

ART PURCHASE CONTRACT

GENERAL SERVICES DEPARTMENT

EV2847- KCI Art Project- Development of “Wings”

This art purchase contract is between KANSAS CITY, MISSOURI, a constitutionally chartered municipal corporation (“City”), and John A. Balistreri (“Artist”). City and Artist agree as follows:

In consideration of the payments and mutual agreements contained in this contract, City and Artist agree as follows:

Sec. 1. Services to be Performed. Artist shall perform the following services in connection with the Artist’s work (the “Work”) as set forth in Attachment A:

- A. Scope of Services - **Attachment A**
- B. Schedule of Performance – **Attachment B**
- C. Submit all documents, including plans, design drawings, specifications, reports, maps, models and renderings in the form requested by City. A list with the specific requirements is included in **Attachment A – Scope of Services**.
- D. City shall have the right to inspect and review the Work being done and to consult with Artist at any reasonable time. Meetings will be held at the request of City or Artist.
- E. If it is determined to be in the best interest of the Work, Artist shall replace the project manager or any other employee of the Artist, Subcontractors, Suppliers or other persons or organizations performing or furnishing any of the Work on the project upon written request by City.

Sec. 2. Responsibilities of City.

- A. City will conduct reviews of plans and respond to Artist with comments and/or approval in the times specified in the approved schedule.
- B. City will display the Artist’s name, copyright notice, title, and date of the Work near or on the Work.
- C. City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. City, to the extent allowed by law and subject to appropriation of funds, will maintain and protect the Work against the ravages of time, vandalism and the elements, taking into account the instructions of the Artist set forth when the Art is completed and installed.
- D. Repairs and Restoration.
 - 1. City will have the right to determine, after consultation with the Artist or a professional familiar with art conservation, when and if repairs and restorations to the Work will be made. During the Artist’s lifetime, the Artist will have the right to approve all repairs and restorations; provided however, that the Artist shall not unreasonably withhold approval for any repair or restoration of the Work. If the Artist unreasonably fails to approve any repair or restoration, City shall have the right to make such repair or restoration. To the extent practical, the Artist, during the Artist’s lifetime, will be given the opportunity to make or personally supervise significant repairs and restorations.
 - 2. All repairs and restorations will be made in accordance with recognized principles of conservation.
- E. Alterations of the Work or of the Work site. City agrees:
 - 1. Not to intentionally damage, alter, modify or change the Work without written approval of the Artist.

2. To notify the Artist of any proposed alteration of the site that would affect the intended character and appearance of the Work and will consult with the Artist in the planning and execution of any site alteration and will make a reasonable effort to maintain the integrity of the Work.
3. Not to remove the Work from public display or destroy the work for a period of fifteen (15) years from final acceptance.
4. In the event the City desires to remove the Work from the site after fifteen (15) years, and the removal would result in the destruction, distortion, mutilation or other modification of the Work, City will give the Artist notice as provided herein of the City's intended action. The Artist has 90 days after the mailing of such notice either to remove the Work or to pay for its removal. If the Work is removed at the expense of the Artist, title to the Work shall be deemed to be in the Artist. If the Artist fails to remove the Work within the 90-day period, City may proceed to remove the Work with no further liability to Artist.
5. Not to intentionally use the Work in any manner which would reflect discredit on the Artist's name or reputation as an Artist or which would violate the spirit of the Work.

Sec. 3. Term of Contract.

- A. Contract shall start upon executed signatures by all parties. This executed contract will serve as the Notice to Proceed (NTP). The contract shall expire on March 31, 2023. A contract amendment will be needed to extend the expiration date, if applicable.

Sec. 4. Compensation and Reimbursables.

- A. The maximum amount that City shall pay Artist under this contract is \$192,000. City is not liable for any obligation incurred by Artist except as approved under the provisions of this contract.

Sec. 5. Method of Payment.

- A. Method of Payment. Upon completion of each task set forth below Artist shall invoice City, stating completion of the task and all actual reasonable expenses incurred and allowed under this contract and the amount due. City, upon approving the invoice, shall remit payment to Artist in accordance with the following schedule:
 1. \$24,000 upon execution of this contract;
 2. \$72,000 upon approval of the final design concept and issuance of NTP;
 3. \$72,000 upon certification by the Artist that fabrication of the Work is complete;
 4. \$16,800 upon delivery and installation of the Work to the site; and
 5. \$7,200 within thirty (30) days following final acceptance of the Work.
- B. Condition Precedent to Payment.
 1. Artist shall submit all invoices in a form provided by the City.
 2. It shall be a condition precedent to payment of any invoice from Artist that Artist is in compliance with, and not in breach or default of, all terms, covenants and conditions of this contract. If damages are sustained by City as a result of breach or default by Artist, City may withhold payment(s) to Artist for the purpose of set off until such time as the exact amount of damages due City from Artist may be determined.

3. No request for payment will be processed unless the request is in proper form, correctly computed, and is approved as payable under the contract. City is not liable for any obligation incurred by Artist except as approved under the provisions of this contract.
4. The Work shall be developed, fabricated and installed without further compensation than that provided for in this contract.

Sec. 6. Warranties of Title. The Artist represents and warrants that:

1. The Work is solely the result of the artistic effort of Artist;
2. The Work is unique and original and does not infringe upon any copyright;
3. That the Work, or a duplicate has not been accepted for sale elsewhere;
4. The Work is free and clear of any liens from any source whatsoever; and
5. Prior to final payment, Artist will furnish City with notarized statements from the fabricator, if applicable, and all other suppliers of materials used in the Work that all monies due have been paid.

Sec. 7. Notices. All notices required by this contract shall be in writing and sent to the following:

City:

General Services Department
Darrell Everette, Acting Manager of Procurement Services
414 E 12th St, 1st Floor
Kansas City, MO 64106
Phone: (816) 513-0798
E-mail address: darrell.everette@kcmo.org

General Services Department
James Martin, Public Art Administrator
414 E 12th St, 17th Floor
Kansas City, MO 64106
Phone: (816) 315-0504
E-mail address: james.martin@kcmo.org

Artist:

John A. Balistreri
11 Valleyview Dr
Bowling Green, OH 43402
419-308-5774
balistr@bgsu.edu

All notices are effective (a) when delivered in person, (b) upon confirmation of receipt when transmitted by facsimile transmission or by electronic mail, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, (d) on the next business day if transmitted by overnight courier (with confirmation of delivery), or (e) three (3) business days after the date of mailing, whichever is earlier.

Sec. 8. Risk of Loss. The risk of loss or damage to the Work shall be borne by the Artist and the Artist shall take such measures as are necessary to protect the Work from loss or damage until its final acceptance by City.

Sec. 9. Title and Ownership. Upon completion and installation of the Work and upon final acceptance and final payment to the Artist by City, title to the Work shall pass to the City. Consistent with Section 2. E.4., and in the case of removal, the Artist is aware of and hereby specifically waives all rights under the Artists Visual Rights Act of 1990, 17 U.S.C. Sections 106A and 1133, or as subsequently amended, with regard to the Work.

Sec. 10. Copyright.

- A. The Artist shall retain the ownership of copyrights in and to the Work, plans, drawings, schematics, design studies and models prepared by the Artist in connection with this commission, except as limited by this paragraph. The Artist agrees that it will not make any additional exact duplicates or three-dimensional reproductions of the exact design dimensions and materials of the Work nor grant others permission to do so, except with the written permission of City.
- B. The Artist grants to City a license to use photographic reproductions of the Work in advertising brochures, media publicity, and promotion of its activities, catalogues, site guides, books and publications for noncommercial purposes. If reproductions by either party where the Work is the central focus of the reproductions are made, there shall be included credits listing the Artist as the creator of the Work and owner of its copyright, and City as the party which owns and commissioned the Work, and they agree to use their best efforts to secure credits in any reproduction or public showing of a reproduction or public show of a reproduction by other parties.

Sec. 11. No Gratuities and Kickbacks. The provisions of City's Code Section 3-303, prohibiting gratuities to city employees, and kickbacks by subcontractors, and Code Sections 3-307, imposing sanctions for violations, shall apply to this contract.

- A. **Gratuities.** Artist certifies that it has not and will not offer or give any city employee or officer a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation or preparation of any part of a contract requirement or purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract, or to any solicitation or proposal therefore.
- B. **Kickbacks.** Artist certifies that no payment, gratuity, offer of employment or benefit has been or will be made by or on behalf of or solicited from a subcontractor under a contract to Artist or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

Sec. 12. Prohibition Against Contingent Fees. The provisions of City's Code Section 3-305 prohibiting the retention of persons to solicit contracts for contingent fees, and Sections 3-307, imposing sanctions for violations, shall apply to this contract. Artist certifies that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by Artist for the purpose of securing business. For breach or violation of this warranty, City shall have the right to annul this contract without liability or, at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

Sec. 13. Subcontracting. City authorizes Artist to subcontract with the individuals, firms or entities identified in **Attachment D**, Subcontractors List. **Attachment D**, and the additional conditions stated therein, shall be incorporated into this contract. Artist shall not subcontract, assign or transfer any part or all of Artist's obligations or interests without City's prior written approval.

Sec. 14. Attachments. The following documents are attachments to this contract and are attached hereto and incorporated herein by this reference:

- Attachment A – Scope of Services**
- Attachment B – Schedule of Performance**
- Attachment C – Non-Construction Subcontractor Listing**
- Attachment D – Prevailing Wage Requirements**

Annual Wage Order No. 27
County Clay
Work Type:
State – Building
Federal – Building

- Division of Labor Standards Rules & Regulations
- 01290.03 Certified Payroll Instructions
- 01290.04 Certified Payroll Example
- 01290.05-06 Certified Payroll Report
- 01290.07 Payroll Certification
- 01290.08 Wage Rate Verification Questionnaire
- 01290.11 Daily Labor Force Report
- 01290.14 Contractor Affidavit for Final Payment

- Attachment E – 00560 Missouri Project Exemption Certificate**
 - 00560.01 Kansas City Missouri Tax Exempt Certificate
- Attachment F – 00620 Insurance Certificate**

Sec. 15. Design Standards.

Except as otherwise directed in writing by City, Artist shall use all applicable design standards required by federal, state, local laws or codes or such standards recognized and used in the industry in the performance of services under this contract. In the development of any design under this contract, Artist shall comply with all provisions of the Americans with Disabilities Act, Public Law 101-336 as well as 28 CFR parts 35 and 36 and 29 CFR part 1630, as applicable and as amended from time to time, and shall comply with the provisions of the Missouri Domestic Product Procurement Act, Section 34.350 RSMo. Artist shall notify and explain to City any applicable exceptions under these acts. Artist shall endorse all plans and specifications, or estimates, and engineering data furnished under this contract. All subcontractors as appropriate shall endorse their respective plans and specifications.

Sec. 16. General Indemnification.

- A. For purposes of this Section 16 only, the following terms shall have the meanings listed:
 - 1. **Claims** means all claims, damages, liability, losses, costs and expenses, court costs and reasonable attorneys’ fees, including attorneys’ fees incurred by City in the enforcement of this indemnity obligation.
 - 2. **Artist’s Agents** means Artist’s officers, employees, subcontractors, su-bconsultants, successors, assigns, invitees, and other agents.
 - 3. **City** means City, its Program Manager/Construction Advisor, if any, and their respective agents, officials, officers and employees.

- B. Artists' obligations under this section with respect to indemnification for acts or omissions, including negligence, of City shall be limited to the coverage and limits of General (not Professional) Liability insurance that Artist is required to procure and maintain under this contract. Artist affirms that it has had the opportunity to recover the costs of the liability insurance required in this contract in its contract price.
- C. Artist shall defend, indemnify and hold harmless City from and against all Claims arising out of or resulting from all acts or omissions in connection with this contract caused in whole or in part by Artist or Artist's Agents, regardless of whether or not caused in part by an act or omission, including negligence, of City. Artist is not obligated under this section to indemnify City for the sole negligence of City.
- D. Nothing in this section shall apply to indemnification for professional negligence which is specified in a separate provision of this contract.

Sec. 17. Indemnification for Professional Negligence. Artist shall indemnify, and hold harmless City and any of its agencies, officials, officers, or employees from and against all claims, damages, liability, losses, costs, and expenses, including court costs and reasonable attorneys' fees, to the extent caused by any negligent acts, errors, or omissions of the Artist, its officers, employees, subconsultants, subcontractors, successors, assigns, invitees and other agents, in the performance of professional services under this contract. Artist is not obligated under this section to indemnify City for the negligent acts of City or any of its agencies, officials, officers, or employees.

Sec. 18. Insurance

- A. Artist shall procure and maintain in effect per the requirements below, insurance coverage not less than the types and amounts specified below. In the event that additional insurance, not specified herein, is required during the term of this contract, Artist shall supply such insurance at City's cost. Policies containing a Self-Insured Retention are unacceptable to City unless City approves in writing the Artist Self-Insured Retention.
 - 1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$2,000,000 aggregate, written on an "occurrence" basis. The policy shall be written or endorsed to include the following provisions:
 - a. Severability of Interests Coverage applying to Additional Insureds
 - b. Per Project Aggregate Liability Limit or, where not available, the aggregate limit shall be \$2,000,000.
 - c. No Contractual Liability Limitation Endorsement
 - d. Additional Insured Endorsement, ISO form CG20 10, or its equivalent
 - 2. Worker's Compensation Insurance: as required by statute, including Employers Liability with limits of:
 - a. Workers Compensation Statutory
 - b. Employers Liability
 - c. \$100,000 accident with limits of:
 - d. \$500,000 disease-policy limit
 - e. \$100,000 disease-each employee
 - 3. Commercial Automobile Liability Insurance at the execution of the contract and throughout the duration of the contract: with a limit of \$1,000,000 written on an "occurrence" basis, covering

owned, hired, and non-owned automobiles. If the Artist owns vehicles, coverage shall be provided on an “any auto” basis. If the Artist does not own any vehicles, coverage shall be provided on a “hired autos” and “nonowned autos” basis. The insurance will be written on a Commercial Business Auto form, or an acceptable equivalent, and will protect against claims arising out of the operation of motor vehicles, as to acts done in connection with the contract, by Artist.

4. If applicable, Professional Liability Insurance with limits Per Claim/Annual Aggregate of \$1,000,000.
- B. The Commercial General Liability Insurance specified above shall provide that City and its agencies, officials, officers, and employees, while acting within the scope of their authority, will be named as additional insureds for the services performed under this contract. Artist shall provide to City at execution of this contract a certificate of insurance showing all required endorsements and additional insureds. The certificates of insurance will contain a provision stating that should any of the policies described in the certificate be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.
- C. If Artist provides Commercial General Liability Insurance or Professional Liability Insurance through a Subcontractor, Artist shall contractually require the Subcontractor to include City as additional insured in the Subcontractor’s policy. Artist shall deliver to City, prior to the start of any work at the project site, properly completed certificates of insurance or other evidence that the required insurance is in full force and effect, in a form acceptable to City. Artist shall contractually require its Subcontractor to defend, indemnify and hold harmless City from and against all claims arising out of or resulting from all acts or omissions in connection with this Contract caused in whole or in part by Subcontractor or Subcontractor’s agents, regardless of whether or not caused in part by any act or omission, including negligence, of City. Artist must provide evidence that this requirement has been complied in accordance with the provisions of this contract.
- D. All insurance coverage must be written by companies that have an A.M. Best’s rating of “A-V” or better, and are licensed or approved by the State of Missouri to do business in Missouri.
- E. Artist’s failure to maintain the required insurance coverage will not relieve Artist of its contractual obligation to indemnify City pursuant to Sections 16 and 17. If the coverage afforded is cancelled or changed or its renewal is refused, Artist shall give at least thirty (30) days prior written notice to City. In the event of Artist’s failure to maintain the required insurance in effect, City may order Artist to immediately stop work, and upon ten (10) days’ notice and an opportunity to cure, may pursue its remedies for breach of this contract as provided for herein and by law.
- F. In no event shall the language in this section constitute or be construed as a waiver or limitation of City’s rights or defenses with regard to sovereign immunity, governmental immunity, or other official immunities and protections as provided by the federal and state constitutions or by law.

Sec. 19. Defaults and Remedies.

- A. Artist shall be in default of this contract upon the happening of any of the following events:
 1. If Artist fails to comply with any of the provisions required of Artist under this contract, and such failure continues for a period of ten (10) days after written notice thereof is given to Artist by City; or
 2. If, by operation of law or otherwise, the right, title, or interest of Artist in this contract is transferred to, passes to, or devolves upon any other person, firm or corporation without written consent of City; or

3. Upon the levy of any attachment or execution of any process of a court of competent jurisdiction which does or will interfere with Artist's performance under this contract, and which attachment, execution or other process of such court is not enjoined, vacated, dismissed, or set aside within a period of thirty (30) days; or
 4. Upon the suspension, revocation or termination of any power, license, permit, or authority that has the effect of preventing Artist from performing under this contract.
- B. Upon the occurrence of any one or more of the events as set forth in sub-paragraphs A1 through A4 of this Section, or upon any other default or breach of this contract, City may, at City's option, exercise concurrently or successively, any one or more of the following rights and remedies without waiving such default:
1. Suspend City's performance withhold payment or invoke any other legal or equitable remedy after giving Artist notice and opportunity to correct such default or breach.
 2. Interplead funds to a court or pay any sum required to be paid by Artist to parties other than City, and which Artist has incurred in connection with this contract and failed to pay. Any amount so paid in good faith by City, together with interest thereon at the maximum rate provided by law from the date of such payment, and all expenses connected therewith shall be repaid by Artist to City on demand; or
 3. Enjoin any breach or threatened breach by Artist of any covenants, agreements, terms, provisions or conditions hereof; or
 4. Bring suit for the performance of any covenant devolving upon Artist for performance or damage thereof, all without terminating this contract; or
 5. Terminate this contract upon ten (10) days written notice to Artist, specifying date of termination.

Sec. 20. Rights and Remedies Cumulative and Not Exclusive. All rights and remedies granted to City herein and any other rights and remedies which City may have at law and in equity are hereby declared to be cumulative and not exclusive, and the fact that City may have exercised any remedy without terminating this contract shall not impair City's rights thereafter to terminate or to exercise any other remedy herein granted or to which City may be otherwise entitled.

Sec. 21. Americans with Disabilities Act. Artist agrees to comply, during the course of this contract, with all provisions of the Americans with Disabilities Act, Public Law 101-336 as well as 28 CFR parts 35 and 36 and 29 CFR part 1630, as applicable and as amended from time to time.

Sec. 22. Merger. This contract, including any referenced Attachments, constitutes the entire agreement between City and Artist with respect to this subject matter, and supersedes all prior agreements between City and Artist with respect to this subject matter, and any such prior agreement shall be void and of no further force or effect as of the date of this contract.

Sec. 23. Modification.

- A. Unless stated otherwise in this contract, no provision of this contract may be waived, modified or amended except by written amendment signed by City and Artist.
- B. No act, conversation or communication with any officer, agent or employee of City, either before or after the execution of this contract, shall affect or modify any term or terminology of this contract and any such act, conversation or communication shall not be binding upon City or Artist.

Sec. 24. Binding Effect. This Contract shall be binding upon City and Artist and their successors in interest.

Sec. 25. Representations and Warranties. City and Artist each certify that it has the power and authority to execute and deliver this contract, to use the funds as contemplated hereby and to perform this contract in accordance with its terms.

Sec. 26. Prevailing Wage.

A. Prevailing Wage.

1. Artist shall comply and require its Subcontractors to comply with;
 - a. Sections 290.210 to 290.340, RSMo the State of Missouri Prevailing Wage Law (the “Law”); and
 - b. 8 CSR 30-3.010 to 8 CSR 30-3.060, the Prevailing Wage Law Rules (the “Rules”); and
 - c. the Annual Wage Order (Wage Order) issued by the State of Missouri’s Department of Labor and Industrial Relations; and
 - d. any applicable Annual Incremental Wage Increase (Wage Increase) to the Annual Wage Order.
2. The Law, Rules, Wage Order and any Wage Increase are incorporated into and made part hereof this Contract and shall be collectively referred to in this Section as the “Prevailing Wage Requirements.” In the event this Contract is renewed for an additional term, the Wage Order in effect as of the commencement date of the additional term, as amended by any applicable Wage Increase, shall be deemed incorporated herein and shall apply to and remain in effect for the duration of the additional term. The new Wage Order and any applicable Wage Increase shall govern notwithstanding the fact that the Wage Order being replaced might be physically attached to this Contract.
3. Artist shall pay and require its Subcontractors to pay to all workers performing work under this Contract not less than the prevailing hourly rate of wages for the class or type of work performed by the worker in accordance with the Law, Rules, Wage Order and any applicable Wage Increase. Artist shall take whatever steps are necessary to insure that the prevailing hourly wage rates are paid and that all workers for Artist and each of its Subcontractors are paid for the class or type of work performed by the worker in accordance with the Prevailing Wage Requirements.
4. Artist shall keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City’s:
 - a. Keep and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to keep full and accurate records on City’s “Daily Labor Force Report” Form indicating the worker’s name, occupational title or classification group and skill and the workers’ hours. City shall furnish blank copies of the Daily Labor Force Report Form to Artist for its use and for distribution to Subcontractors. Artist shall submit its and its Subcontractors Daily Labor Force Reports to City each day; and
 - b. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in a format prescribed by the City, Certified Payroll Report Information indicating the worker’s name, address, social security number, occupation(s), craft(s) of every worker employed in connection with the public work together with the number of hours worked by each worker and the actual wages paid in connection with the Project and other pertinent information as requested by the City; and
 - c. Submit, and require each of its Subcontractors engaged in the construction of public works in performance of the Contract to submit, electronically, in format prescribed by the City, a

Payroll Certification. The Payroll Certification must be signed by the employee or agent who pays or supervises the payment of the workers employed under the Contract for the Artist and each Subcontractor.

- d. The Daily Labor Force Report, documents used to compile information for the Certified Payroll Report, and Payroll Certification are collectively referred to in this Section as the "Records."
5. Artist shall make all of Artist's and Subcontractors' Records open to inspection by any authorized representatives of City and the Missouri Department of Labor and Industrial Relations at any reasonable time and as often as they may be necessary and such Records shall not be destroyed or removed from the State of Missouri for a period of one (1) year following the completion of the public work in connection with which the Records are made. Artist shall have its and its Subcontractors Certified Payroll Reports and Payroll Certifications available at the Artist's office and shall provide the Records to the City electronically at City's sole discretion. In addition, all Records shall be considered a public record and Artist shall provide the Records to the City in the format required by the City within three (3) working days of any request by City at the Artist's cost. City, in its sole discretion, may require Artist to send any of the Records directly to the person who requested the Record at Artist's expense.
6. Artist shall post and keep posted a clearly legible statement of all prevailing hourly wage rates to be paid to all workers employed by Artist and each of its Subcontractors in the performance of this Contract in a prominent and easily accessible place at the Site of the Work by all workers.
7. If the Contract Price exceeds \$250,000.00, Artist shall and shall require each Subcontractor engaged in any construction of public works to have its name, acceptable abbreviation or recognizable logo and the name of the city and state of the mailing address of the principal office of the company, on each motor vehicle and motorized self-propelled piece of equipment which is used in connection with the Project during the time the Artist or Subcontractor is engaged on the project. The sign shall be legible from a distance of twenty (20') feet, but the size of the lettering need not be larger than two (2") inches. In cases where equipment is leased or where affixing a legible sign to the equipment is impractical, the Artist may place a temporary stationary sign, with the information required pursuant to this section, at the main entrance of the Project in place of affixing the required information on the equipment so long as such sign is not in violation of any state or federal statute, rule or regulation. Motor vehicles which are required to have similar information affixed thereto pursuant to requirements of a regulatory agency of the state or federal government are exempt from the provisions of this subsection.
8. Artist must correct any errors in Artist's or any Subcontractors' Records, or Artist's or any Subcontractors' violations of the Law, Rules, Annual Wage Order and any Wage Increase within fourteen (14) calendar days after notice from City.
9. Artist shall and shall require its Subcontractors to cooperate with the City and the Department of Labor and Industrial Relations in the enforcement of this Section, the Law, Rules, Annual Wage Order and any Wage Increase. Artist shall and shall require its Subcontractors to permit City and the Department of Labor and Industrial Relations to interview any and all workers during working hours on the Project at Artist's sole cost and expense.
10. Artist shall file with City, upon completion of the Project and prior to final payment therefore, affidavits from Artist and each of its Subcontractors, stating that each has fully complied with the provisions and requirements of the Missouri Prevailing Wage Law. City shall not make final payment until the affidavits, in proper form and order, from Artist and each of its Subcontractors, are filed by Artist.

11. Artist shall forfeit as a statutory penalty to the City one hundred dollars (\$100.00) for each worker employed, for each calendar day, or portion thereof, such worker is paid less than the prevailing hourly rates for any work done under this Contract, by Artist or by any of Artist's Subcontractors. If Artist or any of its Subcontractors have violated any section(s) of 290.210 to 290.340, RSMo, in the course of the execution of the Contract, City shall when making payments to the Artist becoming due under this Contract, withhold and retain therefrom all sums and amounts due and owing as a result of any violation of sections 290.210 to 290.340, RSMo.

B. Prevailing Wage Damages. Artist acknowledges and agrees that, based on the experience of City, violations of the Missouri Prevailing Wage Act, whether by Artist or its Subcontractors, commonly result in additional costs to City. Artist agrees that additional costs to City for any particular violation are difficult to establish and include but are not limited to: costs of construction delays, additional work for City, additional interest expenses, investigations, and the cost of establishing and maintaining a special division working under the City Manager to monitor prevailing wage compliance.

1. In the event of the failure by Artist or any of its Subcontractors to pay wages as provided in the Missouri Prevailing Wage Act, City shall be entitled to deduct from the Contract Price, and shall retain as liquidated damages, one hundred dollars (\$100.00) per day, per worker who is paid less than the prevailing hourly rate of wages, to approximate the additional costs. The sum shall be deducted, paid or owed whether or not the Contract Times have expired.

2. City shall give written notice to Artist setting forth the workers who have been underpaid, the amount of the statutory penalty and the amount of the liquidated damages as provided for in this Subparagraph. Artist shall have fourteen (14) calendar days to respond, which time may be extended by City upon written request. If Artist fails to respond within the specified time, the City's original notice shall be deemed final. If Artist responds to City's notice, City will furnish Artist a final decision in writing within five (5) days of completing any investigation.

Sec. 27. Workforce. If Artist is required to pay prevailing wages for the work performed pursuant to this Contract, Artist agrees to comply with all requirements of City's Construction Employment Program as enacted in City's Code, Sections 3-501 through 3-527 and as hereinafter amended. Artist shall meet or exceed the construction employment goals unless the same shall have been waived in the manner provided by law. Artist's compliance with this provision is a material part of this Contract.

Sec. 28. Professional services certification. Code Section 2-83, prohibiting contracts with certain attorneys, architects, engineers and other professionals thereunder, shall apply to this contract. Artist certifies that it is not an architect, engineer, or other professional, exclusive of medical doctors or appraisers, who at the time of the issuance of this contract, serves as an expert witness for any litigation against City, and that it will not serve as an expert witness for any litigation against City during the term of this contract.

Sec. 29. Design Standards and Endorsement.

A. Except as otherwise directed in writing by City, Artist shall use all applicable design standards required by federal, state, local laws or codes or such standards recognized and used in the industry in the performance of services under this contract.

B. Artist shall endorse all plans and specifications, or estimates, and engineering data furnished under this contract if prepared by Artist. All subcontractors as appropriate shall endorse their respective plans and specifications, or estimates, and engineering data furnished for the project.

C. Artist shall monitor quality assurance for their design services and shall revise the design and plans at their own expense in case of error or oversight in design by Artist.

Sec. 30. Governing Law. This contract shall be construed and governed in accordance with the laws of the State of Missouri without giving effect to Missouri's choice of law provisions. City and Artist: (1) submit to the jurisdiction of the state and federal courts located in Jackson County, Missouri; and no other (2) waive any and all objections to jurisdiction and venue; and (3) will not raise forum non conveniens as an objection to the location of any litigation.

Sec. 31. Compliance with Laws. Artist shall comply with all federal, state and local laws, ordinances and regulations applicable to the work and this contract.

Sec. 32. Termination for Convenience.

- D. City may, at any time upon ten (10) days' notice to Artist specifying the effective date of termination, terminate this contract, in whole or in part. If this contract is terminated by City, City shall be liable only for payment for services rendered before the effective date of termination. Artist shall prepare an accounting of the services performed and money spent by Artist up to the effective date of termination and shall return to City and remaining sums within thirty (30) days of such date.
- E. If this contract is terminated prior to Artist's completion of services, all work or materials prepared or obtained by Artist pursuant to this contract shall become City's property.
- F. If this contract is terminated prior to Artist's completion of the services to be performed hereunder, Artist shall return to City any sums paid in advance by City for services that would otherwise have had to be rendered between the effective date of termination and the original ending date of the contract. Artist shall prepare an accounting of the services performed and money spent by Artist up to the effective date of termination and shall return to City any remaining sums within thirty (30) days of such date.

Sec. 33. Waiver. Waiver by City of any term, covenant, or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any term, covenant or condition. No term, covenant, or condition of this contract can be waived except by written consent of City, and forbearance or indulgence by City in any regard whatsoever shall not constitute a waiver of same to be performed by Artist to which the same may apply and, until complete performance by Artist of the term, covenant or condition, City shall be entitled to invoke any remedy available to it under this contract or by law despite any such forbearance or indulgence.

Sec. 34. Acceptance. No payment made under this contract shall be proof of satisfactory performance of the contract, either wholly or in part, and no payment shall be construed as acceptance of deficient or unsatisfactory work.

Sec. 35. Modification. Unless stated otherwise in this contract, no provision of this contract may be waived, modified or amended except in writing signed by City.

Sec. 36. Headings; Construction of Contract. The headings of each section of this contract are for reference only. Unless the context of this contract clearly requires otherwise, all terms and words used herein, regardless of the number and gender in which used, shall be construed to include any other number, singular or plural, or any other gender, masculine, feminine or neuter, the same as if such words had been fully and properly written in that number or gender.

Sec. 37. Severability of Provisions. Except as specifically provided in this contract, all of the provisions of this contract shall be severable. In the event that any provision of this contract is found by a court of competent jurisdiction to be unconstitutional or unlawful, the remaining provisions of this contract shall be valid unless the court finds that the valid provisions of this contract are so essentially and inseparably connected with and so dependent upon the invalid provision(s) that it cannot be presumed that the parties to this contract could have included the valid provisions without the invalid provision(s); or unless the court finds that the valid provisions, standing alone, are incapable of being performed in accordance with the intentions of the parties.

Sec. 38. Records.

- G. For purposes of this section:
 - 1. "City" shall mean the City Auditor, the City's Internal Auditor, the City's Director of Human Relations, the City Manager, the City department administering this contract and their delegates and agents.
 - 2. "Record" shall mean any document, book, paper, photograph, map, sound recordings or other material, regardless of physical form or characteristics, made or received in connection with this contract and all contract amendments and renewals.
- H. Artist shall maintain and retain all Records for a term of five (5) years that shall begin after the expiration or termination of this contract and all contract amendments. City shall have a right to examine or audit all Records and Artist shall provide access to City of all Records upon ten (10) days written notice from City.

Sec. 39. Affirmative Action.

- I. If this Contract exceeds \$300,000.00 and Artist employs fifty (50) or more people, Artist shall comply with City's Affirmative Action requirements in accordance with the provisions of Chapter 3 of City's Code, the rules and regulations relating to those sections, and any additions or amendments thereto; in executing any Contract subject to said provisions, Artist warrants that it has an affirmative action program in place and will maintain the affirmation action program in place for the duration of the Contract. Artist shall not discriminate against any employee or applicant for employment because of race, color, sex, religion, national origin or ancestry, disability, sexual orientation, gender identity or age in a manner prohibited by Chapter 38 of City's Code. Artist shall:
 - 1. Submit, in print or electronic format, a copy of Artist's current certificate of compliance to the City's Human Relations Department (HRD) prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years. If, and only if, Artist does not possess a current certification of compliance, Artist shall submit, in print or electronic format, a copy of its affirmative action program to HRD prior to receiving the first payment under the Contract, unless a copy has already been submitted to HRD at any point within the previous two calendar years.
 - 2. Require any Subcontractor awarded a subcontract exceeding \$300,000.00 to affirm that Subcontractor has an affirmative action program in place and will maintain the affirmative action program in place for the duration of the subcontract.
 - 3. Obtain from any Subcontractor awarded a subcontract exceeding \$300,000.00 a copy of the Subcontractor's current certificate of compliance and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed. If, and only if, Subcontractor does not possess a current certificate of compliance, Artist shall obtain a copy of the Subcontractor's affirmative action program and tender a copy of the same, in print or electronic format, to HRD within thirty (30) days from the date the subcontract is executed.
- J. City has the right to take action as directed by City's Human Relations Department to enforce this provision. If Artist fails, refuses or neglects to comply with the provisions of Chapter 38 of City's Code, then such failure shall be deemed a total breach of this Contract and this Contract may be terminated, canceled or suspended, in whole or in part, and Artist may be declared ineligible for any further contracts funded by City for a period of one (1) year. This is a material term of this Contract.

Sec. 40. Tax Compliance. Artist shall provide proof of compliance with City's tax ordinances administered by the City's commissioner of revenue as a precondition to City making the first payment under this contract or any contract when the total contract amount exceeds \$160,000.00. If Artist performs work on a contract that is for a

term longer than one year, the Artist also shall submit to City proof of compliance with City's tax ordinances administered by City's commissioner of revenue as a condition precedent to City making final payment under the contract.

Sec. 41. Assignability or Subcontracting. Artist shall not subcontract, assign or transfer any part or all of Artist's obligations or interests without City's prior approval. If Artist shall subcontract, assign, or transfer any part of Artist's interests or obligations under this contract without the prior approval of City, it shall constitute a material breach of this contract.

Sec. 42. Conflicts of Interest. Artist certifies that no officer or employee of City has, or will have, a direct or indirect financial or personal interest in this contract, and that no officer or employee of City, or member of such officer's or employee's immediate family, either has negotiated, or has or will have an arrangement, concerning employment to perform services on behalf of Artist in this contract.

Sec. 43. Buy American Preference. It is the policy of City that any manufactured goods or commodities used or supplied in the performance of any City contract or any subcontract hereto shall be manufactured or produced in the United States whenever possible.

Sec. 44. Independent Contractor. Artist is an independent contractor and is not City's agent. Artist has no authority to take any action or execute any documents on behalf of City.

Sec. 45. Employee Eligibility Verification. If this contract exceeds five thousand dollars (\$5,000.00), Artist shall execute and submit an affidavit, in a form prescribed by City, affirming that Artist does not knowingly employ any person in connection with the contracted services who does not have the legal right or authorization under federal law to work in the United States as defined in 8 U.S. C. § 1324a(h)(3). Artist shall attach to the affidavit documentation sufficient to establish Artist's enrollment and participation in an electronic verification of work program operated by the United States Department of Homeland Security (E-Verify) or an equivalent federal work authorization program operated by the United States Department of Homeland Security to verify information of newly hired employees, under the Immigration Reform and Control Act of 1986. Artist may obtain additional information about E-Verify and enroll at <https://www.e-verify.gov/>. For those Artists enrolled in E-Verify, the first and last pages of the E-Verify Memorandum of Understanding that Artist will obtain upon successfully enrolling in the program shall constitute sufficient documentation for purposes of complying with this Section. Artist shall submit affidavit and attachments to City prior to execution of the contract, or at any point during the term of the contract if requested by City.

Sec. 46. Missouri Sales Tax Exemption. Pursuant to Section 144.062, RSMo, City is a Missouri exempt entity and tangible personal property to be incorporated or consumed in the construction of this Project may be purchased without sales tax. City shall furnish Artist a Missouri Project Exemption Certificate for Sales Tax at the time of issuance of the Notice to Proceed.

Sec. 47. Contract Authorization. Any contract for an amount over \$400,000.00 requires City Council approval.

Sec. 48. Effectiveness; Date. This contract will become effective when City's Director of Finance has signed it. The date this contract is signed by City's Director of Finance will be deemed the date of this contract.

Sec. 49. Annual Appropriation of Funds.

- A. Multi-year term supply and service contracts and leases and the exercise of options to renew term contracts are subject to annual appropriation of funds by the City Council. Payments made under term contracts and leases are considered items of current expense. Purchase orders are funded when issued, therefore are current expense items and are not subject to any subsequent appropriation of funds.

- B. In the event sufficient funds are not appropriated for the payment of lease payments or anticipated term contract payments required to be paid in the next occurring lease or contract term and if no funds are legally available from other sources, the lease or contract may be terminated at the end of the original term or renewal term and the CITY shall not be obligated to make further payments beyond the then current original or renewal term. The CITY will provide notice of its inability to continue the lease or contract at such time as the Manager of Procurement Services is aware of the non-appropriation of funds; however, failure to notify does not renew the term of lease or contract. If a lease is cancelled, the events of default will occur as described in the lease and/or the section titled TERMINATION FOR DEFAULT. The CITY has no monetary obligations in event of termination or reduction of a term contract since such contracts represent estimated quantities and are not funded as a contract, but only to the extent of purchase orders issued.

THIS AGREEMENT CONTAINS INDEMNIFICATION PROVISIONS

ARTIST

I hereby certify that I have the authority to execute

this document on behalf of ARTIST

Contractor: _____

By: _____

Title: _____

Date: _____

APPROVED AS TO FORM

Assistant City Attorney (Date)

KANSAS CITY, MISSOURI

By: _____

Title: _____

Date: _____

ATTACHMENT A- SCOPE OF SERVICES

KCI Art Project- Development of “Wings”

A. Project Understanding

Artist has been selected by the General Services Department to develop the work of art “Wings” for the north end of the Check-In Hall area in the KCI New Single Terminal in accordance with the attached proposal, while allowing for design refinements due to feedback from the KCI New Single Terminal project team and authorities having jurisdiction including, but not limited to, engineering needs and compliance with building and safety codes.

1. City will provide technical support services, as reasonably requested by the Artist, in order to permit the Artist to prepare and submit the Working Drawings.
 - a. The City shall use its best efforts to facilitate the work of the Artist and to assist the Artist, if necessary, in connection with the Artist’s services.

B. Scope of Services

1. Preliminary Phase, Design and Coordination

a. Artist will work with the KCI New Single Terminal Design Team to determine the specific location of the Work and prepare and submit detailed working drawings and plans and specifications, including but not limited to foundation plans, connection details, special installation details, lighting plans, calculations of foundation design, calculations of structural design, specifications which clearly outline any special materials or installation methods required (collectively “Working Drawings”) for fabrication and installation of the Work for approval by the KCMO Municipal Art Commission.

b. Artist shall provide detailed Working Drawings and Plans and Specifications to KCAD Including but not limited to:

(1) Sprinkler coverage analysis may be required and may need to be provided by artist.

(2) Structural loading and construction documents need to be submitted for review.

c. Artist shall attend meetings with City and design team for Art approvals and coordination.

d. Artist will not proceed with the Work until the City has approved the Site and Plans and Specifications and issued written authorization to proceed.

e. Work will be completed as set out in **Attachment B – Schedule of Performance**.

2. Fabrication

a. Artist shall fabricate the Work in accordance with the approved proposal.

b. City shall have the right to inspect the Work at reasonable times during the fabrication at City’s expense

3. Shipping and Delivery

a. Artist shall notify the City for delivery and final preparation of the site for installation of the Work.

b. Artist shall oversee the transportation of all components of the Work to KCI New Single Terminal.

4. Installation and Final Acceptance

- a. Artist &/or Artists team shall comply with all safety protocols and security access requirements. Completing on site Safety Training will be required.
- b. Installation and maintenance details to be submitted to The City by Artist.
- c. Artist shall install the Work. Artist will be responsible for providing any installation equipment (i.e. lifts, scaffolding, etc.) required to install the art and supervise any installation assistance.
- d. Artist shall advise, consult, and inspect the completed installation of the Work at the site to ensure that the installation is in conformance with the proposal.
- e. The Artist will provide information for a plaque that the City will have fabricated and installed on site as specified by the KCMO One Percent for Art program.
- f. The Artist is responsible for contracting with a photographer to document the Work and will provide hi-resolution, print quality digital photographs to the Public Art Administrator for use in accordance with the Artist's copyright in Section 10 of this contract.

5. Final Acceptance.

- a. The Artist will advise City in writing when all services required under **Attachment A - Scope of Services**, have been completed. City will make a final inspection with the Artist and will notify the Artist in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. Artist shall immediately take such measures as are necessary to complete such work or remedy such deficiencies.
- b. Prior to final acceptance, the Artist will provide City with a description of the methods of cleaning, preserving and maintaining the Work.
- c. City will notify the Artist of its final acceptance of the Work. Final acceptance shall be effective as of the date City's notification of final acceptance.
- d. Artist will guarantee to make good, at its own expense and in accordance with the instructions of City, any and all faulty or defective material or workmanship which may appear in the Artist's work for a period of one (1) year from the date of final acceptance.

ATTACHMENT B- SCHEDULE OF PERFORMANCE

KCI Art Project- Development of "Wings"

Schedule of Performance. The services required of the Artist as set forth in this contract will be completed in accordance with the schedule for completion of the Work as outlined by the project schedule, provided by the design/build team and approved in writing by City, but the time limits may be extended or modified by written agreement between the Artist and City.

- A. Design and Coordination
 - 1. Artist shall complete City paperwork, licenses, insurances and required documents as outlined in the Contract. (30 days)
 - 2. Artist shall complete the Work per the Production Schedule in Section E below.
 - 3. Artist shall provide detailed Working Drawings and Plans and Specifications to City. (60 days)
 - 4. Attend meetings with City and design team for Art approvals and coordination. (monthly)
- B. Fabrication
 - 1. Fabricate the Art in accordance with the proposal. See Section E below.
 - 2. Attend monthly check-in meetings with City and design team for fabrication milestones.
- C. Shipping and Delivery
 - 1. Artist shall notify City in writing when the Work is complete and ready to deliver and install.
- D. Installation: to begin October 2022, See Section E below.
 - 1. Artist &/or Artists team shall comply with all safety protocols and security access requirements and attend on-site safety training as required prior to installation.
 - 2. Installation and maintenance details to be submitted to The City by Artist.
 - 3. City agrees to grant reasonable extensions of time to the Artist in the event that there is a delay caused by conditions beyond the Artist's control or Acts of God render timely performance of the Artist's services impossible. Failure to fulfill contractual obligations due to conditions beyond the Artist's reasonable control will not be considered a breach of contract; but the obligations will be suspended only for the duration of the conditions.
 - 4. City will notify Artist of final acceptance.
 - 5. Final Close-Out and Final Payment
 - a. Within thirty (30) days of final acceptance of the Work, Artist shall provide City with a description of the methods of cleaning, preserving and maintaining the Work.
 - b. Upon acceptance of preservation submittal by City, Artist shall submit final payment application invoice.
 - 6. Inauguration/Dedication
 - a. The Artist will be available at a mutually agreed to time for the inauguration or dedication ceremonies of the work, if any.
- E. Production Schedule
 - 1. August 2021 Agreement execution: contract signed.
 - 2. August 2021 through Dec 2022: Artist will attend monthly (virtual) check-in meetings with design team, stakeholders and KCMO City Administrator to track project progress.
 - 3. Summer/Fall 2021: KCI site-visit, meet with design team (*additional site visits to be scheduled as needed*)
 - 4. Aug-Sept 2021; Artist to further develop plinth details, working drawings, lighting design, material specifications, etc. for final design of art piece
 - 5. Oct 2021: Artist to finalize and submit artwork and plinth details, and resolve stakeholder comments. Final design approval to proceed with fabrication of artwork. (see additional dates for reference below in 5a,5b,5c, 5d)
 - a. September 2021: Wall Close-In
 - b. November 2021-May 2022: Installation of power for lighting

- c. January 2022: Ceiling work close-in final
- d. May-July 2022: Flooring terrazzo installation
- 6. Fall 2022: Artwork fabrication complete. Packing and shipping.
- 7. Delivery of artwork to site October/November 2022.
- 8. Artist on site November 2022 for artwork installation with Installation Team.
- 9. December 2022: Last day of install, final walk through with City of Kansas City, Mo. representatives for final approval.
- 10. March 2023: New Single Terminal and Parking at KCI Opens