

CITY OF OKLAHOMA CITY  
1% FOR ART-PUBLIC ART COMMISSION AGREEMENT  
PROJECT: WILL ROGERS TRAIL

THIS AGREEMENT, made and entered into this \_\_\_\_ day of \_\_\_\_\_ 2024, by and between The City of Oklahoma City, hereinafter called “City,” and artist Scott Henderson dba Whiteboard Exhibits LLC, hereinafter called “Artist,” for the design, fabrication, delivery, and installation of a sculptural assemblage titled ***Sound Houses*** on the Will Rogers Trail, hereinafter called the “Work.”

Artist was selected pursuant to a competitive process by the City for the design, fabrication, delivery, and installation of the Work at the location described in Exhibit A, hereinafter the “Location” and Artist is willing to provide such services and the Work, as set forth in the Artist’s Concept in Exhibit B, attached hereto and made a part of this Agreement. City desires to contract with Artist for the design, fabrication, delivery, and installation of the Work on such terms and conditions as hereinafter follow.

NOW, THEREFORE, in consideration of the premises and mutual promises herein contained, City and Artist agree as follows:

SECTION I: ARTIST’S SERVICES

Artist’s Work shall reflect concepts and designs as depicted in the Artist’s Conceptual Design Report and recommended by the Selection Committee and the Oklahoma City Arts Commission, which concepts and designs are set forth in Exhibit B, attached hereto and made a part of this Agreement. Artist may discuss the Work or its requirements with various departments of the City, but the Arts Liaison or his designee, hereinafter called “Arts Liaison,” shall authorize

all specific direction or responses to all requests of the Artist. Artist shall be responsible for the design, fabrication, delivery, and installation of the Work, and for all services and expenses associated with the design, fabrication, delivery, and installation, including but not limited to all necessary supplies, materials, equipment, footing, foundation, engineering, insurance, subcontracting costs, rental, delivery costs, and permit requirements. Artist shall design, fabricate, deliver, and install the Work to conform to the requirements of all City and State of Oklahoma laws, ordinances, codes, regulations, and requirements which affect completion of the Work. If requested, Artist shall assist in filing any documents required to secure approval of any governmental authorities having jurisdiction.

A. Commencement of Work

1. Work shall commence upon Artist's receipt of the executed Agreement, Purchase Order, and a written Notice to Proceed authorized by the Arts Liaison.
2. The goal of the parties is for Artist to design, fabricate, deliver, and install the Work as illustrated and described in the Artist's Concept in Exhibit B. In addition, Artist shall design, create, deliver, and install an appropriate art identification marker, which shall be developed in accordance with current standards promulgated by the Oklahoma City Arts Commission.
3. The Work represents the creative talents of the Artist and satisfies the specifications of the City. Both parties recognize that they must consult closely to accomplish the Work that is the goal of this Agreement.

B. Completion of Design

1. Artist shall request additional information from City as needed to prepare Drawings and Specifications to the satisfaction of the City, according to recommendations made by the Selection Committee and/or the Arts Commission.
2. Artist or his appointed representative(s) shall coordinate with Arts Liaison and travel to the Location as often as necessary to field verify measurements, siting requirements, and conditions of the Location of the Work.
3. Artist may be required to complete Other Information. Additional drawings may be requested for review and permitting purposes. Any Other Information required shall be requested from Artist in writing. Artist shall then be allowed at least thirty (30) days to provide the requested information.
4. Artist shall avoid the use of materials or finishes known to be hazardous or potentially hazardous, including asbestos or any derivative thereof. Artist shall report to the Arts Liaison any material or finish hazard, and any action taken by Artist to minimize or eliminate hazard.

C. Drawings and Specifications

1. Artist shall complete Drawings and Specifications which shall be submitted to the Arts Liaison for review.
2. Artist shall provide Engineering drawings for the Work including footing, foundation, and entire structure of the Work. Engineering drawings must be signed and stamped by an engineer licensed in the State of Oklahoma.

3. Fabrication may begin once all plans are reviewed.
4. During the term of this Agreement, Artist shall send a monthly Progress Report (Report) by the 5th business day of each month to [arts@okc.gov](mailto:arts@okc.gov). Reports must provide adequate verifiable detail to ensure that development of the Work is progressing according to the agreed Project Schedule, including but not limited to quotes, invoices received, and invoices paid. During fabrication, Artist shall include images of fabrication with the monthly Report. Once fabrication of the Work is completed, Artist shall submit a Final Report to the Arts Liaison certifying that the Work is complete.

D. Delivery and Installation Phase

1. The Work shall not be delivered to the Location until Artist has received written authorization from the Arts Liaison that the specific installation plans submitted by Artist have been approved by the City, which authorization shall not be unreasonably withheld.
2. Artist shall install the Work at the Location in Exhibit A. Artist shall be responsible for all expenses, labor and equipment involved with the installation of the Work, including installation of the footing and foundation.
3. All risk of destruction of, or damage to, the Work or any part thereof from any cause whatsoever shall be the responsibility of Artist until final acceptance of the Work is authorized by the Arts Liaison. It is hereby specifically agreed that the risk of loss or damage shall be borne by City prior to final acceptance of the Work during such period of time as the partially or wholly completed Work is in the

custody, control or supervision of City or its agents. Artist shall provide the Arts Liaison and City with at least a thirty (30) day notice of the proposed date of completion.

4. Arrangements for access to the Location for installation shall be as authorized through the Arts Liaison, and access thereto shall not be scheduled until City has received from Artist a Certificate of Insurance as required in Section X. Upon prior arrangement, access by Artist may be scheduled for weekends and evenings as well as during normal business hours, as authorized by the Arts Liaison.
5. Artist shall notify the Arts Liaison in writing when the Work is completed, and all services have been completed, to secure final acceptance by City.
6. The anticipated Project Schedule that includes completion is described in Exhibit C, attached to this Agreement.
7. A Preliminary Maintenance Plan is attached as Exhibit D to this Agreement. Artist shall provide a detailed Maintenance Plan for the Work. The Maintenance Plan shall include details for general maintenance and upkeep, all physical, technical, and kinetic components, as well as any necessary software or material upgrades. Since the Maintenance Plan is subject to change based on finalized construction methods and/or material selection, it shall be submitted within 30 days following Final Acceptance of the Work.

## Section II-CITY'S RESPONSIBILITY

- A. City shall provide all available information, including requirements and specifications, for the Location of the Work shown on Exhibit A. All specifications shall be provided as authorized through the Arts Liaison.
- B. City shall examine materials and information submitted by the Artist and promptly render decisions pertaining thereto to avoid unreasonable delay in the progress of the Work unless City must rely on a third-party Conservator or other expert for decisions. Response to the Artist's written request for decisions related to the Work shall be made in writing as soon as reasonably possible.
- C. City shall provide final acceptance of the Work to be effective as of the earlier to occur of (1) the date of the City's notification of final acceptance; or (2) the 30<sup>th</sup> day after the Artist has sent written notice to the Arts Liaison as required under Section I.D.5., unless the Arts Liaison, upon receipt of such notice and prior to the expiration of the 30-day period, gives written notice to the Artist specifying and describing the services which have not been completed.
- D. City shall provide technical assistance and recommendations to Artist, through the Arts Liaison, to secure all required reviews, licenses, and similar legal authorizations, and permitting for the Work as may be necessary for the installation and maintenance of the Work at the Location until final acceptance by City.

### Section III-COMPENSATION AND PAYMENTS

- A. Following approval of this Agreement by City, payments shall be made to Artist in full consideration of the design, fabrication, delivery, and installation of the Work as described in the Compensation and Payment Schedule, attached hereto as Exhibit E.
- B. All requests for payment shall be submitted to the Arts Liaison for review and approval and shall be in accordance with City procedures for processing Artist's Requests for Payment, described on Exhibit F attached to this Agreement.

### Section IV-TERMINATION OF AGREEMENT

If either party willfully or negligently fails to fulfill in a timely manner any of the stipulations of this Agreement, or otherwise violates such stipulations or commits an event of default hereunder, then the other party shall thereupon have the right to terminate this Agreement by giving written notice to the defaulting party by certified mail, return receipt requested, or sending an email confirmed by a response from the recipient, of its intent to terminate and specifying the grounds for the termination. The defaulting party shall have thirty (30) days after receipt of a Termination Notice to cure the default described in the Termination Notice. If the default is not cured, then this Agreement shall terminate without further required action of the party giving notice. City may terminate this Agreement at any time, for convenience, when it is in the best interest of the City to do so. Written notice of such action shall be provided in writing to Artist, in this event.

#### A. Termination by Artist

If this Agreement is terminated by Artist before installation of the Work without fault on the part of the City, Artist shall refund to City all monies paid by City to Artist for the performance of work

under this Agreement. Artist may then retain the Work, together with any models, plans or drawings and all materials and supplies purchased for the Work, for Artist's own use without restrictions. Nothing in this section shall prevent City from pursuing a remedy otherwise available to it in law or equity.

B. Termination by City

1. In the event this Agreement is terminated by City without fault on the part of Artist, Artist shall be paid an amount equal to the percentage of the Work done at the time the Agreement is terminated, as determined by the Compensation and Payment Schedule (Schedule) attached to this Agreement as Exhibit E. If payments previously made to Artist exceed the total amount due, Artist shall refund to City all funds in excess of amount due according to the Schedule. Artist shall retain the Work, together with any models, plans, or drawings and all materials and supplies purchased for the Work, for Artist's own use without restrictions. Nothing in this section shall prevent Artist from pursuing a remedy otherwise available to it in law or equity.

2. In the event this Agreement is terminated by City for fault on the part of Artist, or in the event of any breach of the terms of this Agreement by Artist, Artist shall refund to City all monies paid by City to Artist for the performance of work under this Agreement. Artist may then retain the Work, together with any models, plans or drawings and all materials and supplies purchased for the Work, for Artist's own use without restrictions. Nothing in this section shall prevent City from pursuing a remedy otherwise available to it in law or equity..

Section V-GENERAL CONDITIONS

A. The failure of either party to enforce any of the provisions of this Agreement or to require performance of the other party of any of the provisions hereof shall not be construed to be

a waiver of such provisions, nor shall it affect the validity of this Agreement or any part thereof, or the right of either party to thereafter enforce each and every provision.

- B. The terms of this Agreement constitute the entire understanding between the parties hereto and no statement, promise, condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid. This Agreement may only be amended or modified by mutual consent of the parties hereto, in writing signed by both parties.
- C. Neither the performance of this Agreement, nor any part thereof, nor any monies due or to become due thereunder may be assigned by Artist without the prior written consent and approval of City.
- D. Death of the Artist shall terminate this Agreement, and City shall be entitled to the Work in whatever form it exists at that time, as its sole property.
- E. Nothing contained in the terms of this Agreement shall create or give to third parties any claim or right of action against City.
- F. Artist shall protect Location property and City structures, including but not limited to buildings, roads, public streets, sidewalks, parking lots, and landscape elements from paint, dust, dirt, rubbish, or other nuisance arising out of Artist's operations or storage practice. The repair of or compensation for damage to City property due to negligence or lack of adequate protection on the part of Artist shall be at no cost to City.

- G. Artist shall perform no construction operations of any nature on, over, or across premises, except such construction operations as are specifically authorized in Artist's plans or specifications, or as otherwise authorized in writing by Arts Liaison.
- H. Artist shall comply with all applicable laws, statutes, ordinances, regulations, and administrative requirements, including but not limited to safety and engineering regulations and requirements of the City.
- I. Directly upon completion of the installation of the Work, Artist shall remove from Location all equipment and any waste materials not previously disposed of, leaving Location thoroughly clean and ready for City's final inspection.
- J. Installation and worker safety shall be in conformance with Oklahoma laws and regulations.
- K. Artist shall be responsible for all mailing, shipping, transportation, and travel expenses required under this Agreement, and all Federal and State income taxes on the total compensation from this Agreement, as well as any State and City sales tax which may be required.
- L. Artist, and all agents and employees of Artist, shall observe and comply with all prevailing Federal, State and City laws, ordinances, regulations, and requirements which in any way affect conduct or Work under this Agreement.
- M. Artist agrees, in connection with the performance of work under this Agreement that Artist will not unlawfully discriminate, as prohibited in the Non-Discrimination Statement,

attached to this Agreement as Exhibit G hereto. Further, any violation of such provisions shall constitute a material breach of this Agreement.

- N. Artist states that Artist has not been a party to any collusion in the Artist's selection, preparation of the Conceptual Design Report, or in connection with the award or approval of this Agreement as fully described on the Non-Collusion Affidavit, Exhibit H attached to this Agreement.
- O. Prior to beginning the Work, Artist shall furnish to the Arts Liaison for approval any names of collaborators, makers, or fabricators to be used on the Work. Any subsequent changes are subject to the approval of the Arts Liaison and shall be in writing.
- P. It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Oklahoma, both as to interpretation and performance. Any action of law, suit in equity or judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Oklahoma, in Oklahoma City.

#### Section VI-NOTIFICATION

- A. All notices, requests, demands, and other communications which are required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given upon delivery and receipt, if delivered personally, or sent by email confirmed by a response from the recipient, or sent by registered or certified mail with return receipt requested and postage prepaid, as follows:

If to the Arts Liaison, to: Arts Liaison, Office of Arts & Cultural Affairs  
Oklahoma City Planning Department  
420 W. Main, 9<sup>th</sup> Floor  
Oklahoma City, OK 73102  
[arts@okc.gov](mailto:arts@okc.gov)

If to the City, to: City Clerk  
The City of Oklahoma City  
200 N. Walker Avenue, 2<sup>nd</sup> Floor  
Oklahoma City, OK 73102  
[cityclerk@okc.gov](mailto:cityclerk@okc.gov)

If to the Artist, to: Whiteboard Exhibits LLC  
8614 N Georgia Ave  
Oklahoma City, OK 73114  
[scott@whiteboardexhibits.com](mailto:scott@whiteboardexhibits.com)

#### Section VII-INDEMNIFICATION

Artist agrees to release, to defend, to indemnify and to hold harmless City and its officers, agents, and employees, from and against all claims, costs and damages, suits, expenses, liability actions or procedures of any kind or nature whatsoever arising out of Artist's activities under this Agreement.

#### Section VIII-ARTIST'S REPRESENTATIONS AND WARRANTIES

- A. Defects in Material or Workmanship and Inherent Vice. Artist warrants that the Work will be free of defects in workmanship or materials, including inherent vice, and that Artist will at Artist's own expense, promptly remedy any defects that arise within a period of three (3) years from the date the Work is finally accepted by City, except for unforeseen changes in environmental conditions or changes to the Location by City or by third parties affecting the Work site (including but not limited to, damage by car or other vehicle or equipment, intentional vandalism, tornado, windblown objects and hail). Artist further warrants that

the Work will not require maintenance substantially more than that described in the recommendations provided by Artist to City, beginning the date the Work is finally accepted by City. The Preliminary Maintenance Plan is attached hereto as Exhibit D. “Inherent vice” refers to a quality within the material or materials that comprise the Work which, either alone or in combination, results in the tendency of the Work to destroy itself. City agrees that it will exercise reasonable care and diligence to prevent conditions that may damage or otherwise degrade the materials and structure of the work.

- B. Title. Artist warrants that the Work is solely the result of the artistic efforts of Artist and that it will be installed free and clear of any liens, claims or other encumbrances of any type.
- C. Unique. Artist warrants to the best of the Artist’s knowledge that the Work is unique and an edition of one and does not infringe upon any copyright, and that Artist will not execute or authorize another to execute another Work of the identical design as the Work commissioned pursuant to this Agreement. This warranty shall continue in effect for a period consisting of the life of Artist plus 50 years. Artist hereby acknowledges that the aforementioned warranty shall be binding on Artist’s heirs and assigns.

#### Section IX-EXCUSE OR SUSPENSION OF CONTRACTUAL OBLIGATIONS

The parties shall be excused from performing an obligation under this Agreement if performance of that obligation is prevented by a condition beyond the control of the parties, such as acts of God, war, public emergency or strike or other labor disturbance. An obligation affected by a condition beyond the control of the parties shall be suspended only for the duration of the condition unless otherwise agreed by the parties. Both parties shall take reasonable steps during

the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. The Project Schedule in Exhibit C will be equitably adjusted to reflect delays in the work that are not the fault of the parties.

#### Section X-INSURANCE TYPE, AMOUNT, AND DURATION

Liability and Property Damage Insurance. Artist assumes all risks incident to or in connection with its purpose to be conducted herein under and shall indemnify, defend and save The City of Oklahoma City harmless from damage or injuries of whatever nature or kind to persons or property arising directly or indirectly out of the Artist's operations and transportation of Artist's or the City's equipment to and from Location regardless of fault and arising from acts or omissions of its employees regardless of fault and shall indemnify, defend, and save harmless The City of Oklahoma City from any penalties for violation of any law, ordinance or regulation affecting or having application to said operation.

In this connection, the Contractor shall carry Worker's Compensation in accordance with State Laws, and General Liability Insurance in the following amounts:

Property Damage Liability. Limits shall be carried in the amount of not less than twenty five thousand dollars (\$25,000) to any one person for any number of claims for damage to or destruction of property, including but not limited to consequential damages, arising out of a single accident or occurrence.

All Other Liability. In the amount not less than one hundred seventy-five thousand dollars (\$175,000) for claims including accidental death, personal injury, and all other claims to any one person out of a single accident or occurrence.

Single Occurrence or Accident Liability. In an amount not less than one million dollars (\$1,000,000) for any number of claims arising out of a single occurrence or accident.

Automobile Liability Insurance. The Artist shall maintain insurance coverage as to the ownership, maintenance, and use of all owned, non-owned, leased or hired equipment when said equipment is utilized to meet the requirements of this Agreement.

Transit Insurance. Insurance protecting the Work or components of the Work while being transported or in transit by any means, with aggregate limits of not less than the full replacement value of the Work or combined components of the Work.

The insurance policies shall be issued by a company authorized to do business in the state of Oklahoma and acceptable to The City of Oklahoma City. The City shall be furnished with a Certificate of Insurance evidencing all of the above-referenced requirements and shall state that such insurance shall not be changed or canceled without ten days prior written notice to The City of Oklahoma City. All policies shall be in the form of an “occurrence” insurance coverage or policy. If any insurance is written in a “claims made” form, the Contractor shall also provide tail coverage that extends a minimum of two years from the expiration of the Contract. All policies must be fully insured with any single deductible not exceeding \$25,000. Certificates of Insurance shall be delivered to The City of Oklahoma City prior to issuance of a Purchase Order. **The City of Oklahoma City shall be listed as the Certificate Holder. The policy description shall state the following: “The City of Oklahoma City and its’ Trusts are additional insureds on all policies as required by the contract.”**

Unless otherwise approved by the City prior to contract award, self-insured retentions will not be accepted unless accompanied by a bond or irrevocable letter of credit guaranteeing payment of the

losses, related investigations, claim administration, and defense expenses not otherwise covered by the Contractor's self-insured retention.

#### Section XI-OWNERSHIP

- A. Title: Title to the Work shall remain with Artist until Artist is paid in full pursuant to Section III hereinabove.
- B. Ownership of Documents and Samples. Upon final acceptance of the Work, and upon written request from Artist, the studies, drawings, and models prepared and submitted pursuant to this Agreement shall be returned, at Artist's expense, to Artist and shall belong to Artist.

#### Section XII-EXPLOITATION OF THE WORK AND REPRODUCTION RIGHTS

- A. Copyright. Subject to section XIII of this Agreement, Artist shall retain all rights under 17 U.S.C. §101 et seq. (the Copyright Act of 1976), and all other rights in and to the Work, except ownership and possession, except as otherwise provided in this Agreement. City shall have ownership and possession of the Work pursuant to this Agreement, but shall not own the copyright to the Work, which shall be retained by Artist.
- B. Reproductions. City, or parties designated by the City, in exercise of its exclusive ownership and possession, may make, or authorize the making of, photographs and other two-dimensional reproductions of the Work for educational, public relations, arts promotional, and other purposes. In the case of such use by City, the Artist shall be entitled to customary and appropriate identification as the creator of the Work as follows: Graham

Carraway © 2024. Such notice shall also be affixed to the Work in its Location of permanent display and at any Location of public display or exhibition.

- C. City's Credit. Artist agrees that all references made by Artist to the Work shall include the following credit line: "Commissioned under Oklahoma City's 1% for Art Ordinance" or equivalent, and that Artist shall make a good faith effort to ensure that any and all references to the Work by others shall include the same credit.
- D. Documentation.
  - 1. During installation Artist shall provide the City with one or more publication quality photos of the work in progress, accurate in color and detail and in .jpg format.
  - 2. After completion, and within thirty (30) days following installation of the Work Artist shall provide the City with one or more publication quality photos of the Work, accurate in color and detail and in .jpg format.
- E. Photography. Upon reasonable notice to City, Artist or Artist's designee shall be permitted to enter upon the premises at a mutually convenient time or times to reproduce by photographic or other means, the Work described herein.
- F. Publicity. The City grants to the Artist the right to use the City's name and project name and description for non-commercial purposes relating to the Work, such as to identify the Work as part of Artist's portfolio, promotional and marketing materials including, but not limited to, on Artist's website, and in third party publications or media.

### Section XIII-CARE OF WORK, REPAIR AND RESTORATION AND RIGHT OF RECOVERY

All parties to this Agreement including Artist, by their signatures to this Agreement, acknowledge and agree that application of certain provisions of the Visual Artists Rights Act (VARA) 17 U.S.C. § 106A et seq., will be waived by Artist. A VARA waiver signed by Artist is attached to this Agreement as Exhibit I hereto.

However, the City promises Artist that:

- A. City shall not intentionally destroy, damage, alter, modify, or change the Work except when the condition, safety or security of the Work cannot be guaranteed as determined by the City.
- B. It is the policy of City to consult with Artist regarding repairs and restoration which are undertaken during Artist's lifetime, when that is practicable. To facilitate consultation, Artist shall notify City of any change in Artist's permanent address, email address or contact telephone number. If Artist is unable or unwilling to perform any necessary repairs or restoration, or if City desires to use someone other than Artist to repair or restore the Work, City shall have such Work performed in accordance with recognized best practices and in accordance with Artist's Drawings and Specifications.
- C. When practical to do so, the City shall notify Artist of any proposed alteration of the Location that would affect the intended character and appearance of the Work and shall consult with Artist in the planning and execution of any such alteration. City shall make a reasonable effort to maintain the integrity of the Work.

- D. Nothing in this Section XIII shall preclude any right of the City to remove the Work from public display or to permanently relocate the Work to a Location not specified in Exhibit A.

#### Section XIV-REPUTATION

- A. City's Commitment. City agrees that it will not use the Work or Artist's name in a way which reflects discredit on the Work or on the names or reputation of Artist as an Artist. In the event the Work is in some way represented in a way not intended by Artist, Artist shall have the right to request that the Work no longer be represented as the Work of Artist.
- B. Artist's Commitment. Artist agrees that Artist will not refer to the Work or reproduce the Work, or any portion thereof, in a way which reflects discredit on City or the Work.

#### Section XV-NO ASSIGNMENT OR TRANSFER

The personal skill, judgment and creativity of Artist is an essential element of this Agreement. Therefore, although the parties recognize that Artist may employ qualified personnel to work under Artist's supervision, Artist shall not assign, transfer, or subcontract the creative and artistic portions of the Work to another party without the prior written consent of City through the Arts Liaison.

#### XVI-SUCCESSORS AND ASSIGNS

City and Artist each bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party, in respect to all covenants of this Agreement to the extent the law allows. Artist shall not assign, sublet, or transfer Artist's interest in this Agreement without

the written consent of the City, through the Arts Liaison. In no event shall Artist attempt to create a contractual relationship between any third party and the City.

IN WITNESS WHEREOF, the parties hereto have approved this Agreement as indicated by the authorized signatures below, as of the dates there set out.

(The remainder of this page intentionally left blank)

APPROVED by The City of Oklahoma City and SIGNED by the Mayor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2024.

\_\_\_\_\_  
City Clerk

APPROVED as to form and legality.

\_\_\_\_\_  
MAYOR

Beta G. Douglas-Tally  
Assistant Municipal Counselor

\_\_\_\_\_  
ARTIST

Scott Henderson  
Scott Henderson

Subscribed and sworn to before me this 17<sup>th</sup> day of April, 2024.

Allison Michelle Terrill  
Notary Public

ALLISON MICHELLE TERRILL  
Notary Public - State of Oklahoma  
Oklahoma County  
Commission # 24002004  
My Commission Expires Feb. 12, 2028

My Commission Expires: Feb. 12, 2028

My Commission Number: 24002004

Exhibit A  
Location



The image represents the location of Will Rogers Trail along NW 56<sup>th</sup> Street. The red oval indicates the location of the art installation.



The image represents a street-level view of Will Rogers Trail. The red oval indicates the exact location of which the work ***Sound Houses*** will be located.

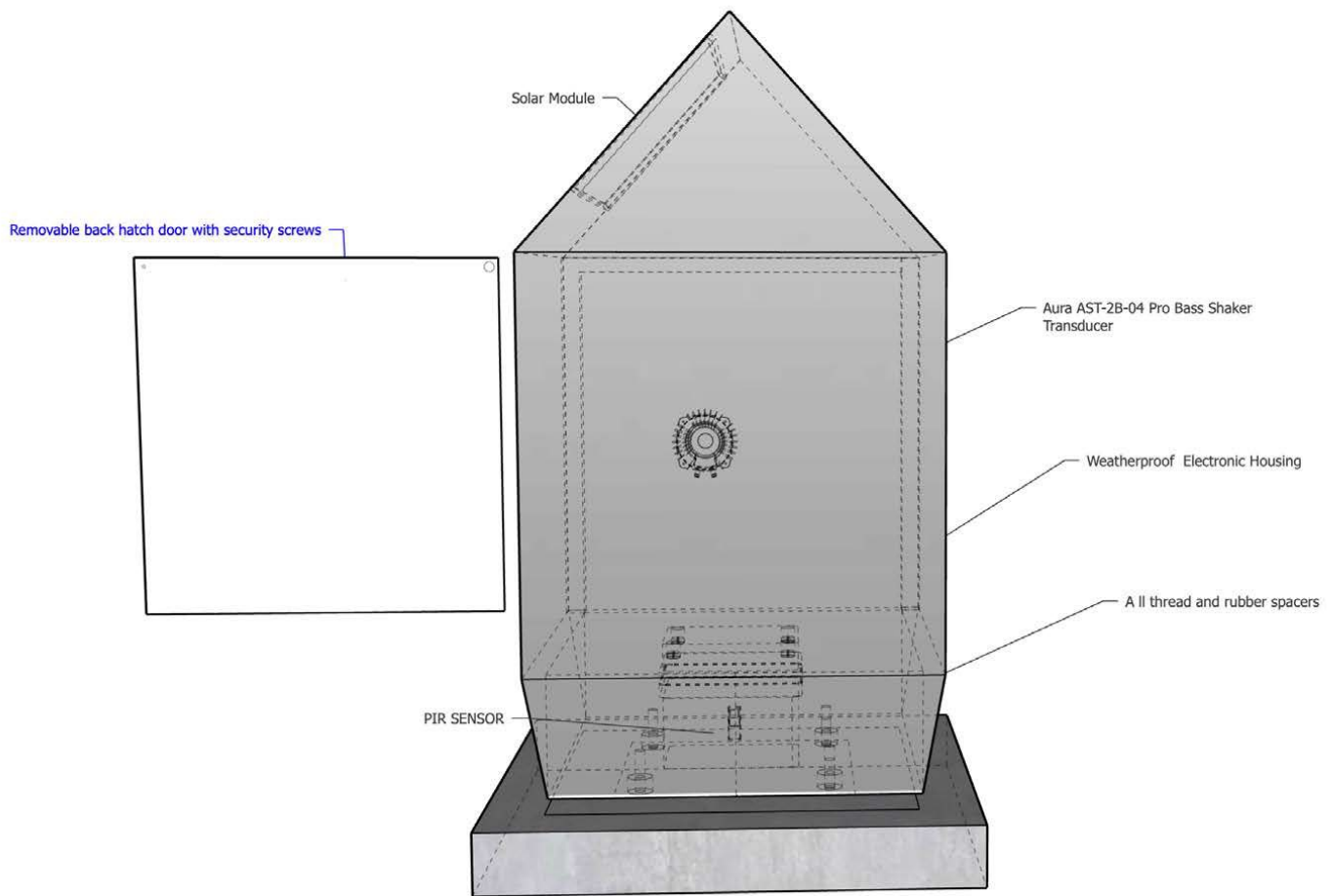
## Exhibit B

### Artist's Concept

Artist's complete Conceptual Design Report included here by reference.



The three structures that comprise the sculptural soundscape installation ***Sound Houses*** as depicted in the conceptual illustration by the Artist, will be an interactive, motion censored installation. Each individual structure will be 72" x 40" x 40" and will be fabricated from colored steel with a polished and reflective front-facing surface.



The sculptural soundscape installation ***Sound Houses*** will be programmed with robust technology to enable pedestrian interaction based on movement, sound, and touch. Motion sensors will be placed in front of each house structure triggering a sound reaction as pedestrians pass by along the trail. Additionally, each house frame will be lined with a tactile transducer, triggering a “bass shake” reaction when the surface is touched.

## Exhibit C

### Project Schedule

Artist estimates that the time required for producing a final design, obtaining engineering, obtaining required permits, fabricating, delivering, and installing the Work will take approximately ten (10) weeks from receipt of an official Notice to Proceed.

The approximate starting date is May 30, 2024 and estimated completion date is August 9, 2024.

Exhibit D  
Preliminary Maintenance Plan

As provided by Artist:

*Sound Houses* will be accompanied by a three-year maintenance plan. Artist will provide maintenance booklet that will be available to Parks and Recreation and Arts and Cultural Affairs after the installation has been completed. Artist will complete periodic inspections (at least once every 6 months) of the installation and its elements for any needed repairs. These elements include, but are not limited to the structural framework, solar panels, infrared sensors, tactile transducer, circuit materials, and other needed materials to ensure a fully functional art installation.

In the instance that structural or electronic maintenance is required, the installation will be designed to allow for an easy repair process. Artist will be allowed up to 14 days upon notification of damage, defect, or malfunction to make the necessary repairs. Unless an instance of extreme damage or vandalism occurs, Artist estimates that cost of repairs, if needed, should not exceed \$600 per-year. Costs should not exceed \$600 per year after the initial three-year warranty period.

## Exhibit E

### Compensation and Payment Schedule

	Payment Due	Billing/Payment Amount	Payment rendered to deliver the Following:
Payment No. 1	Upon execution of Agreement, issuance of Purchase Order and Notice to Proceed, and receipt of invoice from Artist.	<b>Artist will be paid \$32,630 as follows:</b> 100% of materials and supplies costs of <b>\$21,630</b> ; 100% of design and fabrication costs of <b>\$6,000</b> ; 50% of electronic technician costs, of \$10,000 ( <b>\$5,000</b> )	<ul style="list-style-type: none"> <li>• Artist shall complete drawings and specifications to the satisfaction of the City.</li> <li>• Artist shall travel to the Location as necessary to field verify and coordinate with staff and consultants regarding the Location of the Work</li> <li>• Artist shall purchase materials</li> <li>• Artist shall initiate fabrication of the Work</li> <li>• Artist shall obtain all required insurance</li> <li>• Artist shall provide all documents necessary to obtain all required permits</li> <li>• Artist shall submit all reports on time as determined by this Agreement</li> </ul>
Payment No. 2	After all Services described in payment No. 1 are successfully completed and after receipt of invoice from Artist.	<b>Artist will be paid \$10,620 as follows:</b> 100% of installation and footing costs of <b>\$3,120</b> ; 50% of artist fee cost of \$10,000 ( <b>\$5,000</b> ); 25% of electronic technician costs of \$10,000 ( <b>\$2,500</b> )	<ul style="list-style-type: none"> <li>• Artist shall continue fabrication of the Work</li> <li>• Artist shall begin site work and installation preparation at the location</li> <li>• Artist shall submit all reports on time as required by this Agreement</li> </ul>
Payment No. 3	After all Services described in Payment No. 2 and in the right column of this row are successfully completed and after receipt of final invoice from Artist.	<b>Artist will be paid \$7,500 as follows:</b> 50% (5,000) of artist fee cost of <b>\$10,000</b> ; 25% of electronic technician costs of \$10,000 ( <b>\$2,500</b> )	<ul style="list-style-type: none"> <li>• Artist shall complete installation of the Work</li> <li>• Artist shall install art identification marker</li> <li>• Artist shall provide publication photos of the work to the Arts Liaison or his designee</li> <li>• Artist shall submit all reports on time as required by this Agreement</li> </ul>
Total payments			\$50,750

Exhibit F  
Requests for Payment

Contracted Artist should submit invoices for payment and processing by email to:  
arts@okc.gov.

Invoices must be addressed to:

Planning Department  
420 West Main, Suite 900  
Oklahoma City OK 73102

The invoice should have an invoice number, and reference the Purchase Order (PO) number that is part of the Work Order that will be issued to Artist when provided a Notice to Proceed. Invoices shall not include any costs related to other projects. The Planning Department shall endeavor to authorize payment for goods or services received in a timely manner.

**The City of Oklahoma City hereby notifies the Artist that Artist or any vendor who accepts payment confirms the following:**

- The invoice is true and correct.**
- The work, service, or materials as shown by the invoice or claim have been completed or supplied in accordance with the plans, specifications, orders, or requests furnished the Artist.**
- Artist has made no offer of money or anything of value, directly or indirectly, to any elected official, officer, or employee of City.**

Payments will be processed promptly after receipt of properly prepared invoice(s).

Exhibit G

Non-Discrimination Statement

**NON-DISCRIMINATION STATEMENT**

The Proposer agrees, in connection with the performance of work under this Agreement/Contract:

a. That the Proposer will not discriminate against any employee or applicant for employment, because of race, creed, color, sex, age, national origin, ancestry or disability. The Proposer shall take affirmative action to insure that employees are treated without regard to their race, creed, color, age, national origin, sex, ancestry or disability. Such actions shall include, but not be limited to, the following: employment, promotion, demotion or transfer, recruitment, advertising, lay-off, termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. The Proposer agrees to post, in a conspicuous place available to employees and applicants for employment, notices to be provided by the City Clerk/Secretary of the Contracting Entity setting forth the provisions of this section, and;

b. That the Proposer agrees to include this non-discrimination clause in any subcontracts connected with the performance of this Agreement/Contract.

c. In the event of the Proposer's non-compliance with the above non-discrimination clause, this Agreement/Contract may be canceled or terminated by the Contracting Entity. The Proposer may be declared by the Contracting Entity ineligible for further Agreement[s]/Contract[s] with the Contracting Entity until satisfactory proof of intent to comply is made by the Proposer.

**THIS FORM MUST BE COMPLETED BY THE PROPOSER PRIOR TO  
AGREEMENT/CONTRACT AWARD**

Sign Here ☒

Signature of Individual

artist

Title

Scott Henderson

Printed Name of Individual

Whiteboard Exhibits LLC

Company Name and Address

73114

Zip Code

(405) 315-6067

Telephone Number and Fax Number if any

## Exhibit H

### Non-Collusion Affidavit

#### NON-COLLUSION AFFIDAVIT

The undersigned, of lawful age, being duly sworn, upon oath, deposes and says: That the undersigned has the lawful authority to execute the within and foregoing proposal/bid for, and on behalf of, the Proposer/Bidder; that the Proposer/Bidder has not, directly or indirectly, entered into any agreement, express or implied, with any Proposer/Bidder, having for its object the controlling of the price or amount of such proposal/bid, the limiting of the proposals/bids or the Proposers/Bidders, the parceling or farming out to any Proposer/Bidder or other persons, of any part of the Agreement or any part of the subject matter of the proposal/bid, or of the profits thereof, and that Proposer/Bidder has not and will not divulge the sealed proposal/bid to any person whomsoever, except those having a partnership or other financial interest with the Proposer/Bidder in the said proposal/bid, until after the said sealed proposals/bids are opened.

The undersigned further states that the Proposer/Bidder has not been a party to any collusion: among Proposer/Bidders in restraint of freedom of competition, by any agreement to bid at a fixed price or to refrain from proposing; or with any City/Trust official, City/Trust employee or City/Trust agent as to the quantity, quality, or price in the prospective Agreement, or any other terms of the said prospective Agreement; or in any discussions between the Proposers/Bidders or City/Trust official, City/Trust employee or City/Trust agent concerning the exchange of money or other thing of value for special consideration in the letting of Agreement. The Proposer/Bidder states that it has not paid, given or donated or agreed to pay, give or donate to any City/Trust official, officer or employee of the City or awarding agency, any money or other thing of value, either directly or indirectly, in the procuring of the award of Agreement pursuant to this Proposal/Bid.

Witness the hands of the parties hereto:

The undersigned states that the Proposer/Bidder will be bound by its proposal/bid, the specification, the terms and conditions of the Agreement, and the Requirements for Proposer/Bidders.

→ THIS FORM TO BE COMPLETED BY THE PROPOSER/BIDDER PRIOR TO AGREEMENT APPROVAL ←

Scott Henderson artist/ owner  
Type Name of Authorized Agent/Representative Title  
Scott Henderson  
Signature  
Whiteboard Exhibits LLC  
Company Name  
8614 N Georgia Ave 73114  
Address Zip Code  
405-315-6067  
Telephone Number and Fax Number, if any

#### TO BE COMPLETED BY THE NOTARY:

State of Oklahoma )  
County of Oklahoma ) SS.  
[\*State and County where notarized must be written in for bid/proposal to be considered.]

Signed and sworn to before me on this 18 day of April 2024 by Scott Henderson  
[Day] [Month] [Year] [Print the name of the agent/representative who signed above.]

My Commission Number: 00015773  
[Oklahoma]

My Commission Expires: 9/25/2024  
[Date/Year]

J. Barre Conley  
Type Name of Notary Public

J. Barre Conley  
Signature of Notary Public

[49 Okla. Stat. 2011 §119]

September 2020

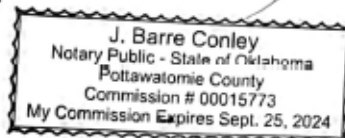


Exhibit I  
VARA Waiver

**General VARA Waiver for Works of Visual Art**

**To be completed by the Artist, Property Owner, and Purchaser (if different than Property Owner)**

I, Scott Henderson, (printed name of Artist) hereby acknowledge the rights of attribution and integrity generally conferred by Section 106A(a) of Title 17 of the U.S. Code, (The Visual Artists Rights Act of 1990, "VARA"), as well as any other rights of the same or similar nature granted by other federal, state, or international laws, that may accrue to me with respect to a certain work of art ("Work" or "artwork"):

Title of Work:

SOUND HOUSES

Description of Work (dimensions, media/materials):

12x40x40 - STEEL w/ various electronic components

Location/Address:

Will Rodgers Trail along NW 56th St.

Initial the following:

X I hereby acknowledge and attest that I am an author of the Work and I am authorized and fully capable of waiving the rights conferred by VARA, in accordance with the waiver provision of 17 U.S.C. § 106A(e)(1).

X I hereby acknowledge that the Work will be placed in the Location and will be, therefore, accessible to the public and be subject to environmental and other factors, both known and unknown.

X I further acknowledge that the Work may be inadvertently destroyed, in whole or in part, for any reason or no reason, including, but not limited to, abuse, vandalism, neglect, property destruction, pestilence, repairs or renovations to the Location, or any other event, which requires removal of the Work, in whole or in part, from the Location.

Therefore, of my own free act, I hereby waive my VARA rights with respect to the uses specified above and acknowledge that the City of Oklahoma City (City), or anyone duly authorized by the City, may have cause to remove said Work when to do so is determined to be in the best interest of the City. I hereby further acknowledge a requirement for removal of the Work to accomplish the best interests of the City may occur, and the removal requirement on the part of the City may occur without opportunity for prior notice to me.

As such, and of my own free will, I hereby permanently and irrevocably waive any and all VARA rights pursuant to 17 U.S.C. § 106(a)(3) to prevent any removal, impairment, distortion, mutilation, modification, or destruction, in whole or in part, of the Work for any reason or no reason, and for any use of the Work that is undertaken that results in the removal, impairment, distortion, mutilation, modification, or destruction, in whole or in part, of the Work. This waiver does not extend to the rights of attribution conferred by 17 U.S.C. § 106A(a)(1) or § 106A(a)(2).

Signature of Artist:



Date:

4/18/24