

**RESOLUTION NO. R 14-38**

**A RESOLUTION AUTHORIZING EXECUTION OF A CONTRACT WITH JOSHUA WIENER FOR THE COMMISSION OF AN ORIGINAL SCULPTURE FOR INSTALLATION AT LINDEN SQUARE.**

**WHEREAS**, the Arts Commission formed an artist selection panel who evaluated eleven applicants and recommended Joshua Wiener to the City Council; and

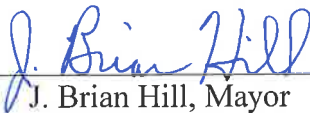
**WHEREAS**, the artist's qualifications were presented to the Council at the Study Session held on June 9<sup>th</sup>, 2014.

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, AS FOLLOWS:**


**THAT**, the City Manager of the City of Gladstone, Missouri, is hereby authorized to execute a contract for the commission of an original sculpture with Joshua Wiener in the amount of \$30,000.00.

**FURTHER, THAT** funds in the total amount of \$30,000.00 are hereby authorized for such purpose from the Capital Improvement Sales Tax Fund.

**INTRODUCED, READ, PASSED AND ADOPTED BY THE COUNCIL OF THE CITY OF GLADSTONE, MISSOURI, THIS 23rd DAY OF JUNE, 2014.**

  
\_\_\_\_\_  
J. Brian Hill, Mayor

ATTEST:

  
\_\_\_\_\_  
Ruth E. Bocchino, City Clerk

## **ART PURCHASE CONTRACT**

THIS CONTRACT is made and entered into this 31 day of July, 2014, by and between The City of Gladstone, Missouri, a Missouri statutory city, ("City") and Joshua Wiener, ("Artist").

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

### **SECTION 1. Services to be Performed.**

Artist shall perform those services set forth in the Scope of Services attached hereto and incorporated herein as Exhibit 1.

### **SECTION 2. Responsibilities of City.**

City shall perform those things set forth in the attached Exhibit 2 which is hereby incorporated herein.

### **SECTION 3. Term of Contract.**

This Contract shall begin upon execution and shall end no later than 10-15-14.

Time is of the essence for the performance of Artist's services.

### **SECTION 4. Compensation and Reimbursable.**

A. The maximum amount that City shall pay Artist under this Contract is Thirty Thousand Dollars (\$30,000.00).

City is not liable for any obligation incurred by Artist except as approved under the provisions of this contract.

B. 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. \$ 7,500 upon execution of this Contract.
2. \$ 7,500 upon design review and approval by City.
3. \$ 4,500 upon certification by Artist that fabrication of the work is 50% complete.
4. \$ 4,000 upon certification by Artist that fabrication of the work is 100% complete.

5. \$ 3,500 upon delivery and installation of the work to the site.
6. \$ 3,000 within thirty (30) days following final acceptance of work.

C. Conditions Precedent to Payment.

1. Warranties of Title. The Artist represents and warrants that:
  - (a) The work is solely the result of the artistic effort of the Artist;
  - (b) The work is unique and original and does not infringe upon any copyright;
  - (c) Neither the work nor a duplicate has been accepted for sale elsewhere;
  - (d) The work is free and clear of any liens from any source; and
  - (e) Prior to final payment, Artist shall furnish City with notarized statements from the fabricator, if applicable, and all other suppliers of materials used in the work that all monies due them have been paid.
  
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, and
  
3. No request for payment will be processed unless the request is in proper form, correctly computed, and is approved as payable under the terms of this Contract.

**SECTION 5. Notices.**

All notices required by this Contract shall be in writing sent by regular U.S. mail, postage prepaid, commercial overnight courier, or facsimile to the following:

City  
 Sheila Lillis  
 Director, Parks and Recreation  
 7010 N. Holmes  
 Gladstone, MO 64118-2646

Artist

\_\_\_\_\_

City, State, Zip

Facsimile: (816) 436-2228

( ) \_\_\_\_\_

**SECTION 6. 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 the City.

**SECTION 7. Title and Ownership.**

Upon completion and installation of the work and upon final acceptance and final payment to the Artist by the City, title to the work shall pass to the City.

**SECTION 8. 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 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 the City.
- B. The Artist grants to City a license to use photographic reproductions of the work in its web-site, 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 the 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.

**SECTION 9. No Gratuities or Kickbacks.**

- A. **Gratuities.** Artist represents and warrants that it has not and will not offer or give any City elected official, employee, commission or board member 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 therefor.
- B. **Kickbacks.** Artist represents and warrant 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 with Artist or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

**SECTION 10. Conflicts of Interest.**

The provisions of City ordinances and policies prohibiting City elected officials, employees, board or commission members from having a financial or personal interest in any contract with City shall apply to this Contract. Artist represents and warrants that no elected official, employee, board or commission member has, or will have a direct or indirect financial or personal interest in the Contract, and that no elected official, employee, board or commission member or member of such person'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.

**SECTION 11. Assignment and Subletting.**

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.

**SECTION 12. Independent Contractor.**

Artist is an independent contractor with respect to all services performed under this Contract. Artist shall furnish all the material and do all work necessary to complete the Art according to the Contract specifications. Artist accepts full and exclusive liability for the payment of any and all premiums, contributions or taxes for workers' compensation, Social Security, unemployment benefits, or other employee benefits now or hereinafter imposed under any state or federal law which are measured by the wages, salaries or other remuneration paid to persons employed by Artist on work performed under the terms of this Contract. Artist shall defend, indemnify and save harmless City from any claims or liability for such contributions or taxes. Nothing contained in this Contract nor any act of City, or Artist, shall be deemed or construed to create any third-party beneficiary or principal and agent association or relationship with City. Artist is not City's agent and Artist has no authority to take any action or execute any documents on behalf of City.

**SECTION 13. General Indemnification.**

A. For purposes of this Section 1 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' incurred by the City in the enforcement of this indemnity obligation.
2. **Artist's Agents** means Design Professional's officers, employees, subcontractors, sub consultants, successors, assigns, invitees, and other agents.
3. **City** means City, its Program Manager/Construction Advisor and any of their agents, officials, officers, and employees.

- B. Artist's 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 the 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.

**SECTION 14. Indemnification for Professional Negligence.**

If applicable, 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, sub-consultants, 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.

**SECTION 15. Insurance.**

- A. Artist shall procure and maintain in effect throughout the duration of this Contract, and for a period of two (2) years thereafter (except that the Commercial Automobile Liability Insurance shall remain in place for 30 days following the completion of the contract), 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.
  - 1. Commercial General Liability Insurance: with limits of \$1,000,000 per occurrence and \$1,000,000 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 \$1,000,000
    - 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:

Workers Compensation Statutory  
Employers Liability  
\$100,000 accident with limits of:  
\$500,000 disease-policy limit  
\$100,000 disease-each employee

3. Commercial Automobile Liability Insurance: 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 "non-owned 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 Agreement, by Artist.
4. Professional Liability Insurance with limits Per Claim/Annual Aggregate of \$1,000,000.

- B. The policies listed above may not be canceled until after thirty (30) days written notice of cancellation to City, ten (10) days in the event of nonpayment of premium. The Commercial General and Automobile 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.
- C. All insurance coverage must be written by companies that have an A.M. Best's rating of "B+V" or better, and are licensed or approved by the State of Missouri to do business in Missouri.
- D. Regardless of any approval by City, it is the responsibility of Artist to maintain the required insurance coverage in force at all times; its failure to do so will not relieve it of any contractual obligation or responsibility. 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 an opportunity to cure, may pursue its remedies for breach of this Contract as provided for herein and by law.

#### **SECTION 16. Governing Law.**

This contract shall be construed and governed in accordance with the law of the State of Missouri. Any action in regard to the Contract or arising out of its terms and conditions must be instituted and litigated in the courts of the State of Missouri within Clay County, Missouri, and in

no other. The parties submit to the jurisdiction of the courts of the State of Missouri and waive venue.

**SECTION 17. Compliance with Laws.**

Artist shall comply with all federal, state, and local laws, ordinances and regulations applicable to the work. Artist, at its own expense, shall secure all occupational and professional licenses and permits from public or private sources necessary for the fulfillment of its obligations under this Contract. All references to "Code" shall mean City's Code of Ordinances, including any amendments thereto or recodification thereof.

**SECTION 18. Termination of Contract.**

- A. 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, when it is in City's best interest. If this Contract is terminated by City, City shall be liable under the payments provisions of this Contract only for payment for services rendered before the effective date of termination.
- B. Artist may terminate this Contract upon ten (10) days' notice to City if City is in material breach of this Contract and fails to cure the breach before the end of the ten (10) day notice period.
- C. If this Contract is terminated prior to Artist's completion of the services to be performed hereunder, then all finished or unfinished documents, including but not limited to data, studies, surveys, drawings, maps, models, photographs, reports, computer programs or other materials prepared or obtained by Artist pursuant to this contract shall become City's property.

**SECTION 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. 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
  2. Enjoin any breach or threatened breach by Artist of any covenants, agreements, terms, provisions or conditions hereof; or
  3. Bring suit for the performance of any covenant devolving upon Artist for performance or damage thereof, all without terminating this Contract; or
  4. Terminate this contract upon ten (10) days written notice to Artist, specifying date of termination.

**SECTION 20. 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 other 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.

**SECTION 21. 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.

**SECTION 22. Audit.**

- A. The City Finance Director, City's Human Resources Administrator and the City department administering this Contract shall have the right to audit this Contract and all books, documents and records relating thereto.
- B. Artist shall maintain all its books, documents and records relating to this Contract during the contract period and for three (3) years after the date of final payment.
- C. The books, documents and records of Artist in connection with this Contract shall be made available to the City Finance Director, City's Human Resources Administrator and the City department administering this Contract for inspection and audit within ten (10) days after request is made.

**SECTION 23. 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. In the event of any conflict between this Contract and any incorporated Attachments, the provisions of this Contract shall control.

**SECTION 24. 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.

**SECTION 25. 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.

**SECTION 26. Severability of Provisions.**

Except as specifically provided herein, 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 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.

**SECTION 27. Prevailing Wage.**

If applicable, Artist, and each of its subcontractors, shall pay not less than the prevailing hourly rate of wages, as determined by the Department of Labor and Industrial Relations of Missouri as set forth in the Annual Wage Order included in this Contract, to each employee of Artist or subcontractor who is engaged in the construction of public works, exclusive of maintenance work, in performance of the Contract, as required by the Missouri Prevailing Wage Act, Sections 290.220 through 290.340, RSMo. (1994).

**SECTION 28. Binding Effect.**

This Contract shall be binding upon City and Artist and their successors in interest.

**SECTION 29. 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.

**SECTION 30. Open Excavations.**

- A. Required Excavations shall be restored to the level of the adjacent surfaces as soon as practicable. Unsupervised open excavations on public properties are discouraged at all times. Every Person who for any purpose makes or causes to be made any excavation in, upon, under, through or adjoining any street, sidewalk, alley, park, boulevard, parkway or any other public properties, and shall leave any part or portion thereof open shall provide effective protection to the public.
- B. All excavations in roadways shall be protected and secured in compliance with existing federal, state and local codes and standards, including but not limited to the most current edition of the Manual of Uniform Traffic Control Devices.
- C. All unsupervised excavations not within roadways shall be protected and secured. The use of a protective cover over an excavation shall be installed so that it can sustain the weight of any persons and/or objects placed upon it. The cover shall be fixed to the ground so it cannot be moved. Protective covers shall have no opening(s) or protuberance(s) of sufficient size to cause a fall and/or injury. Advance warning devices shall be installed as necessary.

- D. Any excavation that is not covered shall be fenced in such a way that it surrounds the entire area under excavation so as to prevent entry by any persons. The fencing shall be a minimum of 42" in height. The fence shall be constructed in such a manner that it is adequately secured and will remain upright at all times under normal site conditions.
- E. All protective coverings and/or fences on excavations shall be inspected at least daily to assure integrity. Protective coverings and/or fences in heavily trafficked areas shall be inspected more often as necessary.
- F. All necessary and applicable permits shall be secured for any work contemplated on public properties before commencing any activity.

**ARTIST**

Name, address and facsimile number of Contractor

*[Handwritten Signature]*  
 \_\_\_\_\_  
 2665 Dartmouth Ave  
 \_\_\_\_\_  
 Boulder CO 80305  
 \_\_\_\_\_  
 (303) 447-2396 call first  
 \_\_\_\_\_

I hereby certify that I have authority to execute this document on behalf of Contractor.

By: *[Handwritten Signature]*  
 \_\_\_\_\_

Title: Notary  
 \_\_\_\_\_

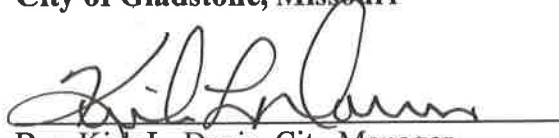
Date: 7/31/14  
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(Attach corporate seal if applicable)

ALONZO MARCONI DEADWILER JR. NOTARY PUBLIC, STATE OF COLORADO NOTARY ID 20144007831 MY COMMISSION EXPIRES APRIL 09, 2018
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**CITY**

**City of Gladstone, Missouri**



By: Kirk L. Davis, City Manager

**Attest:**

Ruth Bocchino 8/8/14  
Ruth Bocchino, City Clerk



## EXHIBIT 1

### SCOPE OF SERVICES

Artist has been selected by the Gladstone City Council to develop, design, and fabricate artwork.

#### 1. Design Development.

- A. Within <sup>thirty four</sup> (34) days of the execution of this Contract, the Artist will prepare and submit to the City 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 of methods required (Collectively "Working Drawings") for fabrication and installation of the Work for approval by the City.
  - B. The Artist will determine the specific location of the Work at the Site and submit to City for approval.
2. Guarantee that the Art shall be constructed without further compensation than that provided for in this contract.
  3. Guarantee to make good, at its own expense, and in accordance with the instructions of the City's Director of Parks and Recreation, any and all faulty or defective material or workmanship which may appear in the Artist's work within a period of one (1) year from the date of final acceptance.
  4. Commence the work on the date specified in the "Notice to Proceed" issued by the City and complete the work by the date set forth in Section 3 of the Contract.
  5. Fabricate, transport, and install Art at the Site in accordance with the proposal.
  6. Fabricate the work in accordance with the proposed concept.  
The City shall have the right to inspect the Work at reasonable times during the fabrication at the City's expense subject to the appropriation of the City.
  7. Be responsible for transportation of all components of the Work to the site and notify the City for final preparation of the site for installation of the Work.
  8. Advise, consult, and inspect the completed installation of the Work at the site to ensure that the installation is in conformance with the Proposal.
  9. Provide consultation to the City for installation of the Work.

10. The Artist will have an information plaque fabricated and installed in a mutually agreeable location as specified by the Cultural Arts Commission.

11. The Artist is responsible for contracting with a photographer to document the art work and will provide digital photographs of at least five (5) mega pixels each to the City for its use in accordance with the artist's copyright in Section 9 of this agreement.

**12. Final Acceptance.**

A. The Artist will advise the City in writing when all services required under this Scope of Services, have been completed.

B. The Artist will, prior to final acceptance of the Work, provide the City with a description of the methods of cleaning, preserving and maintaining the Work.

## EXHIBIT 2

### RESPONSIBILITIES OF CITY

1. The City will conduct reviews of plans, obtain engineering approval for the design and materials and respond to Artist with comments and/or approval in the times specified in the approved schedule.
2. The City will display the Artist's name, copyright notice, title, and date of the Work near or on the Work in a mutually acceptable location.
3. The City recognizes that maintenance of the Work on a regular basis is essential to the integrity of the Work. The City to the extent allowed by law, subject to appropriation, reasonably assures that the Work will be properly maintained and protected, taking into account the instructions of the Artist set forth in Exhibit 1 of this Contract, and will to the extent allowed by law, and subject to appropriation, reasonably protect and maintain the Work against the ravages of time, vandalism and the elements.
4. Repairs and Restoration.
  - A. The City will have the right to determine, after consultation with a Professional conservator, 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, the 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.
  - B. All repairs and restorations will be made in accordance with recognized principles of conversation.
5. Alterations of the Work or of the Site. To the extent allowed by law, the City agrees:
  - A. That it will not intentionally damage, alter, modify, or change the Work without written approval of the Artist.
  - B. The City will 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.



- C. That it is the City's intent to retain and publicly display the Work at the Site for many years. However the City is also aware that circumstances may arise that would make it prudent for the City to remove the Work from public display and/or relocate the Work to another site.
- D. In the event the City desires to remove the Work from the Site, and the removal would result in the destruction, distortion, mutilation or other modification of the Work, the 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, the City may proceed to remove the Work with no further liability to Artist.
- E. Consistent with the paragraph above 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 Work.

**FIRST AMENDMENT TO  
ART PURCHASE AGREEMENT**

The City and Artist desire to clarify and expand upon the provisions of Section 3 of the Art Purchase Contract (the "Contract") and therefore it is agreed as follows:

1. That the initial design will be delivered by the Artist to the City no later than August 15, 2014.
2. The City will provide Artist with comments and recommendations from the Arts Commission and Parks Board about the design no later than August 29, 2014.
3. The Artist will deliver his final proposed design to the City by September 5, 2014 and the design will be presented to the City Council for approval at the September 8 City Council meeting.
4. Upon approval by the City Council, the City will conduct an engineering review and approval of the design, materials, and installation plan with the assistance and input of the artist no later than September 22, 2104.
5. The Artist will complete the installation as soon as possible thereafter but in no event later than December 20, 2014.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment in four original counterparts.

ARTIST



By: Joshua Wiener

CITY



By: Kirk L. Davis, City Manager