

## CONTRACT

This CONTRACT is made in Johnson County, Kansas, by and between the RECREATION DEPARTMENT OF THE CITY OF OVERLAND PARK, KANSAS, hereinafter called the "CITY" and Larry Young of Columbia, Missouri hereinafter called "SCULPTOR."

### SECTION I - TERM OF CONTRACT

The initial term shall be from the execution date of this CONTRACT to the estimated completion date of November 1, 2011.

This CONTRACT may be extended by the mutual written consent of the parties.

### SECTION II - SCULPTOR DUTIES

To create, install and light the sculpture titled "Blackbird" by Larry Young as presented to the Community Development Committee on October 6, 2010 and approved by the Governing Body on October 18, 2010.

The aforementioned sculpture in the center of the circular planter bed on the northern most corner of the lawn at Overland Park City Hall where the 85<sup>th</sup> Street and the Santa Fe Drive intersect. The site map of the installation location is Appendix A.

1. This CONTRACT does include the cost of the foundation and installation of the sculpture.
2. This CONTRACT does not include lighting, post-installation landscaping and perpetual maintenance which are solely the responsibility of the CITY.

### SECTION III - COMPENSATION

For these services itemized in Section II the SCULPTOR will be paid \$110,950 divided into five installments. These payments will be executed based on project progress as defined in Section IV. The project bid provided by the SCULPTOR is Appendix B.

Invoices indicating the completion of project phases will be submitted to the CITY for review prior to each contractual payment. These must be accompanied by corresponding copies of third party fee receipts for all out sourced project work and lien waivers.

### SECTION IV – PERFORMANCE OF WORK

NOW THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties agree as follows:

The first payment will be twenty percent (20%) of the contract total, \$22,190, to be paid to the SCULPTOR after the following conditions are met:

1. This contract is signed and notarized by all relevant parties.
2. Sealed plans for foundations, anchoring, footings, pier requirements, structural load proving adequate planning and assurances that all structural and long-range installation construction requirements are fulfilled to CITY staff for Planning Department review to insure compliance with current code enforcement ordinances and permit issuances.
  - a. The sealed plans must demonstrate that the sculpture should be stable indefinitely under normal conditions.
  - b. Normal conditions do not include natural disasters such as a tornado or man-made disasters such as vandalism or vehicular impact.
3. The SCULPTOR must maintain general liability protection in an amount no less than \$500,000 per occurrence, listing the CITY as an additional insured and providing a certificate of same.
4. Enlargement of the sculpture mold-form from the original maquette to the final ten foot (10') size. This enlargement will be validated by the artist through the following means:
  - a. Photographs of the mold form enlargement of 'Blackbird.'
5. Lien waivers or third party receipts provided to the CITY by the SCULPTOR from all subcontractors involved in the project to this point.

The second payment of twenty percent (20%) of the contract total, \$22,190, will be paid after the SCULPTOR finishes casting of the bronze sections that will comprise the final sculpture provided the following conditions are met:

1. IF The SCULPTOR utilizes an outside foundry for the casting of the sculpture THEN the SCULPTOR will provide the CITY with a copy of the contract between the SCULPTOR and the foundry that indicates:
  - a. Development of the sculpture described in Section II; and
  - b. Noting a completion date that allows for the SCULPTOR to install the finished piece no later November 1, 2011.
2. Photographs of the cast bronze sections.
3. Lien waivers or third party receipts provided to the CITY by the SCULPTOR from all subcontractors involved in the project to this point.

The third payment of twenty percent (20%) of the contract total, \$22,190, will be paid after the SCULPTOR provides the following:

1. Photographs of the bronze sections having been welded together to begin the bronze finishing process.
2. An inspection of work to date by CITY staff and other interested parties.

3. A schedule of delivery and installation dates.
4. A listing of necessary assistance from city staff regarding road closures for equipment movements and the installation process. This includes but is not limited to:
  - a. Potential road closures.
  - b. Traffic cones and other traffic management devices.
  - c. Police and/or other CITY staff to provide traffic management during installation.
5. Lien waivers or third party receipts provided to the CITY by the SCULPTOR from all subcontractors involved in the project to this point.

The fourth payment of twenty percent (20%) of the contract total, \$22,190, will be paid after the SCULPTOR provides the following:

1. Delivery of the sculpture to the City of Overland Park at the City Hall parking lot.
2. Lien waivers or third party receipts provided to the CITY by the SCULPTOR from all subcontractors involved in the project to this point.

The fifth and final payment of twenty percent (20%) of the contract total, \$22,190, will be paid after:

1. The SCULPTOR installs the finished piece on the site indicated in Section II, this includes:
  - a. Monitoring the installation process, ensuring proper placement and anchoring.
  - b. Advising the City staff as to when the installation process is complete and installation is ready for final inspection(s).
  - c. Successful inspection by Planning Department representative.
  - d. Successful inspection by the Recreational Supervisor in charge of public art.
2. The CITY agrees to accept the sculpture as installed.
  - a. IF the CITY does not accept the sculpture, THEN the CITY must provide the SCULPTOR with:
    - i. Written notice specifying and describing the services which have not been completed to the CITY's satisfaction.
    - ii. This written notice must be submitted to the SCULPTOR within 15 days after the SCULPTOR has notified the City that the installation is complete.
    - iii. All negotiations on these matters will be addressed in good faith between both parties in writing.
3. Lien waivers or third party receipts provided to the CITY by the SCULPTOR from all subcontractors involved in the project to this point.

#### SECTION IV - TERMINATION

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.

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.

The parties hereto retain all rights and remedies against one another, including the right to sue for damages, interest and cost. In the event litigation is undertaken, attorneys' fees shall be awarded to the prevailing party.

In the event the sculptor is unable to finish the project, all previously paid monies will be returned.

#### 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; and
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); and
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; and
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. 12101 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 and the patinaed finish of 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 beyond normal weathering as described in Section 4, Items 2a and 2b.

## 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 CITY agrees that the SCULPTOR may produce up to but not more than two more castings of this sculpture provided the reproductions are not placed within a 250 mile radius of the piece commissioned by this contract. This limitation does not apply to

reproductions in a size less than 3' in height for which the CITY and the SCULPTOR agree there may be up to (20) twenty.

SECTION XVI – THE ART REPRESENTS THE SCULPTOR

The CITY agrees to make every effort protect the sculpture, however should the sculpture to be altered or destroyed, whether due to accident, natural calamity, or other unavoidable or unforeseen occurrence by the CITY or others, the work shall no longer be deemed to represent the SCULPTOR.

The CITY further agrees to seek the written input of the SCULPTOR in returning the sculpture to a state that does represent the SCULPTOR.

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SECTION XVII - EXECUTION OF CONTRACT

The parties hereto have caused this CONTRACT to be executed in triplicate this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

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: \_\_\_\_\_

Larry Young  
Sculptor

CORPORATE ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
 ) ss.  
COUNTY OF \_\_\_\_\_ )

BE IT REMEMBERED That on this \_\_\_\_ day of \_\_\_\_\_, 2010, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came \_\_\_\_\_, Sculptor, who is personally known to me to be an officer of said corporation and that such officer executed this within instrument on behalf of said Corporation, and such person duly acknowledged the execution of the same to the act and deed of said Corporation.

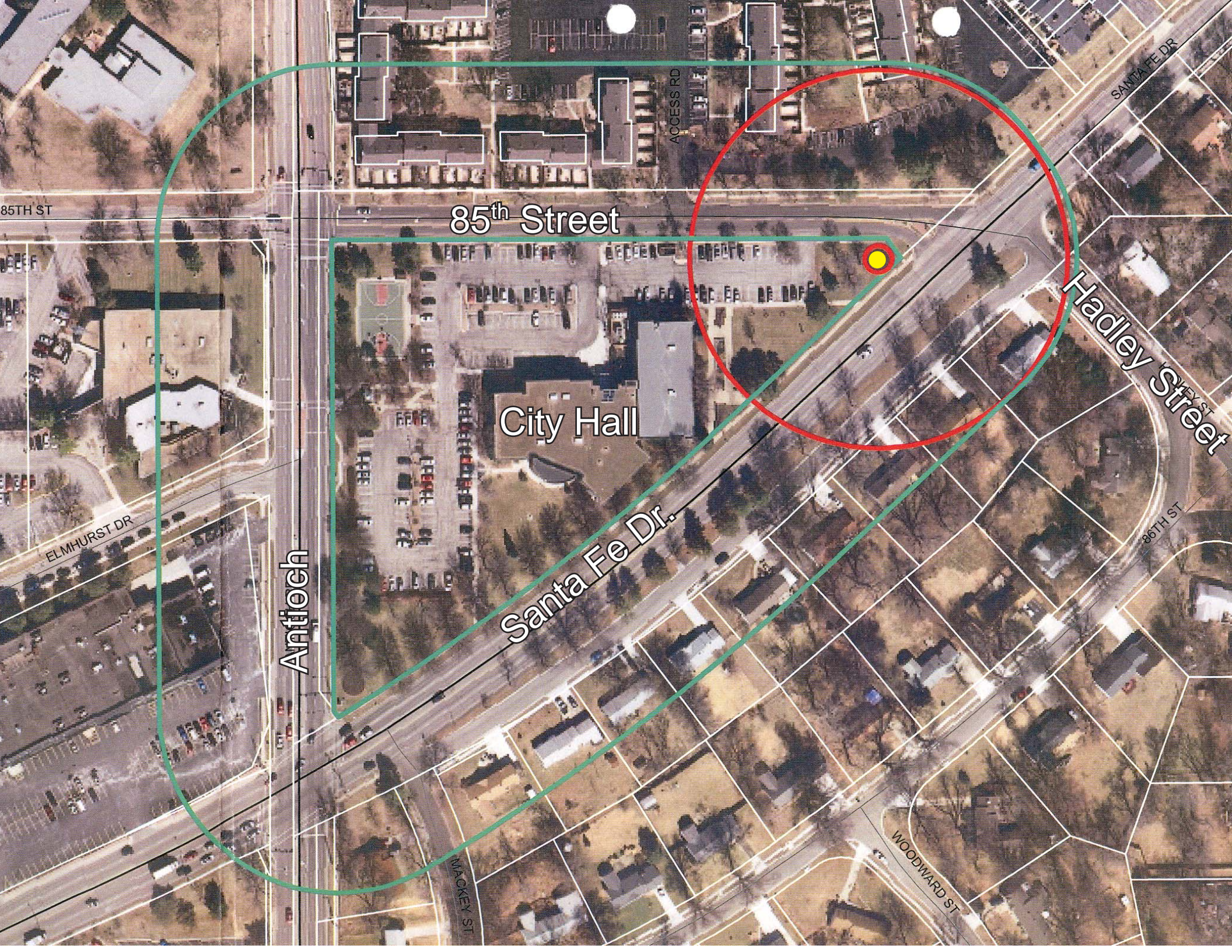
IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed my official seal the day and year above written.

\_\_\_\_\_  
Notary Public

My Appointment Expires: \_\_\_\_\_

(If the CONTRACT is not executed by the president of the corporation or general partner of the partnership, please provide documentation which authorizes the signatory to bind the corporation of partnership.)

## APPENDIX A



85TH ST

85<sup>th</sup> Street

ELMURST DR

ELMHURST DR

Antioch

City Hall

Santa Fe Dr.

ACCESS RD

SANTA FE DR

Hadley Street

86TH ST

WOODWARD ST

MACKEY ST

## APPENDIX B

**Bid for Overland Park City Hall Sculpture Project**  
**Bronze sculpture titled *Blackbird*: 10-12' high x 8' wide and 5' deep.**  
**November 8, 2010**

**BID**

1. Enlargement, casting and delivery to the site: \$100,000.
2. Concrete base and installation: \$8000 (bid includes costs for concrete work, supervision by the artist or his designee (3-4 days), and the crane and operator to lift the sculpture into place.) For more detail, see specifications below.
3. Liability Insurance \$550 includes Overland Park as a certificate holder.
4. Accountability using a results based system \$1200

**TOTAL COST: \$109,750.**

**Concrete Specifications for 7' diameter pier for *Blackbird*:**

Dig a hole in the middle of the flowerbed 7' in diameter, 4'6" deep

Place and compact 6" of ¾" gravel for sub-grade

Reinforce with (2) mats using #4 rebar tied on 1' centers

Place 12" of 4000 psi concrete mix, and install (1) mat

Place 2' of 4000 psi concrete mix, and place the other mat.

This will total 4' of concrete.

Give light broom finish.

Stain the next day with black concrete stain.

24 hours later, spray and seal with acrylic curing compound.

Concrete work will be completed over a period of 2-3 working days, weather permitting.

**Installation and Anchoring Specifications for *Blackbird*:**

Lift bronze sculpture onto concrete pier.

- Drill (8) 1" holes into concrete 8" deep.
- Attach (8) ¾" stainless steel bolts to the bottom of the sculpture.
- Lower sculpture to place bolts into the drilled holes in concrete pier.
- Fill holes with concrete epoxy to secure sculpture.
- Clean, wax, and polish sculpture.

**Accountability System**

To verify accountability on a periodic basis, the artist and the City of Overland Park agree to identify several intermediary completion points that require the artist to submit photographs verifying completion of the intermediary completion point and lien waivers from all relevant subcontractors. Upon achievement of each intermediary completion point, the City will pay the artist for the work that has been completed. For *Blackbird*, the intermediary completion points are as follows:

1. Enlargement of the sculpture from the original maquette to the 10' model
  - a. Validation by artist:
    - i. Photographs of the 10' enlargement of *Blackbird*
    - ii. Lien waivers from all subcontractors involved in the project to this point.
  - b. Payment by City: 20%
2. Casting of the bronze sections for the sculpture
  - a. Validation by artist:
    - i. Photographs of the multiple bronze sections of *Blackbird*
    - ii. Lien waivers from all subcontractors involved in the project to this point.
  - b. Payment by City: 20%