

CITY OF OVERLAND PARK, KANSAS

AGREEMENT BETWEEN

CITY OF OVERLAND PARK, KANSAS AND THE ARTS AND RECREATION
FOUNDATION OF OVERLAND PARK, INC.

FOR THE DONATION OF SCULPTURE AND TO PROVIDE FOR THE INSTALLATION
OF THE SCULPTURE AT THE OVERLAND PARK ARBORETUM & BOTANICAL
GARDENS

THIS AGREEMENT is made and entered into this _____ day of _____, 2013, by and between the City of Overland Park, Kansas (the "City"), and the Arts and Recreation Foundation of Overland Park, Inc. (ARFOP).

WITNESSETH:

WHEREAS, ARFOP intends to donate to the City a sculpture that ARFOP has commissioned from Gary Lee Price Studios, Inc. (picture of the sculpture is attached in Exhibit A hereto, incorporated by reference, and said piece is referred to hereafter as the "Sculpture"); and

WHEREAS, ARFOP will be responsible for the cost of the Sculpture and the shipping costs to get the Sculpture to the Overland Park Arboretum and Botanical Gardens (the "Arboretum"); and

WHEREAS, the City and ARFOP have agreed to cooperate with respect to the installation of the Sculpture on the grounds of the Arboretum, with the City providing the labor for the installation and ARFOP providing all other remaining installation costs.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties hereto agree as follows:

ARTICLE I. RESPONSIBILITIES OF ARFOP

- A. ARFOP shall be responsible for commissioning and purchasing the Sculpture from the artist.
- B. ARFOP shall provide all installation funding for materials and services related to the installation of the Sculpture.
- C. ARFOP shall accept shipment of the Sculpture.
- D. ARFOP shall arrange for the payment for all costs and all other responsibilities for the transportation and delivery of the Sculpture to the Arboretum.
- E. ARFOP shall comply with and bear all responsibilities to comply with any applicable international, federal or state law, ordinance or regulation concerning the

transportation of the Sculpture, and shall indemnify and hold the City harmless from the same.

- F. ARFOP acknowledges and agrees that once the Sculpture is installed, the Sculpture will become the property of the City.
- G. ARFOP shall host a dedication of the Sculpture on a date mutually agreed upon by the parties.
- H. ARFOP accepts that the City retains the right to decide the final location for the Sculpture.

ARTICLE II. RESPONSIBILITIES OF THE CITY

- A. The City shall be responsible for providing the labor for the installation of the Sculpture.
- B. The City shall establish a project oversight committee composed of the Director of Parks Services, the Arts Coordinator, and ARFOP.
- C. The City shall be responsible for the maintenance of the Sculpture upon completion of installation.
- D. The City accepts the Sculpture to be placed at the Arboretum.. The City retains the right to decide the final location for the Sculpture.

ARTICLE III. GENERAL PROVISIONS

- A. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. It is understood and agreed between the parties that there shall be no waiver or modification of the Agreement unless such waiver or modification is first reduced to writing and signed by all parties hereto.
- B. This Agreement is an individual contractual agreement for a capital or operational project as anticipated in the Agreement for Services between the City and ARFOP, dated _____, 2013, and the provisions of said Agreement for Services are incorporated herein by reference.
- C. All notifications to ARFOP shall be sent to the Executive Director, P.O. Box 26392, Overland Park, KS 66225, unless different notification information shall be given to the City in writing. All notifications to the City shall be sent to the Director of Parks Services, City Hall, 8500 Santa Fe Drive, Overland Park, KS 66212, unless different information is given to the Foundation in writing.
- D. Either party may terminate this Agreement if: it becomes apparent during the planning process that there will be additional costs above what is outlined in this Agreement; or if during the planning process any issues arise that are not acceptable or would make the project undesirable.
- E. Except as otherwise provided herein, neither party shall be obligated to perform, and neither party shall be deemed to be in default of its performance, if prevented by an occurrence outside of its reasonable control (a "force majeure"), including but not limited to: (a) a fire, earthquake, hurricane, wind, flood, act of God, riot, or civil commotion; (b) any law, ordinance, rule, regulation, or order of any public or military authority stemming from the existence of economic or energy controls,

hostilities, war, or governmental law and regulation; or (c) labor dispute which results in a strike or work stoppage affecting the project described in this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by an authorized representative the day and year first above written.

CITY OF OVERLAND PARK, KANSAS

By _____
Carl Gerlach, Mayor

ATTEST:

Marian Cook, City Clerk

APPROVED AS TO FORM:

Stephen B. Horner
Senior Assistant City Attorney

THE ARTS AND RECREATION FOUNDATION
OF OVERLAND PARK, INC.

By _____
Todd Roberts, President