

## CONTRACT

This CONTRACT is made in Johnson County, Kansas, by and between the PARKS AND RECREATION DEPARTMENT OF THE CITY OF OVERLAND PARK, KANSAS, hereinafter called the "CITY" and JOSEPH WELCH OF OVERLAND PARK, KANSAS, hereinafter called "SCULPTOR."

### SECTION I - SCULPTOR DUTIES

Per Exhibit A: Scope of Services attached and incorporated by reference to this CONTRACT.

### SECTION II - COMPENSATION

Per Exhibit A: Scope of Services attached and incorporated by reference to this CONTRACT. Invoices indicating the completion of project phases and corresponding fee to be compensated shall be submitted to the CITY in three payment installments.

### SECTION III - TERM OF CONTRACT

1. The initial term shall be from the execution date of this CONTRACT to the estimated completion date of May 15, 2009, with the potential for an additional 90 days if the City deems necessary.
2. This CONTRACT may be extended by the mutual written consent of the parties.
3. This CONTRACT is for sculptor services of the sculpture proposal titled "On the Go". For these services itemized in the Scope of Work the SCULPTOR will be paid \$22,500 divided into three installments.

### SECTION IV - TERMINATION

1. In the event either party perceives the other to have breached this CONTRACT or otherwise defaulted upon its terms, that party shall notify the other in writing, by restricted delivery mail, of the nature of the breach or default and the need to remedy the same. If said breach or default continues for twenty (20) days following delivery of said written notice, then the notifying party may declare this CONTRACT terminated.
2. If the CITY terminates for cause or default on the part of SCULPTOR, the CITY shall compensate SCULPTOR for the reasonable cost of services completed to date of its receipt of the termination notice. In such event, compensation shall not include anticipatory profit or consequential damages, neither of which will be allowed. The CITY also retains all its rights and remedies against SCULPTOR including but not limited to its rights to sue for damages, interest and attorney fees.
3. If the SCULPTOR terminates for cause or default on the part of the CITY, the CITY shall compensate SCULPTOR for the reasonable cost of services completed to date of its receipt of the termination notice. In such event, compensation may include anticipatory profit or consequential damages. The SCULPTOR also retains all its rights and remedies against the CITY including but not limited to his right to sue for damages, interest and attorney fees.

## SECTION V - ASSIGNMENT

The parties hereto agree that neither shall assign, sublet or transfer their interest in the CONTRACT without the written consent of the other and further agree that this CONTRACT binds the parties, their successors, trustees, assignees and legal representatives.

## SECTION VI - PRIOR VERBAL OR WRITTEN STATEMENTS NOT BINDING

It is understood and agreed that the written terms and provisions of this CONTRACT shall supersede all prior verbal and written statements of any and every official and/or other representative of the CITY and SCULPTOR and such statements shall not be effective or be construed as entering into, or forming a part of, or altering in any way whatsoever, the written CONTRACT.

## SECTION VII -INDEPENDENT CONTRACTOR

SCULPTOR is an independent contractor and as such is not an employee of the CITY. SCULPTOR is responsible for any and all federal, state and local taxes.

## SECTION VIII - COMPLIANCE WITH EQUAL OPPORTUNITY LAWS, REGULATIONS AND RULES AND OTHER LAWS

SCULPTOR agrees that:

1. SCULPTOR shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under the present CONTRACT because of race, religion, color, sex, disability, national origin ancestry, or age;
2. In all solicitations or advertisements for employees, SCULPTOR shall include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission (Commission);
3. If SCULPTOR fails to comply with the manner in which SCULPTOR reports to the Commission in accordance with the provision of K.S.A. 44-1031 and amendments thereto, SCULPTOR shall be deemed to have breached the present CONTRACT and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency;
4. If SCULPTOR is found guilty of a violation of the Kansas act against discrimination under a decision or order of the commission which has become final, SCULPTOR shall be deemed to have breached the present CONTRACT and it may be canceled, terminated or suspended, in whole or in part, by the contracting agency; and
5. SCULPTOR shall include the provisions of paragraphs (1) through (4) above in every subcontract so that such provisions will be binding upon such subcontractor. SCULPTOR further agrees that the contractor shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision in the Americans With Disabilities Act (42 U.S.C. 1201 et seq.) as well as all federal, state, and local laws, ordinances and regulations applicable to this project and to furnish any certification required by the federal, state or, local governmental agency in connection therewith.

## SECTION IX - PROHIBITION AGAINST CONTINGENT FEES

1. SCULPTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working for SCULPTOR, to solicit or secure this CONTRACT, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gifts, or any other consideration contingent upon or resulting from the award or making of this CONTRACT. For breach or violation of this warranty, the CITY may terminate this CONTRACT without liability or may, in its discretion, deduct from the Contract Price or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
2. SCULPTOR warrants that it will not accept any fee, commission, percentage, gift, or other consideration from any third party for the performance of any work under the CONTRACT.

## SECTION X - APPLICABLE LAW

The CONTRACT is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Kansas.

## SECTION XI – WARRANTY

The SCULPTOR agrees to provide any and all necessary maintenance and repairs as they pertain to structural inadequacies, to the finished sculpture for a period of one year from the finished installation date. This does not include damage due to vandalism, vehicular impact or other outside influences.

The SCULPTOR further agrees that the final product must meet the approval of city staff and minor improvements may be requested within 30 days of completion. Minor is defined as not exceeding \$1125 in value, which consists of 5% of the total compensation paid to SCULPTOR.

## SECTION XII – PURCHASE OPPORTUNITY

If for any reason the CITY decides to remove and sell the sculpture, the CITY shall provide the SCULPTOR with the first opportunity to purchase the piece at reasonable market value, not to exceed its offering price to the market at large, prior to offering the sculpture to the market at large.

## SECTION XIII – FORCE MAJEURE

In the event of proven serious illness, accident, national calamity, or other unavoidable or unforeseen occurrence, which makes the fulfillment of this CONTRACT impossible by either party, it shall be considered null and void.

## SECTION XIV – HOLD HARMLESS

Upon the CITY's acceptance of completion of the CONTRACT and payment to SCULPTOR, the CITY SHALL ASSUME ALL RESPONSIBILITY, OTHER THAN SET OUT IN Section XI above, for the sculpture and shall indemnify and hold SCULPTOR harmless from any and all

actions or causes of actions arising out of the CITY's possession and maintenance of the sculpture, and all claims for property damage, personal injury and death, of any kind whatsoever, arising out of the CITY's ownership, possession, and maintenance of the sculpture.

#### SECTION XV – REPRODUCTION OF THE IMAGE OF THE SCULPTURE

1. The SCULPTOR shall have the nonexclusive right to photograph, reproduce, and market images of the sculpture and to retain any profits therefrom for himself and his own use.
2. The CITY shall use its best efforts to credit to the SCULPTOR and any photographer in photographs of the sculpture that are used by the CITY in any written or electronic form.
3. The SCULPTOR agrees that the sculpture shall be a unique piece of work and agrees not to reproduce and/or market three dimensional reproductions of the piece, with the exception of a maquette to be used by the SCULPTOR for his own promotional purposes.

**The remainder of this page intentionally left blank.**

SECTION XVII - EXECUTION OF CONTRACT

The parties hereto have caused this CONTRACT to be executed in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

CITY OF OVERLAND PARK , KANSAS

BY: \_\_\_\_\_  
Carl Gerlach  
Mayor

ATTEST:

\_\_\_\_\_  
Marian Cook, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
J. Bart Budetti  
Senior Assistant City Attorney

CONTRACTOR

BY: \_\_\_\_\_  
Joseph Welch  
Sculptor



**EXHIBIT “A” - SCOPE OF SERVICES**

**Scope of Project – On the Go Sculpture** for the City of Overland Park south of 132<sup>nd</sup> Street and 69 Highway south between the bike hike trail and the highway on the City of Overland Park easement. SCULPTOR will work in cooperation with the Arts Coordinator, in installing the completed sculpture. The piece will be 13 feet in height and 8 feet wide at the point of the light fixtures and 27 feet in length. The final work should equate to the scale drawing represented in Exhibit B.

**Initiation Fee Paid Upon Contract Execution by the City .....\$10,500.00**

**1. Engineering Specifications on the Design of the Sculpture**

Task 1.A – The SCULPTOR agrees to provide descriptions of anchoring, footings, pier requirements and load to the City of Overland Park Parks and Recreation staff.

Task 1.B – SCULPTOR agrees to provide an installation plan to the City.

Task 1.C – The SCULPTOR agrees to work with staff to provide adequate planning and assurances that all structural and long-range installation construction requirements are fulfilled. The sculpture should be stable indefinitely, natural disasters notwithstanding.

**Fee Paid Upon Fabrication Completion .....\$6,000.00**

**2. Installation of the Finished Sculpture**

Task 2.A - The SCULPTOR will supervise site preparation. This CONTRACT does not include the cost of site preparation, including but not limited to civil improvements such as grading, utility preparation, and engineering, which is solely the responsibility of the CITY. This CONTRACT does not include the cost post-installation landscaping which is solely the responsibility of the CITY.

Task 2.B - The SCULPTOR will arrange and supervise delivery of piece to site for installation.

Task 2.C - The SCULPTOR will monitor installation process to ensure proper placement and anchoring.

Task 2.D –The SCULPTOR will advise the City Arts Coordinator as to when the installation process is complete.

Task 2.E – The SCULPTOR will perform any minor modifications or improvements in the piece to achieve CITY satisfaction as limited by section XI, paragraph 2.

Task 2.F - The SCULPTOR, if provided fourteen (14) days notice will be available for any celebration ceremony and provide appropriate insight to news media on the project.

**Fee Paid Upon acceptance of Completion of Project by the CITY .....\$6,000.00**