



office memorandum

DATE: November 1, 2024

TO: Darrel Pyle, City Manager
Shannon Stevenson, Assistant City Manager

FROM: Michele Loudenback, Environmental and Sustainability Manager

M&R 11/1/24

SUBJECT: Consideration of approval or rejection of Contract K-2425-54, with Kenneth Eugene Hall, Jr., in the Amount of \$14,250.00 for design, execution, fabrication and installation of Art Work titled, "HazMatt", on the Household Hazardous Waste Facility Grounds.

BACKGROUND:

For twenty (20) years, Norman held one-day, multi-pollutant collection events. The danger inherent in those events as the turnout increased became too risky. The Household Hazardous Waste Facility (HHWF) was opened in February 2022 as a safe, year-round place for residents to bring their household hazardous waste materials.

The City of Norman also recognizes the value of public art, realizing that it can serve as inspiration to others. It was understood that the HHWF would benefit from a large art piece made from recycled materials. Kenneth Eugene Hall, Jr., local artist and one of the founding members of the Crucible Art Foundry and Gallery, was tapped to help create a piece to inspire and encourage residents to consider their waste habits.

DISCUSSION:

As part of providing service to Sanitation customers, old and unrepairable dumpsters are taken out of service rotation and stored at Container Maintenance until a disposal solution is found. There are many dumpsters that have usable metal and support systems that could be reused in other applications, such as art installations. The HHWF is situated atop a hill within the Transfer Station Compound. There is a grassy hill just to the west of the entry drive that is perfect for the installation of HazMatt.

The artist will be responsible for conditioning the used materials (the dumpsters), creating and installing the sculpture. All work will be performed either at the HHWF or at the material storage yard in Container Maintenance. The City will be responsible for implementing concrete pads on which to install and secure the sculpture.

The sculpture is proposed to be completed in time for Earth Day 2025 (April 22, 2025) but no later than May 31, 2025. The total cost of the contract is \$14,250.00. Household Hazardous Waste Facility Capital Project SA0012-MATLS (33999975-46301) has the funds available to cover the award of this contract.

Staff recommends approval of Contract No. K-2425-54, between the City of Norman and Kenneth Eugene, Jr., for the fabrication and installation of artwork at the HHWF.

Reviewed by: Chris Mattingly, Utilities Director *CM*

11-4-24
Date

[Handwritten Signature]
Signature

APPROVED BY: Darrel Pyle, City Manager
 DISAPPROVED Shannon Stevenson, Assistant City Manager

cc: Anthony Purinton, Assistant City Attorney

Contract to Commission Artwork
Between
City of Norman, Oklahoma
And
Kenneth Eugene Hall Jr.

THIS CONTRACT, made this 31st day of October, by and between the City of Norman (hereinafter referred to as the "Owner"), and Kenneth Eugene Hall Jr. (hereinafter referred to as the "Artist") for a work of art as more fully described in Exhibit I attached hereto and incorporated herein by reference (hereinafter referred to as the "Work") to be placed on the lawn in front of the City of Norma Household Hazardous Waste Facility, at 3803 Chautauqua Ave., Norman, Oklahoma.

WHEREAS, the City Council of the City of Norman believes the beautification of the Household Hazardous Waste Facility 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 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 submitted to 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 the lawn in front of the City of Norman Household Hazardous Waste Facility, located at 3803 Chautauqua in Norman, Oklahoma.
 - E. The Owner shall provide clean, discarded trash containers to be used as the main material for the Work. The Artist shall perform all other services and furnish all supplies, materials and equipment necessary for the design, execution, fabrication, transportation and installation of the Work.

- F. The Owner in consultation with the Artist shall determine the arrangement and placement of the final Work.
- G. The Artist shall be responsible for the installation, and securing of the Work on the 12” by 24” concrete pads prepared, by the Owner, at the site in Norman, Oklahoma.

II. Execution of the Work

- A. The Artist shall complete the fabrication of the Work in substantial conformity with the design as submitted to the Owner, and as attached hereto as Exhibit I.
- 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 May 31, 2025, and shall begin no later than January 1, 2025. The Owner will ensure the foundation for the piece is in place and ready for use by a date agreed to by Artist and Owner.
- E. The Owner shall notify the Artist of any construction delays resulting in delays in site preparation prior to the work start date. Upon such notice, a new date shall be agreed upon by the Owner and Artist for construction and completion of the Work.
- F. The Artist shall provide the Owner written instructions for appropriate maintenance and preservation of the Work.
- G. 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.
- H. 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 constructed and completed, will be free of defects in Artist's provided 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.*, the 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 Artist shall receive and accept \$14,250 as total compensation for the design, execution, fabrication, transportation, installation, delivery, and securing of the Work; for meeting all obligations contemplated and embraced under the Contract; for any unforeseen defects or obstruction which may arise or be encountered during the prosecution of the work and before its final acceptance by the Owner; and for all risks of every description connected with the prosecution of the work. This fee does not include the cost to Owner for preparation of the site for installation.
- B. The Artist shall receive payments from the Owner to the Artist to be paid in the amount of \$ \$14,250 as follows:
 - i. \$5,250 upon delivery of signed contract by the Owner and Artist and the issuance of Artist's invoice;
 - ii. \$4,500, on or near January 5, 2025, upon the issuance of Artist's invoice;
 - iii. \$4,500 upon final acceptance of the Work by Owner.

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 within thirty (30) days of such change. The failure to provide notice of address change 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. At any time, the Owner may remove or relocate the Work if it determines, in the Owner's sole discretion, 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 furnish and maintain during the life of this contract 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. The minimum coverage and amounts of such insurance shall be as follows:

1. General Liability in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate (Other than Products/Completed)
2. Products/Completed Operations in an amount not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) in the aggregate
3. Personal & Advertising Injury in an amount not less than one million dollars (\$1,000,000)

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 twenty-five thousand dollars (\$125,000.00) 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. Notice

If either party shall desire or is required to give notice to the other, such notice shall be given in writing, via email and concurrently delivered by overnight Federal Express or priority U.S. Mail, addressed to recipient as follows:

Artist:
Kenneth Eugene Hall Jr.520 E. Frank St.
Norman, OK 73071
Phone: 405-921-2829
Email: hall9059@sbcglobal.net

City of Norman:
Michele Loudonback, Environmental and Sustainability Manager
Utilities Department
Address:225 N. Webster Ave. Norman, OK 73069

Phone: 405-292-9731

Email: Michele.loudenback@normanok.gov

X. Termination and Breach

This Agreement may be terminated prior to the expiration period hereof by written agreement by the parties to the Agreement. Owner may terminate this agreement if Artist fails to perform as indicated in this agreement or otherwise violates any of the terms of this agreement; however, said termination shall not be effective until the Owner has provided written notice of such breach to Artist and Artist has failed to cure such breach to the Owner's satisfaction within thirty (30) after receipt of written notice from the Owner. In the event of a termination by Owner, Owner shall be entitled to reimbursement from Artist for all funds expended or incurred by Owner thus far including costs to remove the base or foundation.

XI. Binding

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

XII. 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.

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.

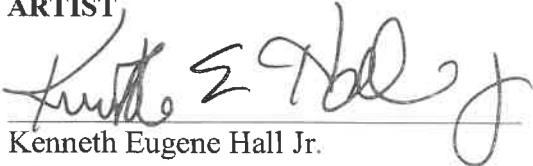
XV. Severability

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.

IN WITNESS WHEREOF, CITY OF NORMAN and Kenneth Eugene Hall Jr. have executed this AGREEMENT.

ARTIST



Kenneth Eugene Hall Jr.
520 E. Frank St.
Norman, OK 73071

ACKNOWLEDGEMENT

STATE OF OKLAHOMA)
) ss.
COUNTY OF OKLAHOMA)

Before me, the undersigned, a Notary Public in and for said County and State, on this 31 day of October, 2024, personally appeared Kenneth Eugene Hall Jr. and acknowledged to me that he executed the same as his free and voluntary act for the uses and purposes therein set forth.

Witness my hand and official seal the day and year above written.



Notary Public

My Commission Expires: 1-9-2027

My Commission Number: 23000364

(SEAL OR STAMP)



CITY OF NORMAN



APPROVED this 4th day of NOVEMBER by the Norman City Council.



Darrel Pyle, City Manager

ATTEST:



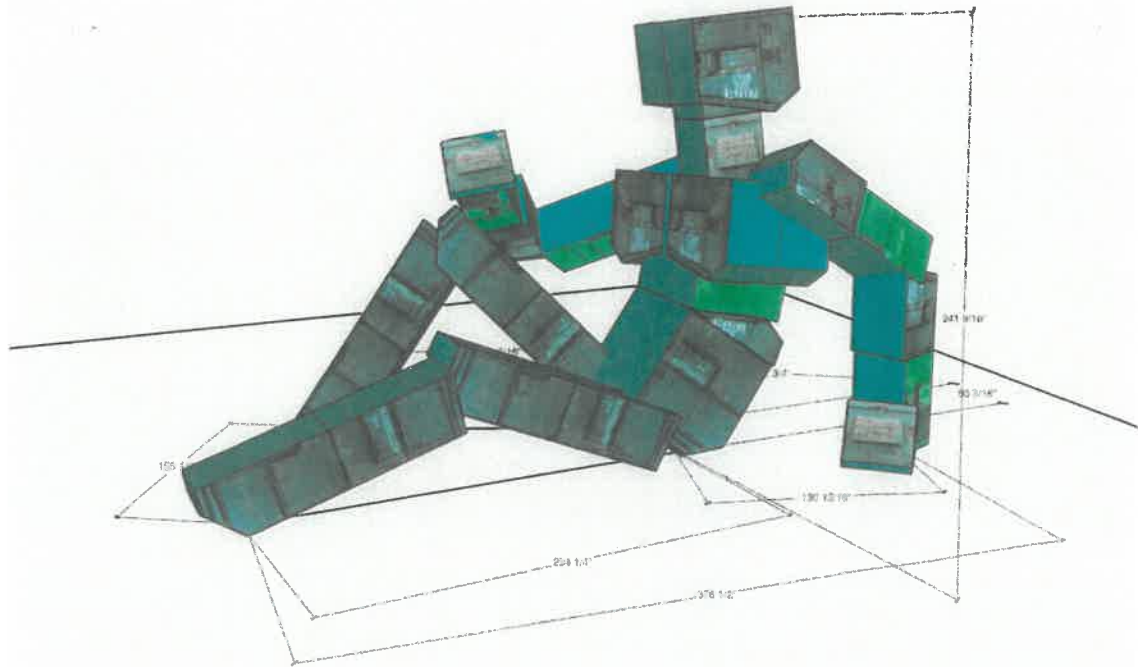
Brenda Hall, City Clerk

APPROVED as to form and legality this 4th day of Nov;

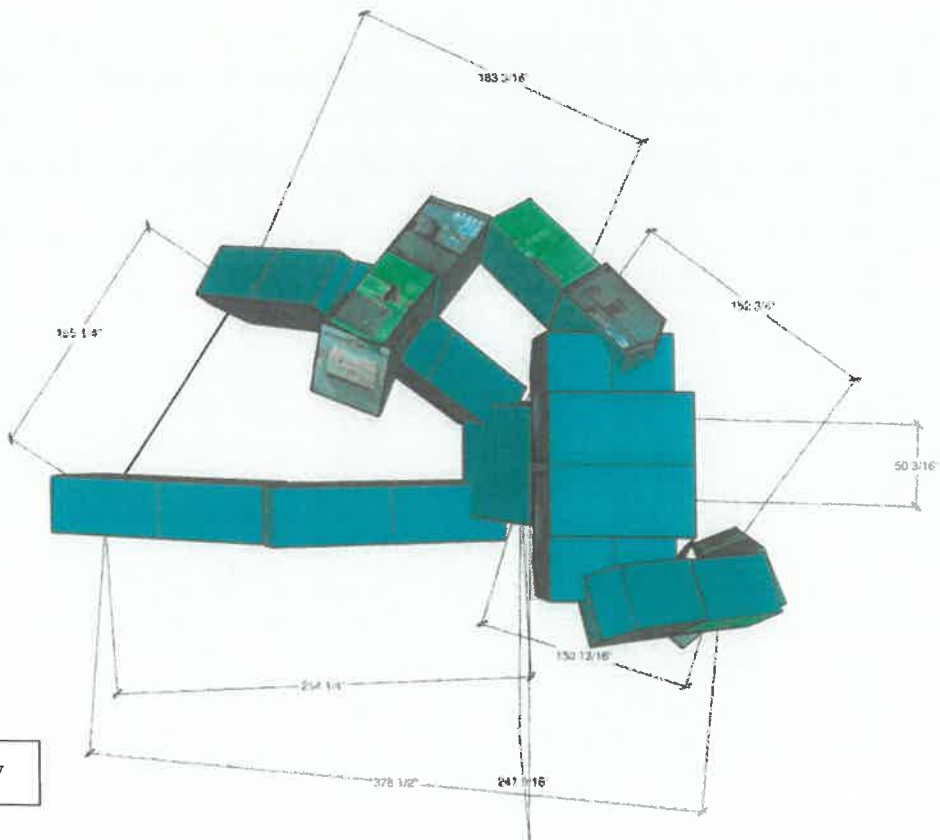


CITY ATTORNEY

EXHIBIT I – GRAPHIC ILLUSTRATION OF WORK



Side View



Top Down View