be deemed to be a waiver of such remedy or any subsequent event of default.

ARTICLE 10

Default of Lessor

10.1 Defaults and Remedies. In the event of any breach by Lessor of any covenant of Lessor under this Lease, Lessee shall have the right to deliver to Lessor a written notice specifying such breach or non-payment, and unless within thirty (30) days from and after the date of delivery of such notice Lessor shall have commenced to remove or to cure such breach or occurrence and shall be proceeding with reasonable diligence to completely remove or cure such breach or occurrence (provided such breach or occurrence must be cured within 120 days after such notice), then Lessee shall have all remedies available at law or in equity, including, without limitation, termination, injunction and specific performance. All remedies of Lessee under this Lease shall

be cumulative, and the failure to assert any remedy or the granting of any waiver of any event of default shall not be deemed to be a waiver of such remedy or any subsequent event of default.

ARTICLE 11

Representations, Warranties and Special Covenants

11.1 Lessor's Representations, Warranties and Special Covenants. Lessor hereby represents, warrants and covenants as follows:

(a) Existence. Lessor City of Norman, Oklahoma is a home rule municipal corporation of the State of Oklahoma duly incorporated and currently existing pursuant to the constitution and laws of the State of Oklahoma.

(b) Authority. Lessor has all requisite power and authority to own the Leased Premises, to execute, deliver and perform its obligations under this Lease and to consummate the transactions herein contemplated and, by proper action in accordance with all applicable law, has duly authorized the execution and delivery of this Lease, the performance of its obligations under this Lease and the consummation of the transactions herein contemplated.

(c) Binding, Obligation. This Lease is a valid and binding obligation of Lessor and is enforceable against Lessor in accordance with its terms.

(d) No Defaults. The execution by Lessor of this Lease and the consummation by Lessor of the transactions contemplated hereby (i) do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default, or a condition which upon notice or lapse of time or both would ripen into a default, under Lessor's charter or any resolution, indenture, agreement, instrument or obligation to which Lessor is a party or by which the Leased Premises or any portion thereof is bound; and (ii) do not, to the knowledge of Lessor, constitute, a violation of any law, order, rule or regulation applicable to Lessor or any portion of the NRHS Leased Premises of any court or of any federal, state or municipal regulatory body or administrative agency or other governmental body having jurisdiction over Lessor or any portion of the Leased Premises.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for Lessor to enter into this Lease, make the agreements herein contained or perform the obligations of Lessor hereunder other than those which have been obtained.

(f) Quiet Enjoyment. During the Term of this Lease and subject to the terms of this Lease, Lessee shall have the quiet enjoyment and peaceable possession of the Leased Premises against hindrance or disturbance by Lessor or any person or entity acting by, through or under Lessor.

(g) Proceedings. There are no actions, suits or proceedings pending or, to the reasonable best knowledge of Lessor, threatened or asserted against Lessor affecting

Lessor's ability to enter into this agreement or any portion of the NRHS Leased Premises, at law or at equity or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

(h) Impositions. Lessor has not received any notice of any Impositions of any nature which are pending or being contemplated with respect to the Land or any portion thereof, except as outlined in Article 3 above.

(i) Compliance with Laws. Lessor has not received any notice of any violation of any ordinance, regulation, law or statute of any governmental agency pertaining to the Land or any portion thereof.

(j) Encumbrances. Lessor has good and marketable fee simple title to the Land, subject to no liens or security interests, and Lessor has not placed or granted any liens or security interests against the Land.

(k) Limitations. Except as otherwise expressly provided herein, this Lease is made by Lessor without representation or warranty of any kind, either express or implied, as to the condition of the Land or the Leased Premises, its merchantability, its condition or its fitness for Lessee's intended use or for any particular purpose.

11.2 Lessee's Representations, Warranties and Special Covenants.

(a) Existence. Lessee is a public trust of the State of Oklahoma having the City of Norman, Oklahoma as its sole beneficiary duly incorporated and currently existing pursuant to the constitution and laws of the State of Oklahoma.

(b) Authority. Lessee has all requisite power and authority to own its property, operate its business, enter into this Lease and consummate the transactions herein contemplated, and by proper action has duly authorized the execution and delivery of this Lease and the consummation of the transactions herein contemplated.

(c) Binding Obligation. This Lease is a valid and binding obligation of Lessee and is enforceable against Lessee in accordance with its terms, subject to (a) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, rearrangement, moratorium, receivership, liquidation and similar laws affecting creditors' rights or (b) general principles of equity.

(d) No Default. The execution by Lessee of this Lease and the consummation by Lessee of the transactions contemplated hereby do not, as of the Commencement Date, result in a breach of any of the terms or provisions of, or constitute a default or condition which upon notice or the lapse of time or both would ripen into default under, the organizational documents of Lessee or under any indenture, agreement, instrument or obligation to which Lessee is a party or is bound.

(e) Consents. No permission, approval or consent by third parties or any other governmental authorities is required in order for Lessee to enter into this Lease, make the

agreements herein contained or perform the obligations of Lessee hereunder other than those which have been obtained.

(f) As-Is. Lessee accepts the leasehold interest in the Land granted by this Lease on an “as-is” basis with all faults.

ARTICLE 12

Miscellaneous

12.1 Inspection. Due to Lessee’s status as a “Covered Entity” under HIPAA, except in emergency situations, the City, it’s agents, employees, and contractors may not enter the NRHS Leased Premises without at least 24 hours advance written notice to Lessee for purposes of inspection, and Lessee reserves the right at all times to have an NRHS representative accompany Lessor, it’s agents, employees and contractors into the NRHS Leased Premises.

12.2 Estoppel Certificates. Lessee and Lessor shall, at any time and from time to time upon not less than ten (10) days’ prior written request by the other Party, execute, acknowledge and deliver to Lessor or Lessee, as the case may be, a statement in writing certifying (a) its ownership of the interest of Lessor or Lessee hereunder, as the case may be, (b) that this Lease is unmodified and in full force and effect (or if there have been any modifications, that the same is in full force and effect as modified and stating the modifications), (c) the dates to which the Construction Funding and any other charges have been paid, and (d) that, to the best knowledge of Lessor or Lessee, as the case may be, no default hereunder on the part of the other Party exists (except that if any such default does exist, the certifying Party shall specify such default.)

12.3 Release. If requested by Lessor, Lessee shall, upon termination of this Lease, execute and deliver to Lessor an appropriate release, in form proper for recording, of all Lessee’s interest in the NRHS Leased Premises, and upon request of Lessee, Lessor will execute and deliver a written cancellation and termination of this Lease and release of all claims (if none are then outstanding) in proper form for recording to the extent such release is appropriate under the provisions hereof.

12.4 Lessor’s Right to Perform Lessee’s Covenants. If Lessee shall fail in the performance of any of its covenants, obligations or agreements contained in this Lease, other than the obligation to pay Construction Funding, and such failure shall continue without Lessee curing or commencing to cure such failure within all applicable grace and/or notice and cure periods, Lessor after ten (10) days additional written notice to Lessee specifying such failure (or shorter notice if any emergency meaning that there is imminent danger to the safety of persons or of substantial damage to property exists) may (but without any obligation to do so) perform the same for the account and at the expense of Lessee, and the amount of any payment made or other reasonable expenses (including reasonable attorneys’ fees incurred by Lessor for curing such default), with interest thereon at the rate of twelve percent (12%) per annum or the highest rate then allowed by law, shall be payable by Lessee to Lessor on demand, or, if not so paid, shall be treated at Lessor’s option as a monetary default hereunder pursuant to and subject to all of the provisions of Section 9.2 hereof.

12.5 Notices. All notices, demands, payments and other communications required to be given or made hereunder shall be in writing and shall be duly given if delivered by hand, messenger, telecopy or reputable overnight courier or if mailed by certified or registered mail, first class postage prepaid, and shall be effectively received upon the date of such delivery or two (2) days after such mailing, to the respective parties hereto at the addresses set forth below, or to such other address furnished in writing to the other party hereto.

If to Lessee: Norman Regional Health Authority
Attn: Richie Splitt, President and CEO
3300 Healthplex Parkway
Norman, Oklahoma 73072

With a copy to: Crowe & Dunlevy
Attn: Karen S. Rieger
324 N. Robinson Ave., Suite 100
Oklahoma City, Oklahoma 73102

If to Lessor: City of Norman
Attn: City Manager
201 West Gray
Norman, OK 73069

With a copy to: City of Norman
Attn: City Attorney
201 West Gray
Norman, OK 73069

12.6 Successors and Assigns. Except as expressly provided in Article 8, this Agreement may not be assigned without the prior written consent of the other party hereto. Subject to the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns.

12.7 Amendment. Except as expressly provided herein, neither this Lease nor any term hereof may be amended, waived, discharged or terminated, except by a written instrument signed by the parties hereto.

12.8 Headings and Subheadings. The headings of the articles, sections, paragraphs and subparagraphs of this Lease are for convenience or reference only and in no way define, limit, extend or describe the scope of this Lease or the intent of any provisions hereof.

12.9 Unavoidable Default and Delays. After the date of execution of this Lease, the time within which any party to this Lease shall be required to perform any act under this Lease shall be extended by a period of time equal to the number of days during which performance of such act is delayed by any Force Majeure. The provisions of this Section 12.9 shall not operate to excuse either Party from prompt payment of the Construction Funding or any other payments required by the terms of this Lease.

12.10 Severability. In the event one or more of the terms or provisions of this Lease or the application thereof to any Party or circumstances shall, to any extent, be held invalid, illegal or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

12.11 Governing Law. THIS LEASE SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE UNITED STATES APPLICABLE THERETO AND THE LAWS OF THE STATE OF OKLAHOMA APPLICABLE TO A LEASE EXECUTED, DELIVERED AND PERFORMED IN SUCH STATE, WITHOUT REGARD TO ANY OTHERWISE APPLICABLE PRINCIPLES OF CONFLICTS OF LAW.

12.12 Venue for Actions. The venue for any legal action arising out of this Lease shall lie exclusively in Cleveland County.

12.13 Attorneys' Fees. Should either Party to this Lease engage the services of attorneys or institute legal proceedings to enforce its rights or remedies under this Lease, the prevailing Party to such dispute or proceedings shall be entitled to recover its reasonable attorneys' fees, court costs and similar costs incurred in connection with the resolution of such dispute or the institution, prosecution or defense in such proceedings from the other Party.

12.14 Relationship of Parties. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of principal and agent, partnership, joint venture or any association between the Parties hereto, it being understood and agreed that none of the provisions contained herein or any acts of the Parties in the performance of their respective obligations hereunder shall be deemed to create any relationship between the Parties hereto other than the relationship of Lessor and Lessee. It is understood and agreed that this Lease does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other. Each Party shall be responsible for any and all suits, demands, costs or actions proximately resulting from its own individual acts or omissions.

12.15 Net Lease. It is the intention of Lessor and Lessee that the Construction Funding payable under this Lease after the Commencement Date and all Impositions and other costs related to Lessee's use or operation of the Leased Premises under this Lease shall be absolutely net to Lessor, and that Lessee shall pay during the Term, without any offset or deduction whatsoever, all such Impositions and other costs due by Lessee under this Lease.

12.16 Lessor's Lien Waiver. Lessor hereby waives all landlord's liens that Lessor might hold, statutory or otherwise, to any of Lessee's (or any Sublessee's) inventory, trade fixtures, equipment or other personal property now or hereafter placed on the Leased Premises.

12.17 Non-Waiver. No Party shall have or be deemed to have waived any default under this Lease by the other Party unless such waiver is embodied in a document signed by the waiving Party that describes the default that is being waived. Further, no Party shall be deemed to have

waived its rights to pursue any remedies under this Lease, unless such waiver is embodied in a document signed by such Party that describes any such remedy that is being waived.

12.18 Obligations to Defend Validity of Agreement. If litigation is filed by a third party against Lessee or Lessor in an effort to enjoin either Party's performance of this Lease, the Parties hereto who are named as parties in such action shall take all commercially reasonable steps to support and defend the validity and enforceability of this Lease. Either Party may intervene in any such matter in which the other Party hereto has been named as a defendant. Each Party shall be responsible for its attorneys' fees and costs of litigation.

12.19 Survival. Covenants in this Lease providing for performance after termination of this Lease shall survive the termination of this Lease.

12.20 Entire Agreement. This Lease and the other documents delivered pursuant to this Lease or referenced herein constitute the full and entire understanding and agreement between the Parties with regard to the subject matter hereof. There are no representations, promises or agreements of Lessor or Lessee regarding the subject matter of this Lease not contained in this Lease, the Exhibits attached hereto or the other documents delivered pursuant to this Lease or referenced herein.

12.21 Counterparts. This Lease may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

12.22 Waiver of Consequential Damages. Notwithstanding anything in this Lease, to the contrary, Lessor hereby waives any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or wrongful act of Lessee or its representatives, agents or employees. Anything to the contrary in this Lease notwithstanding, Lessee hereby waives any consequential damages, compensation or claims for inconvenience, loss of business, rents or profits as a result of any injury or damage, whether or not caused by the willful or wrongful act of Lessor or its representatives, agents or employees.

12.23 Confidentiality. For purposes of this section, "protected health information", or PHI, shall have the meaning defined by the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R Part 160 and Subparts A and E of Part 164 (the "Privacy Standards"), as promulgated by the Department of Health and Human Services pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, as amended. The parties agree that neither the Lessor nor its employees, contractors, and agents shall need access to, nor shall they use or disclose, any PHI of NRHS. However, in the event that PHI is disclosed by NRHS or its agents to Lessor, its employees, contractors or agents regardless as to whether the disclosure is inadvertent or otherwise. Lessor, agrees to take reasonable steps to maintain, and require its employees, contractors and agents to maintain, the privacy and confidentiality of such PHI. The parties agree that the foregoing does not create, and is not intended to create, a "business associate" relationships between the parties as that term is defined by the Privacy Standards.

[remainder of page left blank intentionally]

IN WITNESS WHEREOF, the parties hereto have executed and delivered this Lease as of the date first set forth above.

THE CITY OF NORMAN, OKLAHOMA
(as "Lessor")

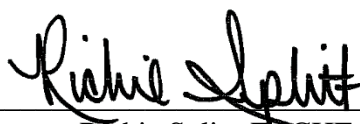
(SEAL)

By: _____
Name: Larry Heikkila
Title: Mayor

ATTEST:

By: _____
Name: Brenda Hall
Title: City Clerk

NORMAN REGIONAL HOSPITAL AUTHORITY
(as "Lessee")

By:  _____
Name: Richie Splitt, FACHE
Title: President and CEO

ATTEST:

By: _____
Name: Mary Womack
Title: Board Vice Chair and Secretary

SCHEDULE ONE
LEGAL DESCRIPTION OF LAND

A TRACT OF LAND LYING IN THE NORTHWEST QUARTER (NW/4) OF SECTION TWENTY FOUR (24), AND THE NORTHEAST QUARTER (NE/4) OF SECTION TWENTY THREE (23), TOWNSHIP NINE (9) NORTH, RANGE THREE (3) WEST OF THE INDIAN MERIDIAN, CITY OF NORMAN, CLEVELAND COUNTY, OKLAHOMA, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARING FOR THIS DESCRIPTION IS THE NORTH LINE OF THE NORTHEAST QUARTER (NE/4) OF SAID SECTION TWENTY THREE (23), BEARING S89°06'20.0"W.

COMMENCING AT THE NORTHEAST CORNER OF THE NORTHEAST QUARTER (NE/4) OF SECTION TWENTY THREE (23), TOWNSHIP NINE (9) NORTH, RANGE THREE (3) WEST, INDIAN MERIDIAN;

THENCE S89°06'20.0"W ALONG THE NORTH LINE OF SAID NORTHEAST QUARTER (NE/4) A DISTANCE OF 112.35;

THENCE S01°02'48.00"W A DISTANCE OF 414.90 FEET TO THE "POINT OF BEGINNING" (P.O.B.);

THENCE S88°58'04.67"E A DISTANCE OF 478.59 FEET;

THENCE S00°38'00.09"E A DISTANCE OF 1049.00 FEET;

THENCE N70°25'58.00" W A DISTANCE OF 401.10 FEET TO A POINT OF NON-TANGENT CURVATURE;

THENCE NORTHEASTERLY ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 300.00 FEET, SAID CURVE SUBTENDED BY A CHORD WHICH BEARS N07°49'15.0"E A DISTANCE OF 19.41 FEET FOR AN ARC DISTANCE OF 19.41 FEET;

THENCE N70°25'58.00"W A DISTANCE OF 201.75 FEET;

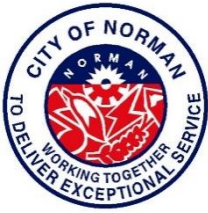
THENCE N01°02'48.0"E A DISTANCE OF 837.64 FEET;

THENCE S88°58'04.67"E A DISTANCE OF 60.00 FEET TO THE POINT OF BEGINNING (P.O.B.).

SAID TRACT CONTAINING 522713.7430 SQUARE FEET OR 11.9999 ACRES MORE OR LESS.

File Attachments for Item:

36. 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.



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.

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 Adult Education and 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:

Griffin Park, located at 1001 E Robinson Street, 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 Adam Buente of PROJECTiONE LLC D/B/A Project One Studio to build and install a sculpture of a three-dimensional replication of wind graphs using the color gradients that reflect wind intensity and direction entitled "Windrose " at the site.

The sculpture is composed of two colorful, curved structures. One is an easy-to-interact 11 feet tall while the other is an eye-catching 21.5 feet tall.

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

The sculpture is proposed to be completed and installed no later than March 31, 2024. 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 \$89,000, \$45,500 of which is payable upon delivery of the signed contract and issuance of an Artist's invoice; \$22,250 of which is due upon 50% completion of the two figures of the sculpture; \$11,125 upon completion of 100% of the sculptures; and the final \$11,125 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-2324-24 with PROJECTiONE LLC for the fabrication and installation of artwork at Griffin Park.

K-2324-24
 Contract to Commission Artwork
 Between
 City of Norman, Oklahoma
 And
 PROJECTiONE LLC d/b/a Project One Studio

THIS CONTRACT, made this _____ day of _____, by and between the City of Norman (hereinafter referred to as the "Owner"), and PROJECTiONE LLC d/b/a Project One Studio (hereinafter referred to as the "Artist") for a work of art incorporated herein by reference (hereinafter referred to as the "Work") to be placed in Griffin Park, at 1001 E Robinson St., Norman, Oklahoma.

WHEREAS, the City Council of the City of Norman believes the beautification of Griffin Park will further enhance the quality of life in Norman, Oklahoma;

WHEREAS, all parties wish to promote and maintain the integrity and clarity of the Artist's ideas and statements as represented by the Work;

WHEREAS, the Selection Panel Advisory Board and the Norman Arts Council Board recommend the retention of the Artist for this Work;

WHEREAS, the parties wish to have the creation of the Work governed by the mutual obligations, covenants, and conditions herein.

THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

I. The Project: The Scope of Services

- A. The Artist will design, execute, fabricate, transport, install and document the Work. These services shall be performed by Artist, and their assistants, as independent contractors.
- B. Artist agrees that said Work will be consistent with and substantially similar to the design concept presented to the Selection Panel Advisory Board and the Norman Arts Council Board. As design details are finalized, Artist will update the Owner.
- C. The Owner agrees to purchase the Work, under the terms and conditions of this contract upon final approval and acceptance of the Work by the Owner.
- D. The permanent location for the work shall be in Griffin Park, at 1001 Robinson St., 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 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


 PROTECTIONE 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

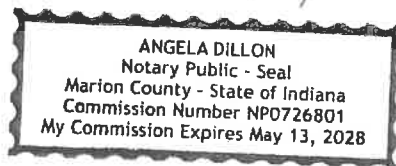
Before me, the undersigned, a Notary Public in and for said County and State, on this 21st day of June, 2023, Adam Buente, Owner AD personally appeared AD, to me known to be the identical person(s)/(company title) Owner who executed the foregoing and acknowledged to me that he executed the same as his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


CITY ATTORNEY

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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

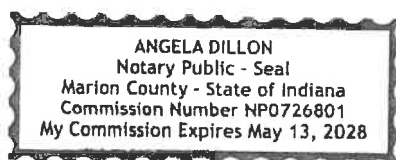
Address: 3151 KIRKBRIDE WAY, STE C.
INDIANAPOLIS, IN 46222

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



Griffin Sports Complex | Norman, OK

WindRose

Concept Proposal • April 24, 2023



We Love Color



Design

Fab & Install

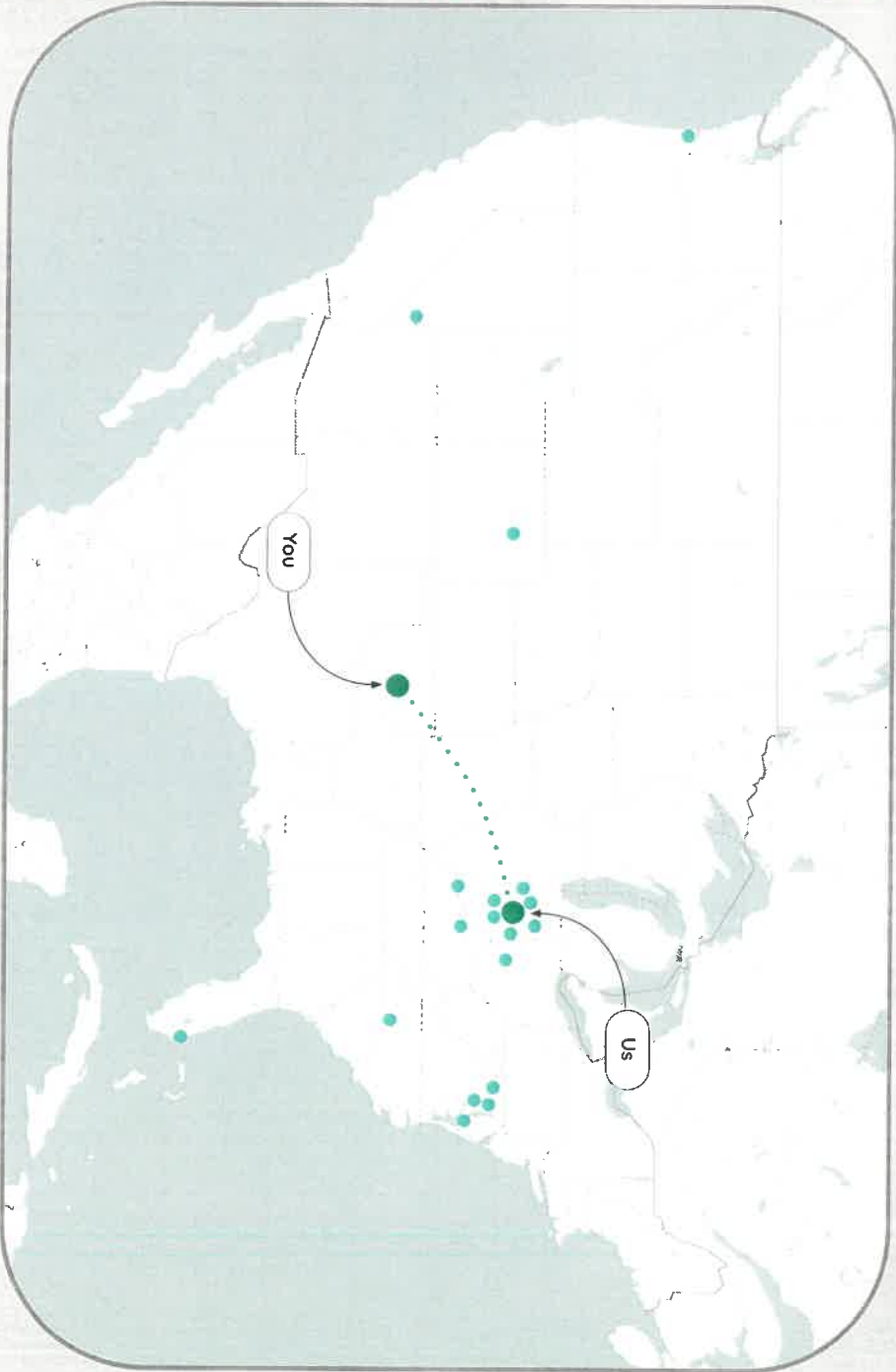


That's Me!

Project One Studio fabrication shop



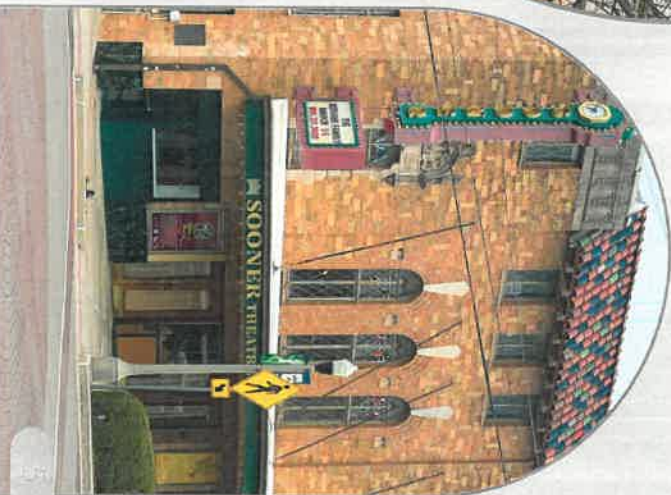
Public Art





Lake Thunderbird

Visiting Norman



Wind is a floating wave of air, whose undulation continually varies.

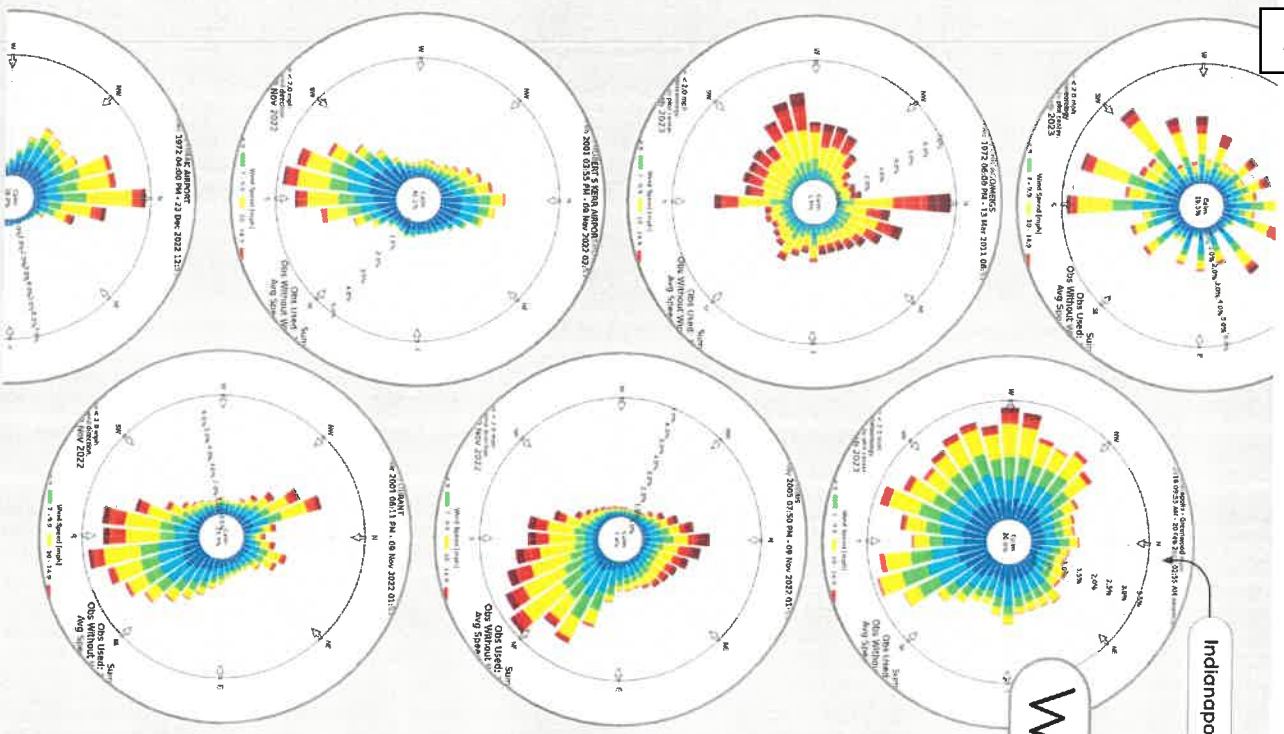
Vitruius

Concept Narrative

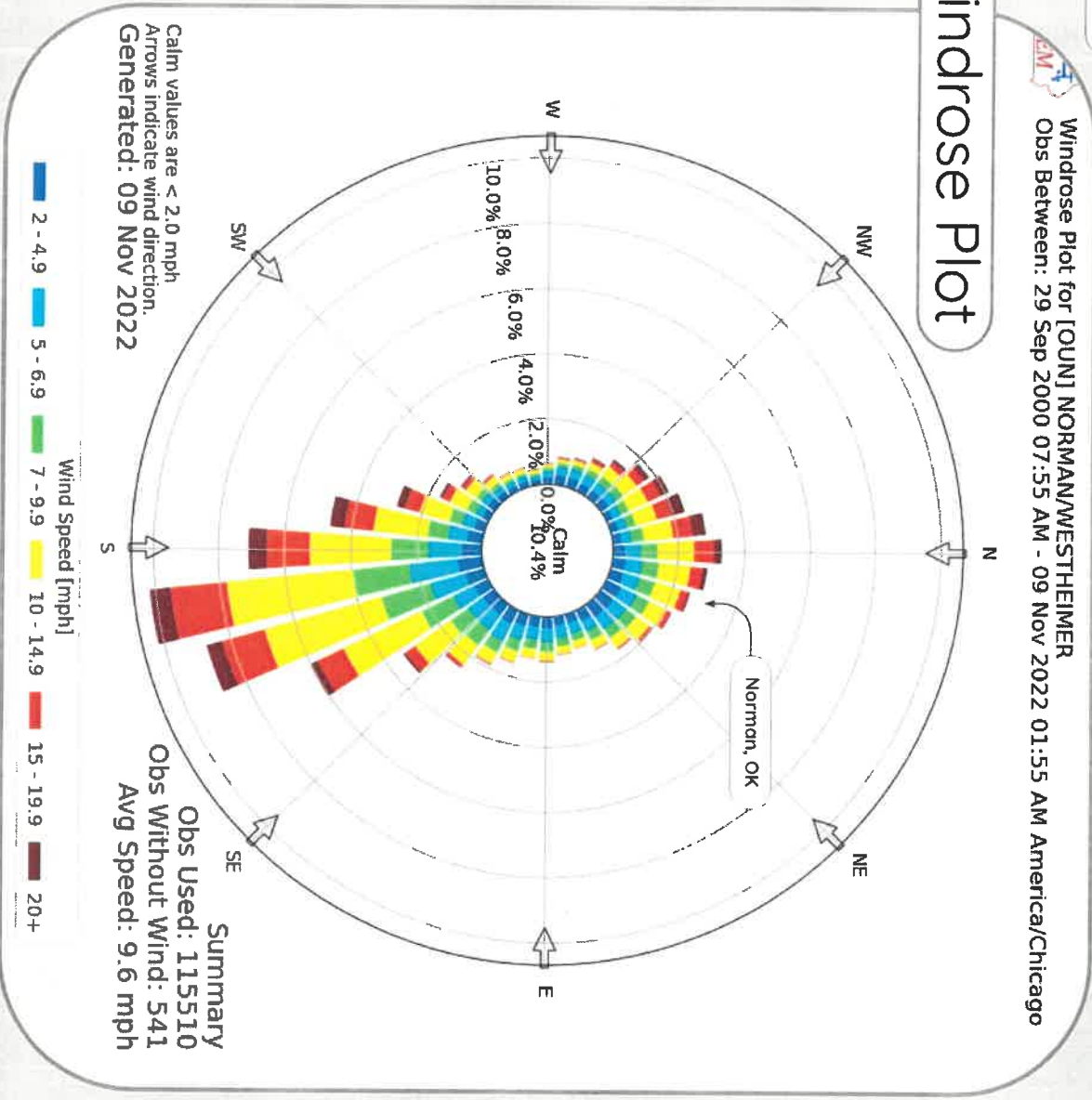
Windrose is a playful yet meaningful addition to the landscape of Norman. It serves as a beacon, becoming a focal point for the community, connecting people, and creating a sense of place. It is an exploration of the ever-changing forces of wind as well as the connection between Norman's natural environment and Griffin Park. The constant movement of air, sometimes barely noticeable and other times turbulent, reminds us that we are all connected by nature.

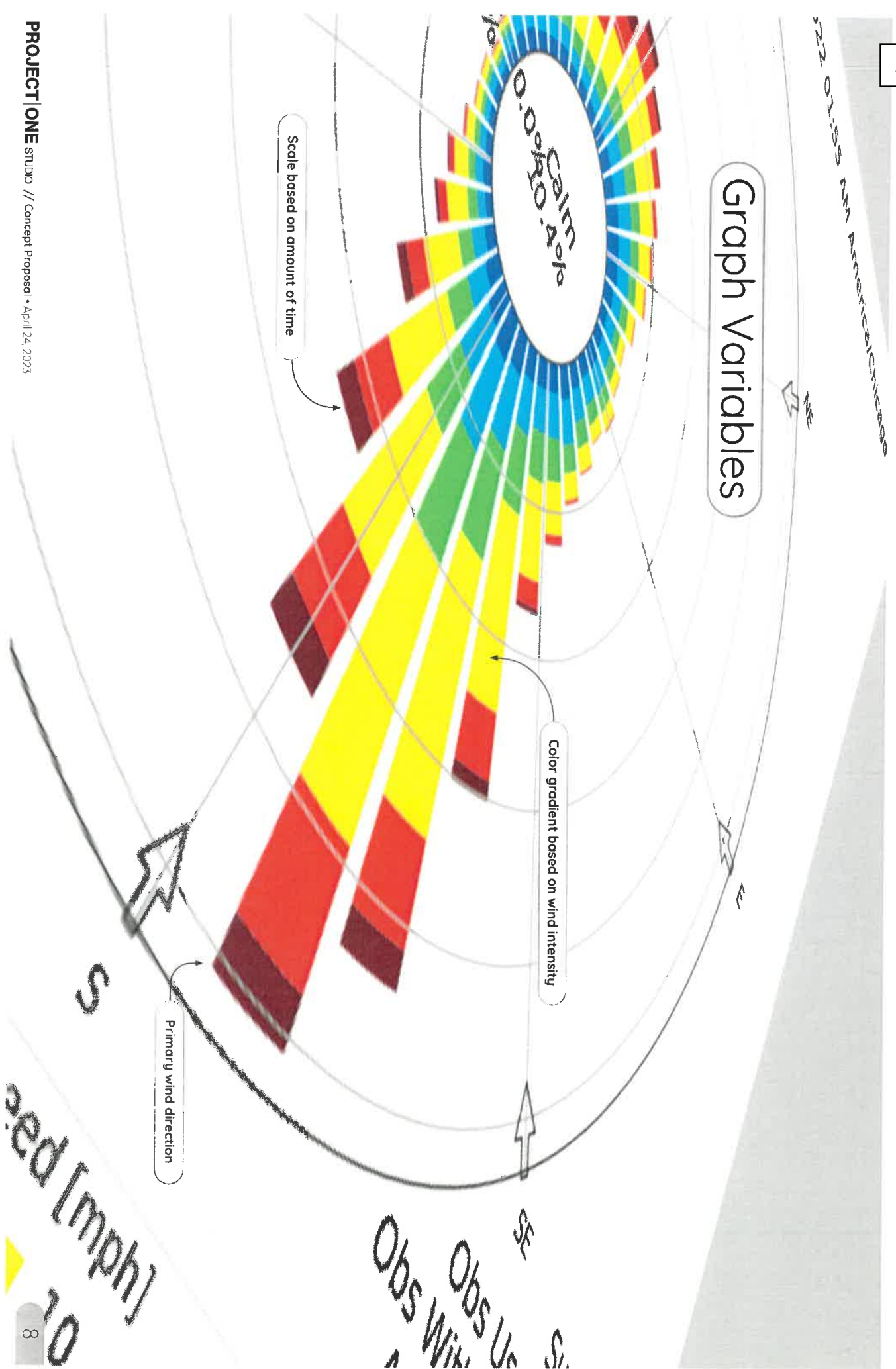
The project abstractly dissects Norman Oklahoma's *Windrose* plot as a generator of form, color, and site-specific integration. It seeks to provide moments of interaction for families, teams, and players visiting the park. Unprogrammed play, vibrant displays of color, and soothing gestural forms allow for various interpretations, ensuring that the artwork engages a diverse group of people and includes many ages, backgrounds, and abilities.

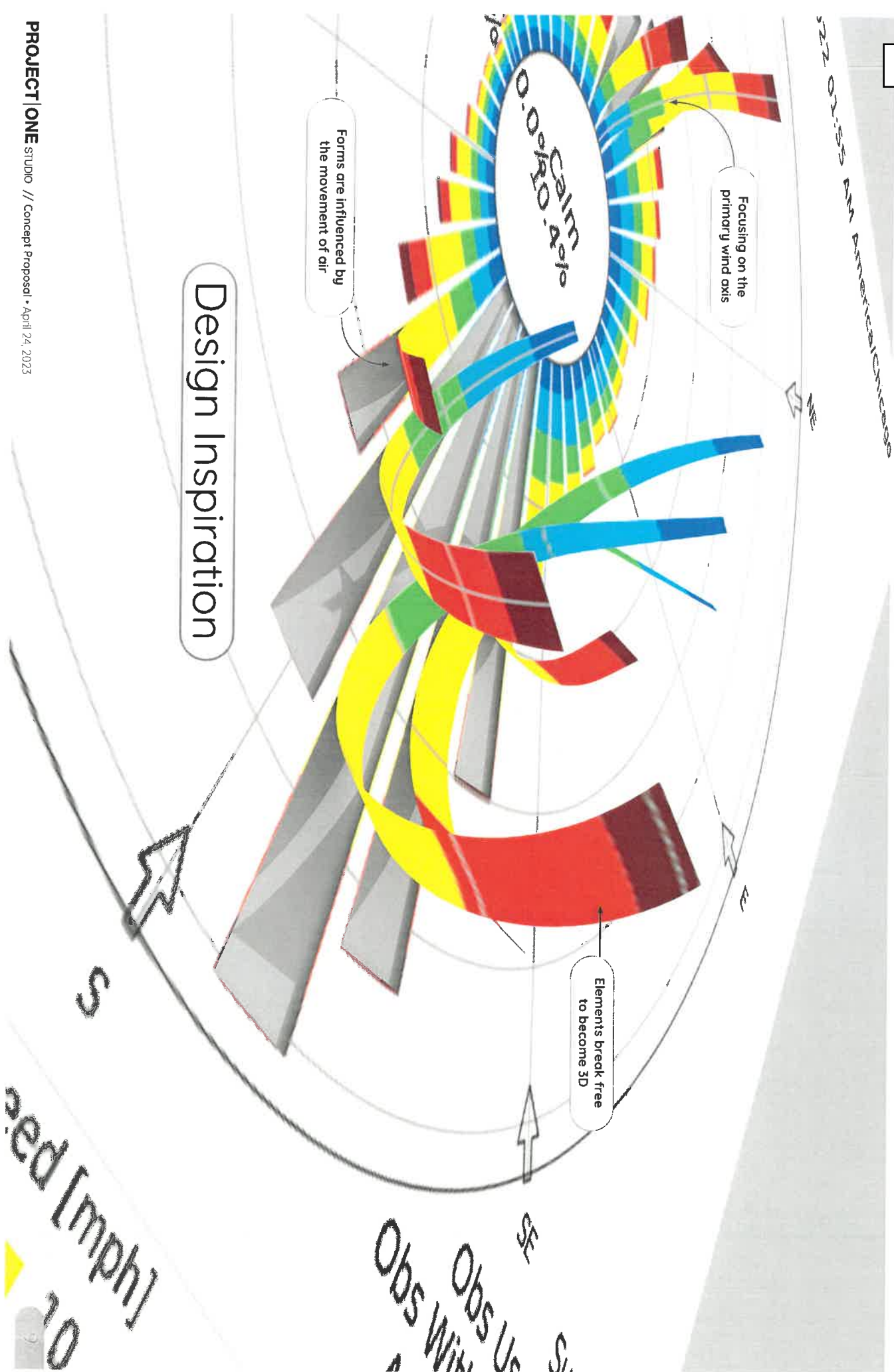
***Windrose* is an uplifting symbol of hope, reminding us not only to appreciate the natural beauty around us, but also the importance of creating connections with one another.**



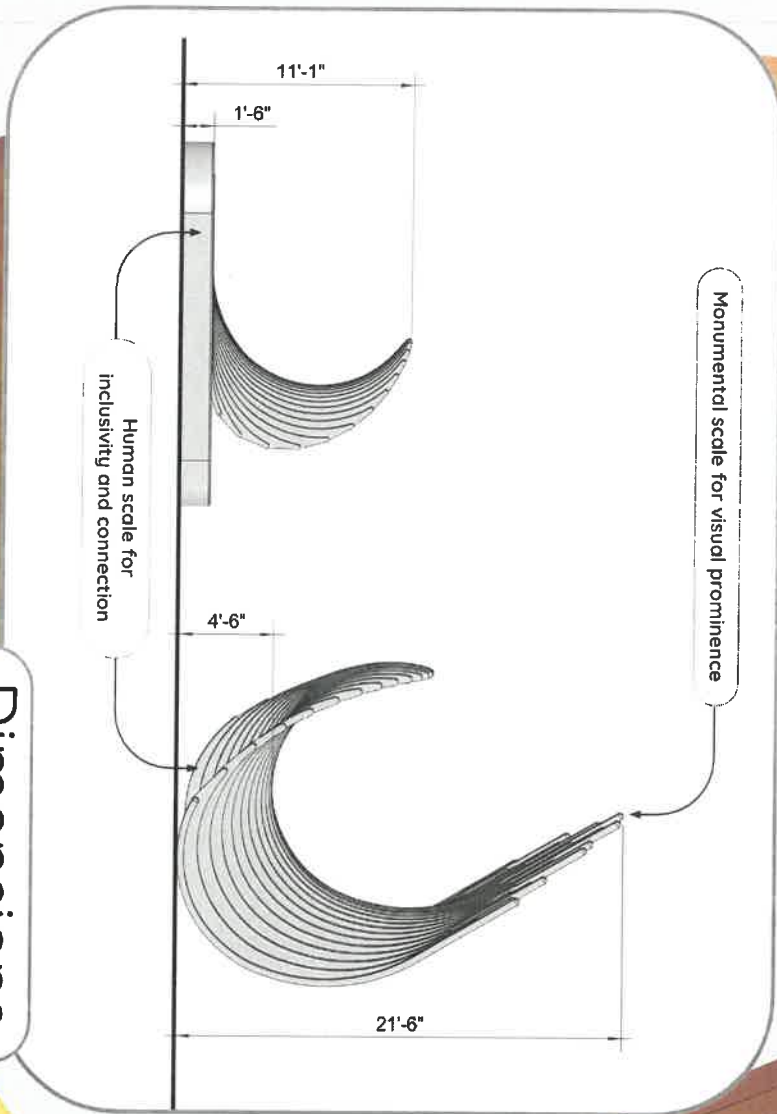
Windrose Plot





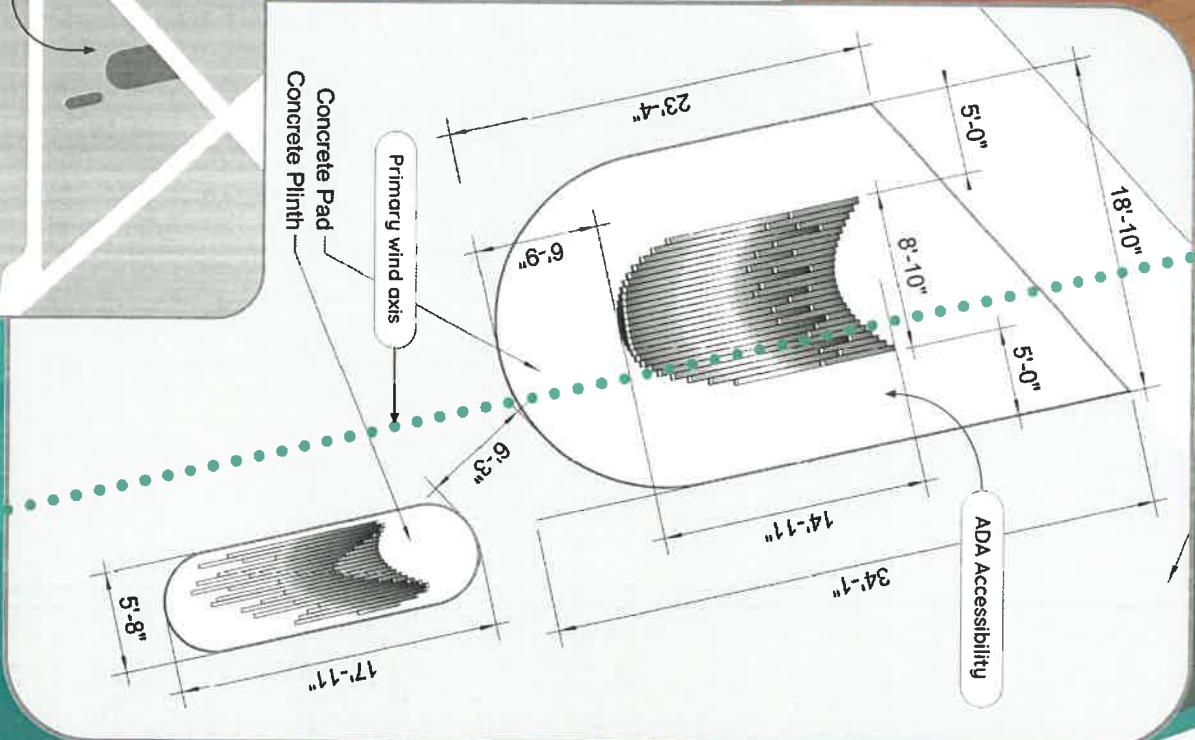
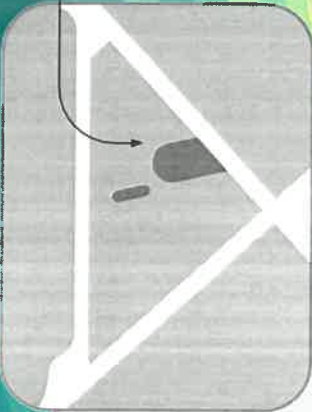






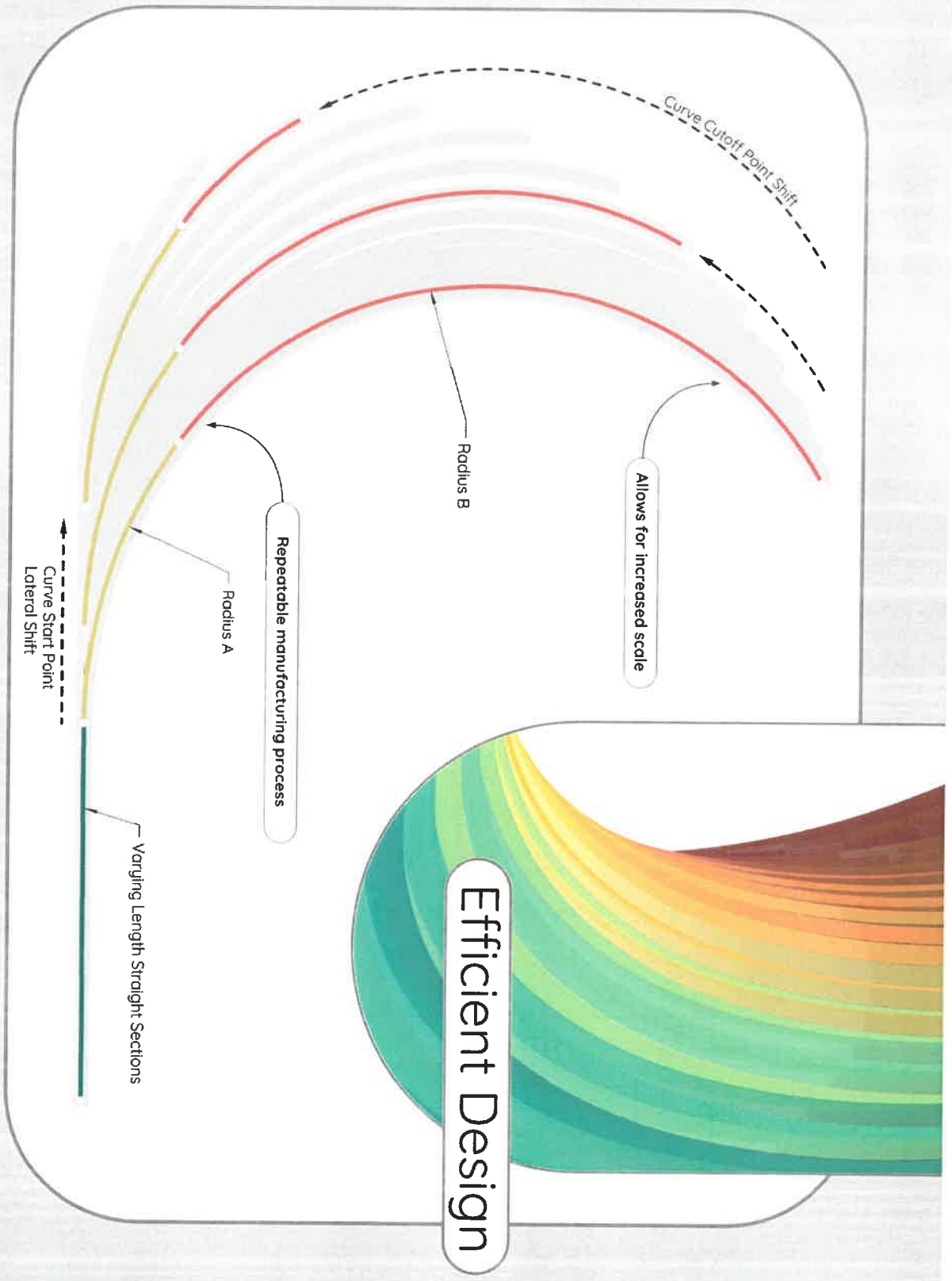
Dimensions

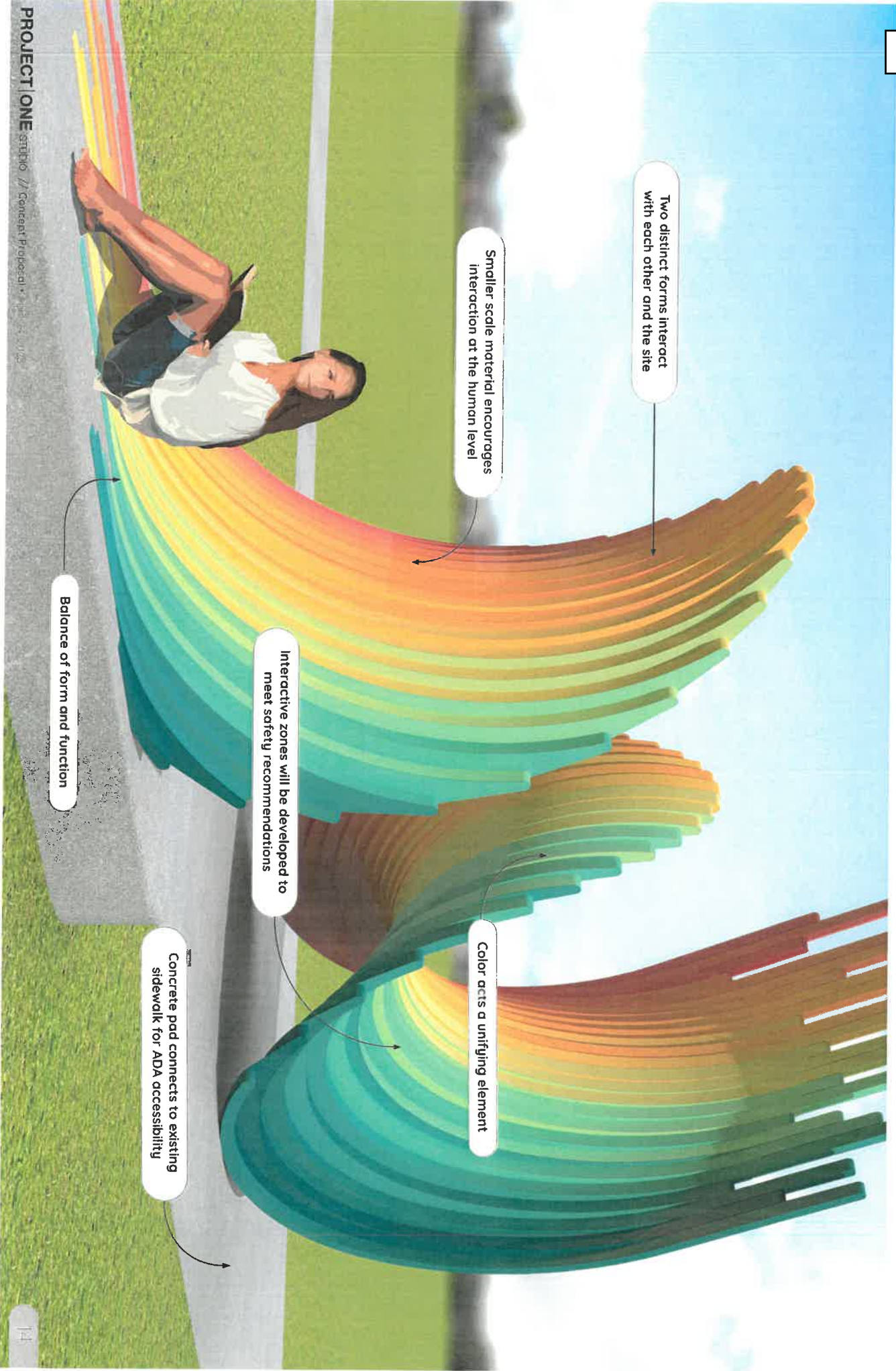
Proposed Site Location



An iconic larger form will serve as wayfinding, a vibrant backdrop, and a reminder of the natural world around us





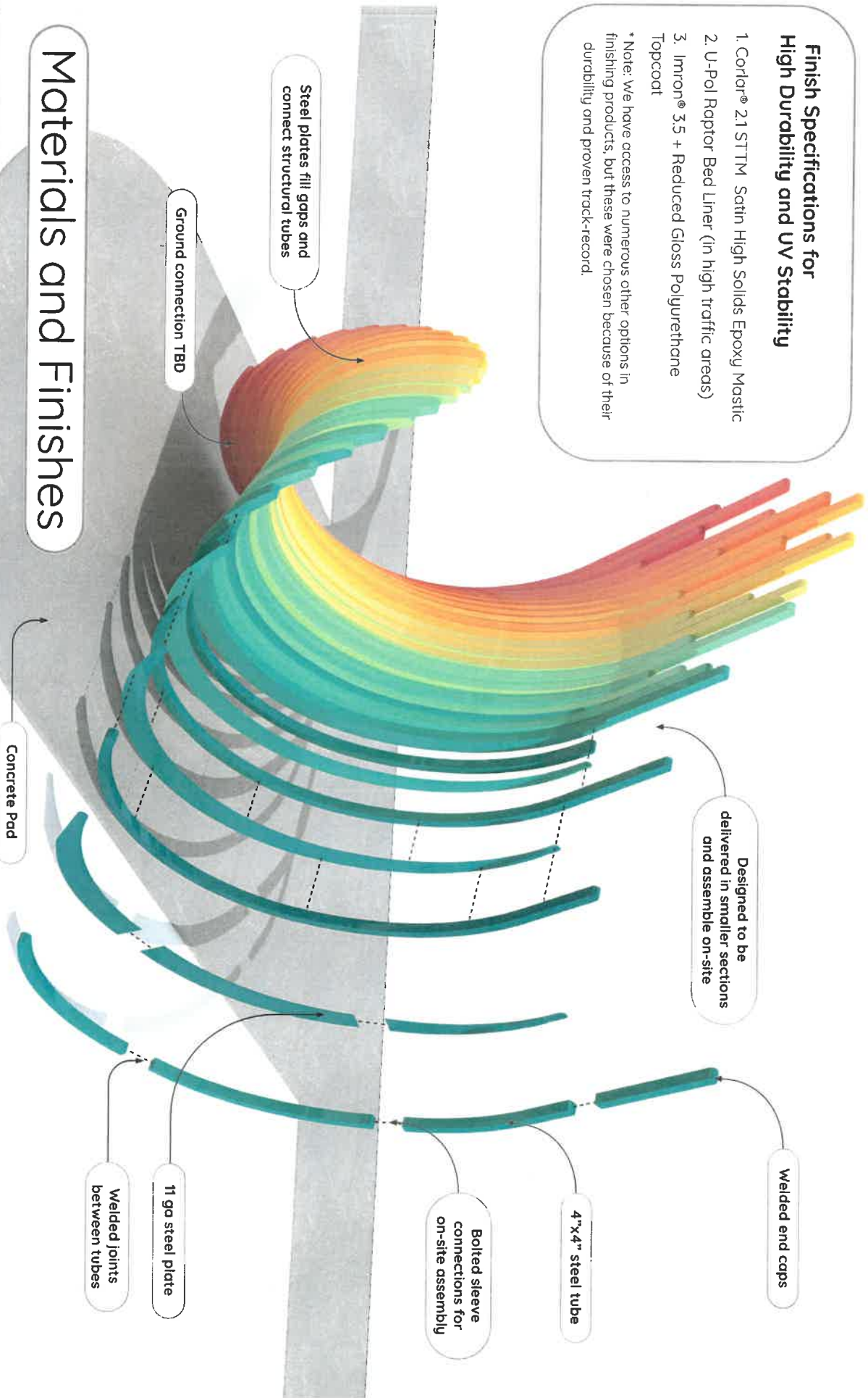


Finish Specifications for High Durability and UV Stability

1. Corlar® 2.1 STTM Satin High Solids Epoxy Mastic
2. U-Pol Raptor Bed Liner (in high traffic areas)
3. Imron® 3.5 + Reduced Gloss Polyurethane Topcoat

* Note: We have access to numerous other options in finishing products, but these were chosen because of their durability and proven track-record.

Materials and Finishes



Color Possibilities



We can work with you to
select the perfect color palette

Abstraction allows for a variety of interpretations beyond our concept, engaging people from all backgrounds and ages



Preliminary Budget

Material	\$12,500.00
Fabrication	\$28,000.00
Finishing	\$5,000.00
Installation	\$18,000.00
Engineering	\$2,000.00
Artist Fee	\$13,300.00
Contingency (Artist-Held)	\$4,500.00
Concrete (*Partial)	\$5,700.00
Total	\$89,000.00

* Budget assumes a portion of the cost for the larger concrete pad will be offset by the client to connect to existing sidewalk.

** Since we design, fabricate, and install our work we are able to adjust as necessary to accurately meet budgets and timelines

Schedule

Contracting, Proposal Revision	1 month
Design Development, Engineering	2 months
Fabrication	2 months
Installation	1-2 weeks
Contingency	1 month

May 2023

Nov 2023

Maintenance

- Minimal maintenance required with selected materials and finishes. Mild detergent and water, no abrasives or chemicals.

* Clean as needed based on environmental conditions of the site

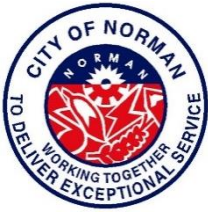
- An annual inspection for any excessive wear or deep scratches is recommended. The topcoat can be easily field applied to remedy any damage. *Adding the bedliner in high-traffic areas will greatly reduce any wear issues

- Curving form and limited larger surface areas reduce vandalism concerns. Typical graffiti can be easily removed with standard cleaners

Wind is a floating wave
of air, whose undulation
continually varies.

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.

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:

The Senior Wellness Center project, located at 602 N. Findlay Ave, has reached the point where an artist has been selected, and a final contract with the selected 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 Nick Athanasiou of Skunk Control to build and install a 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 \$100,000, \$40,000 of which is payable upon delivery of the signed contract and issuance of an Artist’s invoice, \$30,000 of which is due upon substantial completion of the sculpture, and the final \$30,000 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-2324-25 with Skunk Control for the fabrication and installation of artwork at the Norman Senior Wellness Center.

K-2324-25

Contract to Commission Artwork
Between
City of Norman, Oklahoma
And
Skunk Control

THIS CONTRACT, made this _____ day of _____, by and between the City of Norman (hereinafter referred to as the "Owner"), and Skunk Control (hereinafter referred to as the "Artist") for a work of art incorporated herein by reference (hereinafter referred to as the "Work") to be placed in front of the Norman Senior Wellness Center, at 602 N. Findlay Ave, Norman, Oklahoma.

WHEREAS, the City Council of the City of Norman believes the beautification of the Senior Wellness Center Project will further enhance the quality of life in Norman, Oklahoma;

WHEREAS, all parties wish to promote and maintain the integrity and clarity of the Artist's ideas and statements as represented by the Work;

WHEREAS, the Selection Panel Advisory Board and the Norman Arts Council Board recommend the retention of the Artist for this Work;

WHEREAS, the parties wish to have the creation of the Work governed by the mutual obligations, covenants, and conditions herein.

THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

I. The Project: The Scope of Services

- A. The Artist will design, execute, fabricate, transport, install and document the Work. These services shall be performed by Artist, and their assistants, as independent contractors.
- B. Artist agrees that said Work will be consistent with and substantially similar to the graphic illustration presented to the Selection Panel Advisory Board and the Norman Arts Council Board.
- C. The Owner agrees to purchase the Work, under the terms and conditions of this contract upon final approval and acceptance of the Work by the Owner.
- D. The permanent location for the work shall be in in front of the Senior Wellness Center, at 602 N. Findley 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.
- 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



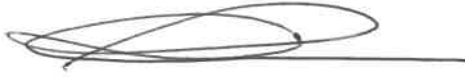
Nick Athanasiou, Creative Director
 Skunk Control

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)

NOTARIAL CERTIFICATE**TO ALL TO WHOM THESE PRESENTS SHALL COME**

I, **LINDA PARIC**, Notary Public, admitted and sworn and an Australian Legal Practitioner the City of Melbourne in the State of Victoria in the Commonwealth of Australia **CERTIFY** that I was present at Melbourne on the 30th day of June Two Thousand and Twenty Three and saw **NICK ATHANASIOU** the person named in the attached Contract to Commission Artwork between City of Norman, Oklahoma and Skunk Control duly sign the same and Nick Athanasou, being the Sole Director and Company Secretary of Skunk Control Pty Ltd (ACN 642980989) and duly registered as such by the Australian Securities and Investments Commission is authorised to do so and that the signature **NICK ATHANASIOU** subscribed thereto is the proper handwriting of the said **NICK ATHANASIOU** and that the signature **LINDA PARIC** thereunto subscribed as the attesting witness thereto is of the proper handwriting of myself.

IN FAITH AND TESTIMONY whereof I the said Notary Public have hereunto subscribed my name and affixed my Seal of Office this 30th day of June Two Thousand and Twenty Three.

My tenure is not limited by time.



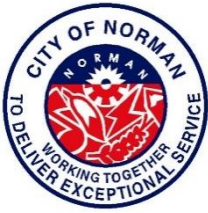
A handwritten signature in black ink, appearing to read "Linda Paric".

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



File Attachments for Item:

38. 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.



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.

K-2324-26

Contract to Commission Artwork
Between
City of Norman, Oklahoma
And
Tyler FuQua Creations

THIS CONTRACT, made this _____ day of _____, by and between the City of Norman (hereinafter referred to as the "Owner"), and Tyler FuQua Creations (hereinafter referred to as the "Artist") for a work of art incorporated herein by reference (hereinafter referred to as the "Work") to be placed in Reaves Park, at 2501 Jenkins Ave, Norman, Oklahoma.

WHEREAS, the City Council of the City of Norman believes the beautification of Reaves Park will further enhance the quality of life in Norman, Oklahoma;

WHEREAS, all parties wish to promote and maintain the integrity and clarity of the Artist's ideas and statements as represented by the Work;

WHEREAS, the Selection Panel Advisory Board and the Norman Arts Council Board recommend the retention of the Artist for this Work;

WHEREAS, the parties wish to have the creation of the Work governed by the mutual obligations, covenants, and conditions herein.

THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree as follows:

I. The Project: The Scope of Services

- A. The Artist will design, execute, fabricate, transport, install and document the Work. These services shall be performed by Artist, and their assistants, as independent contractors.
- B. Artist agrees that said Work will be consistent with and substantially similar to the design concept presented to the Selection Panel Advisory Board and the Norman Arts Council Board. As design details are finalized, Artist will update the Owner.
- C. The Owner agrees to purchase the Work, under the terms and conditions of this contract upon final approval and acceptance of the Work by the Owner.

- 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. Paole

CITY ATTORNEY

SCHEDULE I

[to be included]

OFFICIAL STAMP
KRYSTIN JO ANDERSON
NOTARY PUBLIC - OREGON
COMMISSION NO: 990268
EXPIRES AUGUST 05, 2023

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

Witnessing or Attesting a Signature

State of OREGON

County of Multnomah

Signed (or attested) before me on (date) 15th of June, 20 23

by (name(s) of individual(s)) Tyler F. Qua

Kristyn Jo Anderson

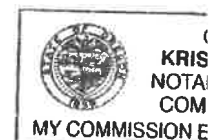
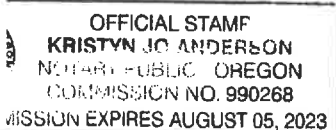
Notary Public - State of Oregon

Official Stamp



Document 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.



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

Tyler Fuqua
Address: 24645 SE Brex Ln
East Creek, OR
97022

6/15/23

State of Oregon
County of Multnomah



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

Kristyn Jo Anderson
Notary Public

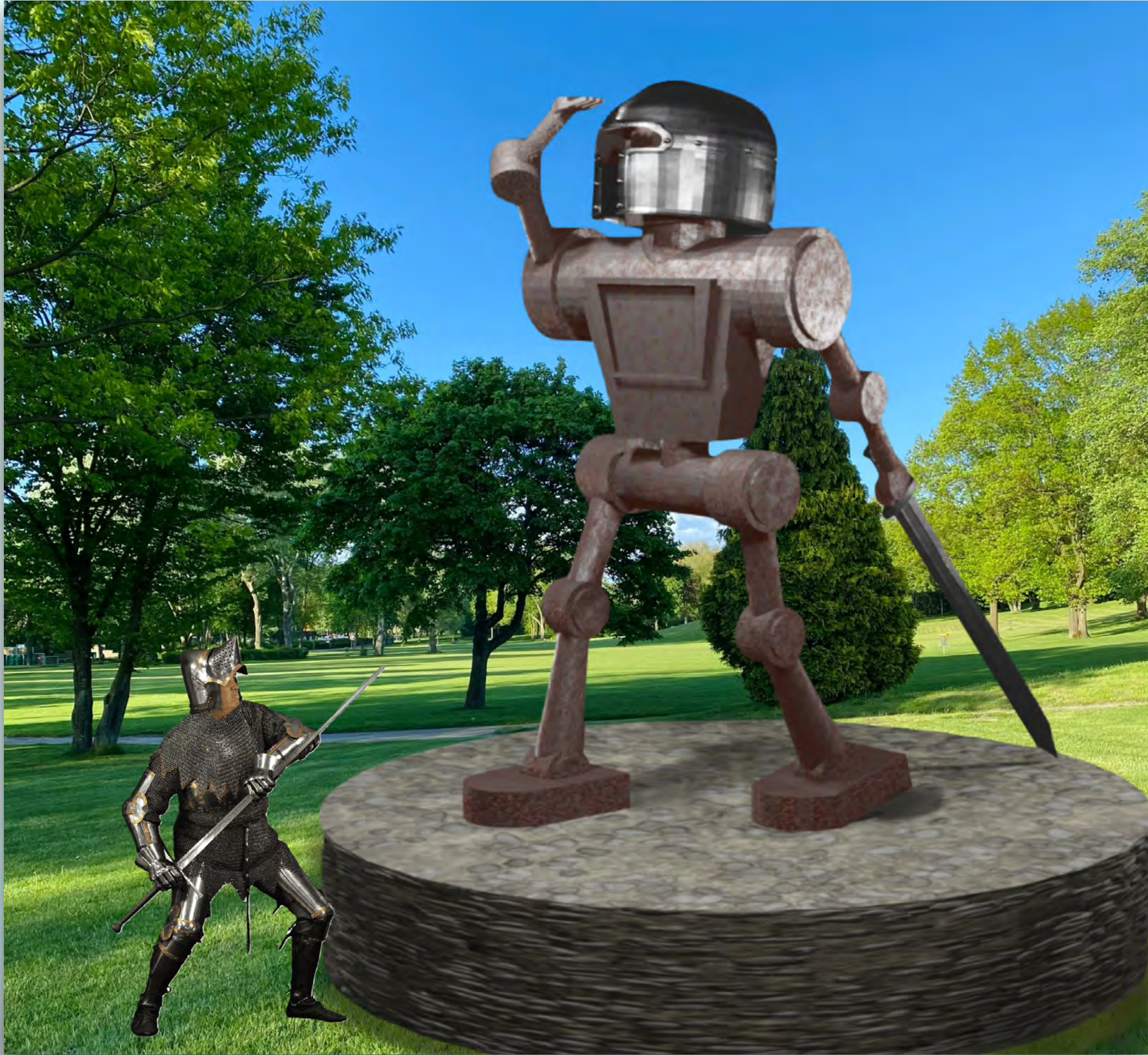
My commission expires: August 5, 2023

HOME RUN MECHAN*

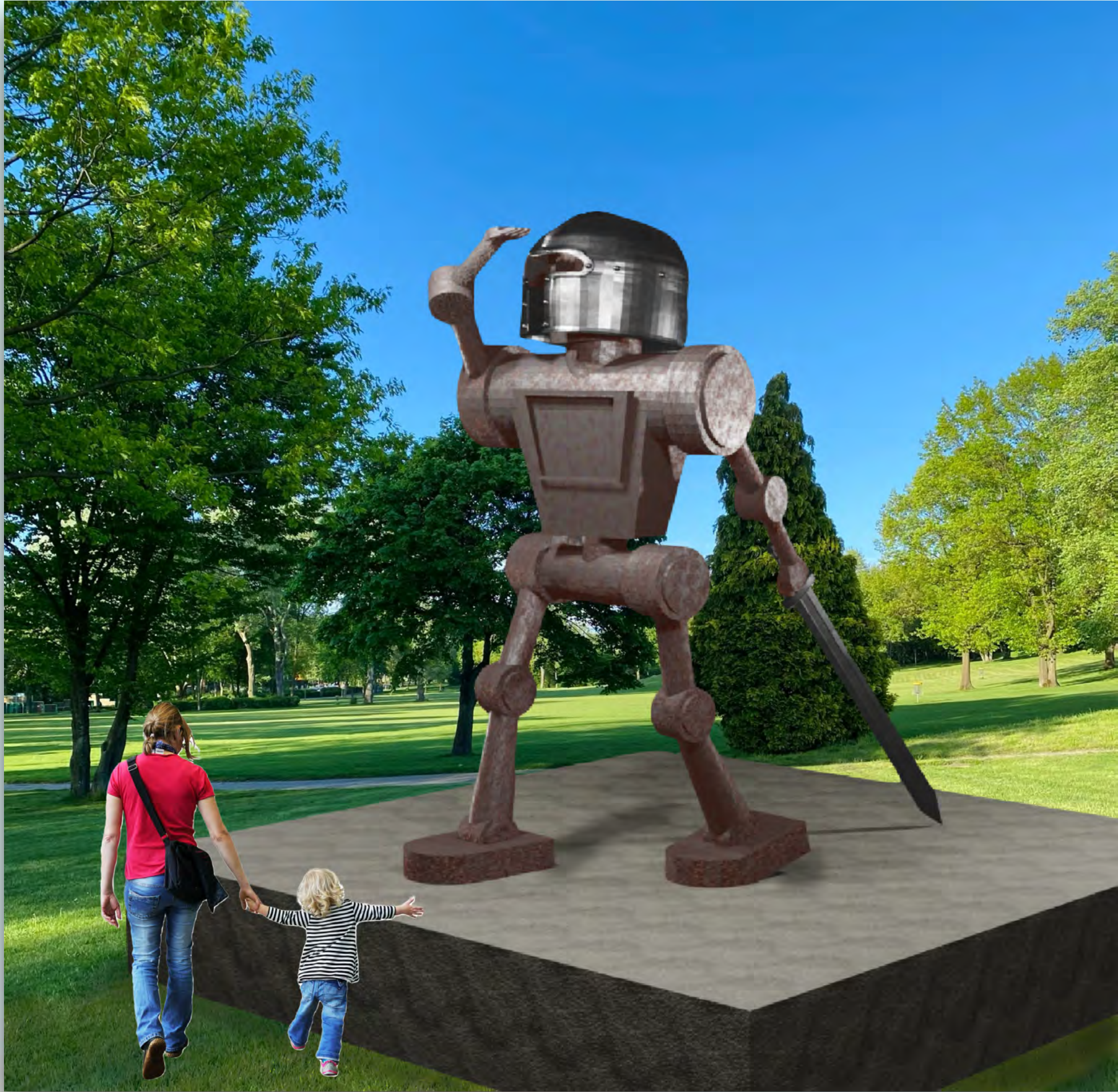
- About 15' tall
- Steel body (rusty patina)
- Silver hat and baseball bat
- Stainless steel accents and details
- Illuminated eyes
- Custom heart chamber, more on that later



- Shown here on flat plate
- Looks like it just hit a game winning home run
- Looking towards the future
- *Name decided later
- Concept robot, will look similar but slightly different



ELEVATED ROUND BASE

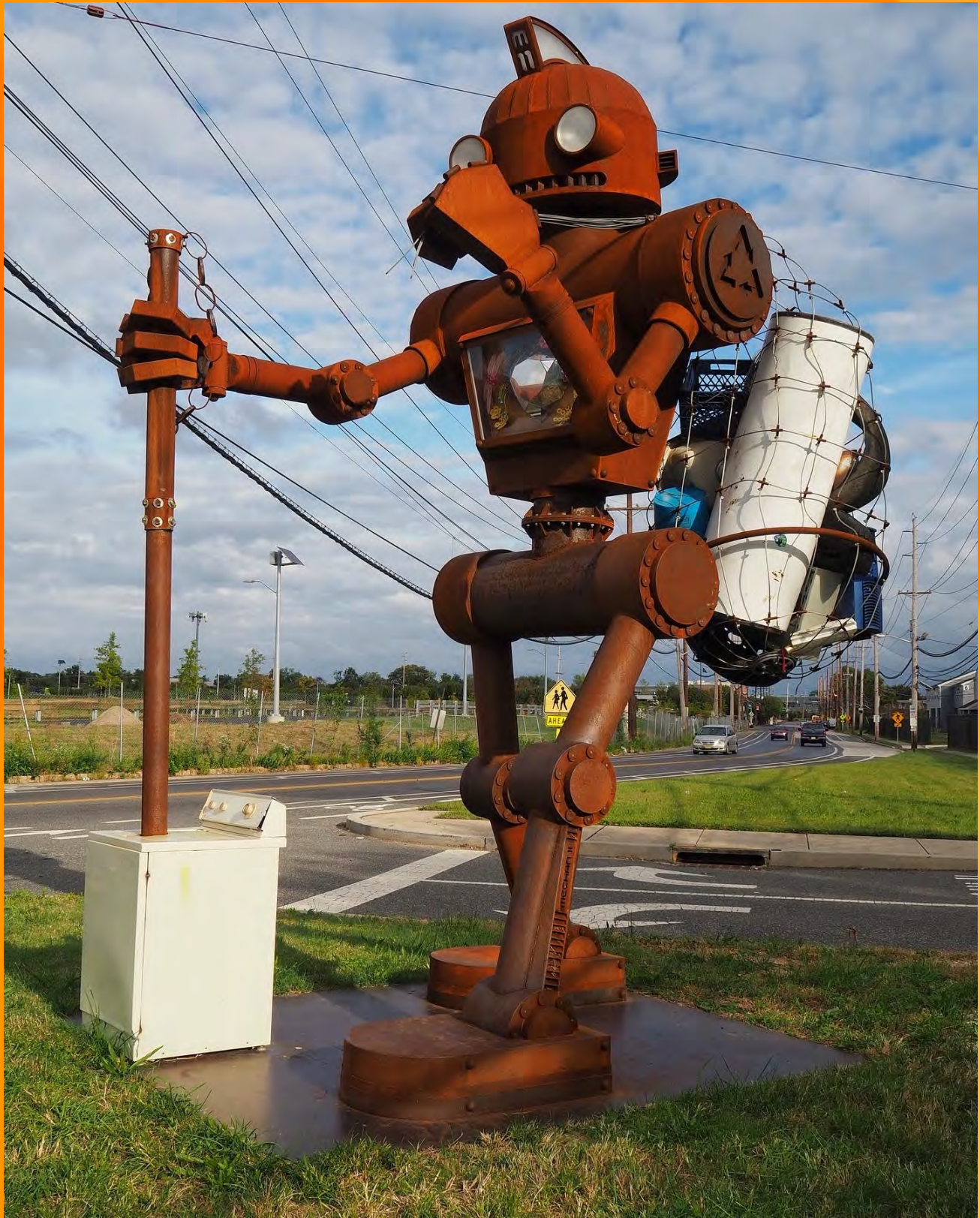
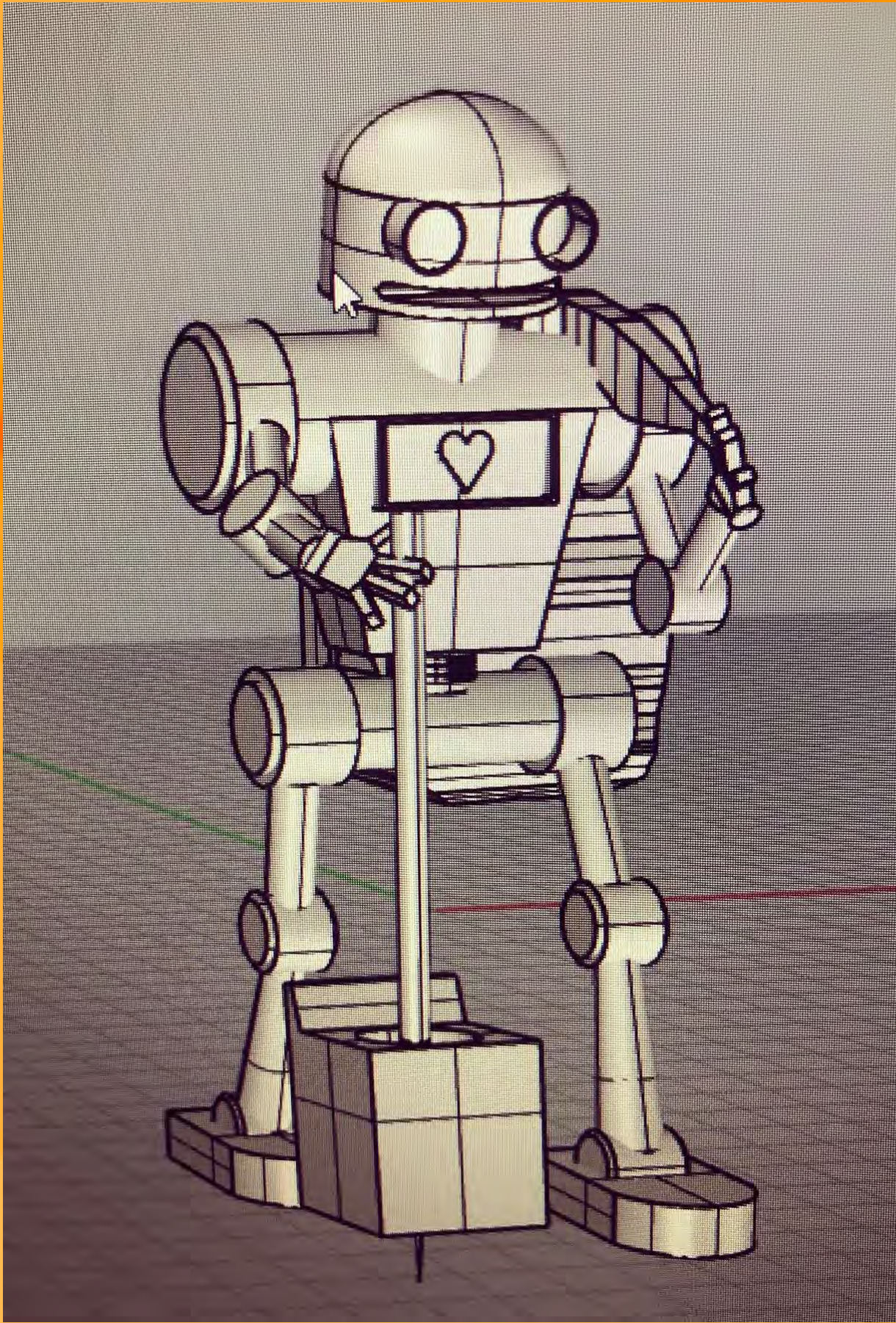
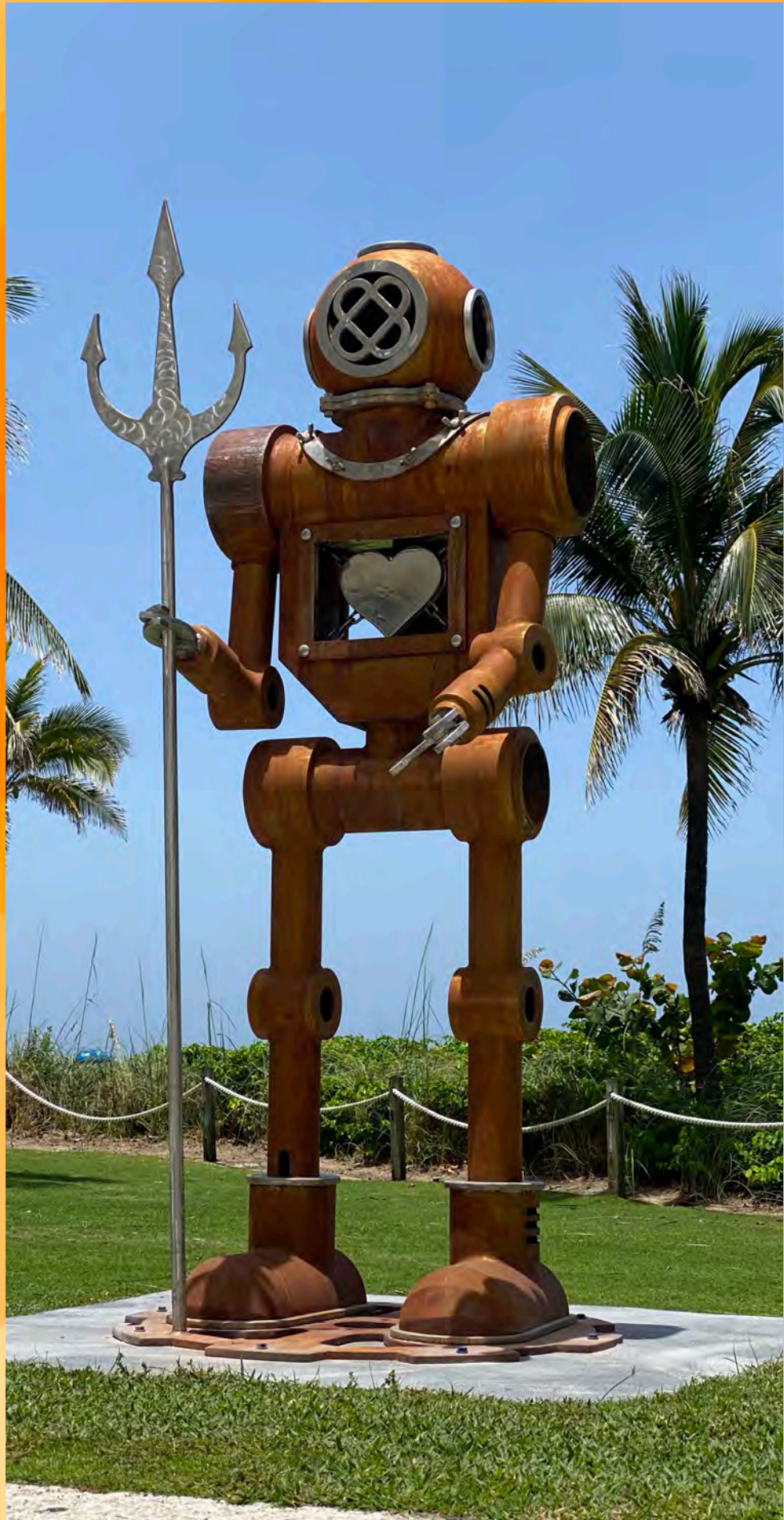


ELEVATED SQUARE BASE



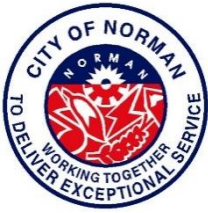
**This is about
how big
the robot
will be.**

CAD DRAWING TO REAL LIFE COMPARISON



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.



CITY OF NORMAN, OK STAFF REPORT

MEETING DATE: 07/11/2023

REQUESTER: Veronica Tracy, Recreation Manager

PRESENTER: Jason Olsen, Director of Parks and Recreation

ITEM TITLE: 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.

BACKGROUND:

The City of Norman/Norman Municipal Authority has been transferring \$35,000 per year for the "Westwood Pool Maintenance Reserve" from the Norman Forward Fund to the Westwood Fund, and it has been placed into a reserve of the Westwood Fund Balance. At the end of this fiscal year, there will be \$187,771 in the reserve.

DISCUSSION:

Currently, the staff is recommending the appropriation from the Westwood Fund balance for the Westwood Family Aquatic Center to pay for an emergency repair of a leak on the lap pool gutter pipe. The Norman Forward program has always anticipated funding this reserve for significant pool maintenance.

RECOMMENDATION:

It is recommended that the City Council approve Resolution R-2324-14, appropriating \$32,778.00 from Westwood Fund Balance (Account No. 29-29000) to Westwood Park Maintenance and Repair Other Miscellaneous (Account No. 29970133-44299).

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

Mayor/Chairman

ATTEST:

City Clerk/Secretary

