

AGREEMENT BETWEEN THE CITY OF OLATHE, KANSAS AND PROJECT ONE STUDIO FOR ARTISTIC SERVICES

THIS AGREEMENT is entered into this 13 day of August 2025, by and between The CITY of Olathe (hereinafter the "CITY"), and PROJECTiONE LLC d/b/a Project One Studio (hereinafter the "ARTIST") with offices at 3151 Kirkbride Way, Suite C, Indianapolis, IN 46222.

WHEREAS, the ARTIST is a recognized ARTIST whose work and reputation make the ARTIST uniquely qualified to create the Artwork; and

WHEREAS, CITY intends to place and provide for Artwork for 119th St and Northgate Roundabout (the "Project") and desires to engage ARTIST to provide professional design and artwork in connection with the Project ("Services").

WHEREAS, ARTIST has represented that he has the necessary professional expertise, qualifications, and capability, and all required licenses and/or certifications to provide the Services.

WHEREAS, the ARTIST and CITY wish to undertake the obligations expressed herein;

NOW, THEREFORE, in consideration of the above-stated premises and subject to the conditions hereinafter set forth, the parties agree as follows:

Article 1: Scope of Services

1.1 ARTIST's Obligations

- a. The ARTIST will perform all services and furnish all supplies, material or equipment as necessary for the design and fabrication of the Artwork at the Site in accordance with the specified schedule. Services will be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
- b. The ARTIST will determine the Artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the CITY as set forth in this Agreement. To ensure that the Artwork as installed will not interfere with the intended use of the Site, pedestrian and other traffic flow, parking, and safety devices and procedures at the Site, the ARTIST's proposal will be reviewed and approved by the CITY and, where appropriate, the project architect to ensure compliance with these objectives.
- c. The ARTIST will prepare the design concept, which will include a description of all materials and products utilized in the Artwork and the required routine care and upkeep involved.
- d. ARTIST will attend design and construction coordination meetings, virtually or in-person, with CITY, general contractor, architect and other parties, as appropriate, to communicate about the Artwork and to ensure appropriate integration and installation of the Artwork.

- e. The ARTIST will secure all required licenses, permits and similar legal authorizations at the ARTIST's expense as may be necessary for the installation and initial cleaning/maintenance of the Artwork at the Site.
- f. The ARTIST will arrange the transportation and installation of the Artwork in consultation with the CITY.
- g. ARTIST will provide required insurance in amounts and limits specified in Article 5 and Exhibit E.
- h. ARTIST will provide a list of all subcontractors if any, along with a copy of the agreement between the ARTIST and each subcontractor.
- i. ARTIST will provide a maintenance manual with a description of all materials and products utilized in the Artwork and the required care and upkeep schedule and frequency involved.
- j. ARTIST will provide photographic documentation of the Artwork during fabrication, pre transport, and installation.
- k. ARTIST will be available with reasonable advance notice for meetings, ceremonies and the like, as necessary.

1.2 CITY's Obligations

- a. The CITY will perform all obligations in strict compliance with all terms and conditions in this Agreement.
- b. The CITY will be responsible for providing the ARTIST, at no expense to the ARTIST, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by ARTIST in order to perform.
- c. As proposed by ARTIST, the project schedule includes an additional stage of design development, during which the ARTIST further develops their design with CITY input and collaborates with CITY, and other relevant parties to establish the details of how the Artwork will be integrated into the Site. The Artist shall prepare and submit to the CITY detailed working drawings of the Artwork and the Site, together with such other graphic material as may reasonably be requested by the CITY in order to permit the CITY to carry out preliminary design review and to certify the compliance of the Artwork with the approved Design. ("Final Design")
- d. The CITY will provide and install a plaque on or near the Artwork containing a credit to the ARTIST and a copyright notice substantially in the following form: Copyright © [ARTIST's name, date of publication].
- e. The CITY will not permit any use of the ARTIST's name or misuse of the Artwork which would reflect discredit on the ARTIST's reputation as an ARTIST or which would violate the spirit of the Artwork, should such use or misuse be within the CITY's control.
- f. The CITY will prepare the Site in accordance with the specifications detailed in the Final Design. The CITY will be responsible for all expenses, labor and equipment to prepare the Site for the timely transportation and installation of the Artwork. The CITY will complete the Site preparations by the scheduled installation date as provided in the Final Design, or will contact the ARTIST in writing informing him or her of any delays. Any additional storage fees incurred as a result of such delays are the responsibility of the CITY.

g. The CITY will support the ARTIST in the Final Design process. Upon request by the ARTIST, the CITY shall promptly furnish all readily available information and assistance required by the ARTIST, such as obtaining and providing plans and reports for the Site areas involved, including but not limited to utility locates, construction documents and any needed civil engineering documentation, for the Final Design. The ARTIST shall be solely responsible for designing the Artwork in compliance with all applicable City, State and/or Federal statutes, ordinances, and/or regulations. The CITY will assist ARTIST with finding local zoning and code regulations and identify any permits that will be required for the installation of the Artwork.

1.3 Design

a. Concept/Schematic

i. The ARTIST submitted a design proposal (the "Design") with an accompanying budget, to design and fabricate an Artwork suitable for the current project, which Design was selected and approved by the CITY. The Design and Budget is to this Agreement as Exhibit A and Exhibit B.

b. Final/Construction Documents ("Final Design")

i. The ARTIST will prepare structural drawings detailing every physical feature of the construction of the Artwork and its integration with the Site. These drawings will indicate any risks involved in the construction, integration and maintenance of the Artwork, as well as any third party subcontractors needed to work on the project.

ii. The ARTIST will present such drawings to a licensed qualified engineer, to be paid by the ARTIST, for certification that the Artwork will be of adequate structural integrity and the ARTIST will provide the CITY with such certification.

iii. If the CITY requires any major revisions to the Final Drawings, the CITY will submit those in writing to the ARTIST. The ARTIST will have thirty (30) days from the date of receipt to comply with such revisions and shall submit a proposal for adjustments to the fees and schedule to comply. If agreed upon by both parties, such revisions will become a part of the Final Drawings. If the CITY and ARTIST do not agree on the approval of Final Drawings, either party may terminate this Agreement upon written notice to the other party.

iv. The Final Drawings will also include a final ARTIST rendering of the Artwork for the City's use in public information materials.

v. The ARTIST will submit a refined and finalized Project and Installation Schedule during the Final Design stage. Additionally, the Preliminary Budget will be updated and submitted to reflect the Final Drawings. Calculation of the budget takes into consideration the possible inflation of service and material costs between the date of execution of this Agreement and the anticipated completion date.

1.4 Budget, Payment Schedule, Construction Schedule and Progress Reports

a. Budget

i. Fixed Fee. The ARTIST agrees to accept, and the CITY agrees to pay, as full and complete compensation for completion of all the items of work contained in this Agreement a fixed fee as indicated in Exhibit C.

ii. The fee shall be paid in installments. A Payment Schedule is attached to this Agreement as Exhibit C.

iii. The ARTIST will keep a log of the ARTIST's project hours and will retain all original receipts pertaining directly to the project.

iv. If the ARTIST incurs costs in excess of the amount of the fixed fee, the ARTIST will pay such excess from the ARTIST's own funds unless the ARTIST previously obtained approval for such costs from the CITY (or such costs were the result of actions or inaction of the CITY).

v. If any payment from the CITY is past due, the ARTIST will promptly notify the CITY and the ARTIST may immediately cease all services until full payment has been made and the project schedule and/or completion date shall be adjusted accordingly. The ARTIST has no obligation to provide services unless the CITY is in good standing and no amounts are owed to the ARTIST. The CITY shall pay a finance charge of one and one-half percent (1.5%) per month on past due accounts. Failure to pay invoices in a timely manner is a breach of a material term of this contract and payment of late charges does not excuse the CITY's failure to pay.

b. Schedule

i. The ARTIST will notify the CITY of the tentative schedule for the fabrication and installation of the Artwork, including a schedule for the submission of progress reports and inspections if any. The Schedule may be amended by written agreement.

1.5 Fabrication Stage

a. The ARTIST will fabricate and install the Artwork in substantial conformity with the Final Design. The ARTIST may not deviate from the approved Final Design without written approval of the CITY.

b. The ARTIST will take reasonable measures to protect or preserve the integrity of the Artwork such as the application of protective or anti-graffiti coatings, if applicable, unless the CITY disapproves. If the Artwork is being constructed on-site, the ARTIST will avoid creating nuisance conditions arising out of the ARTIST's operations. Prior to requesting authorization to transport and install the Artwork, the ARTIST will be required to provide the CITY with a list of all workers or subcontractors and equipment to be used along with the hours of operation and the scope of work to be performed on site. All additional workers or subcontractors must provide proof of insurance prior to entering the site.

c. The CITY will have the right to review the Artwork at reasonable times during the fabrication thereof upon reasonable notice.

d. If the CITY, upon review of the Artwork, determines that the Artwork does not conform to the Final Design, the CITY reserves the right to notify the ARTIST in writing of the deficiencies and that the CITY intends to withhold the next budget installment.

e. The ARTIST will promptly cure the deficiencies and will notify the CITY in writing of completion of the cure. The CITY will promptly review the Artwork, and upon approval will release the next budget installment. If the ARTIST disputes the CITY's determination that the Artwork does not

conform, the ARTIST will promptly submit reasons in writing to the CITY within 30 days of the CITY's prior notification to the contrary. The CITY will make reasonable efforts to resolve the dispute with the ARTIST in good faith. However, final determination as to whether the ARTIST has complied with the terms of this Agreement will remain with the CITY.

f. The ARTIST will notify the CITY in writing when fabrication of the Artwork has been completed, and that the Artwork is ready for delivery and installation at the Site if the Artwork was fabricated off-site.

g. The ARTIST will provide a photo library of the fabrication process and signed affidavit evidencing completion. The CITY will review the Artwork photos and affidavit within 15 days after receiving notification pursuant to paragraph (f), prior to installation, to determine that the Artwork conforms to the Final Design and to give final approval of the Artwork. The CITY will not unreasonably withhold final approval of the fabricated Artwork. In the event that the CITY does withhold final approval, the CITY will submit the reasons for such disapproval in writing within 15 days of examining the fabricated Artwork. The ARTIST will then have 15 days from the date of the CITY's notice of the disapproval to make the necessary adjustments to the fabricated Artwork in accordance with such writing. The ARTIST will not be penalized for any delay in the delivery and installation of the Artwork to the Site unless the ARTIST has willfully and substantially deviated from the Final Design without the prior approval of the CITY. The ARTIST will then be held responsible for any expenses incurred in correcting such deviation.

h. The CITY will promptly notify the ARTIST of any delays affecting installation of the Artwork. The ARTIST will be required to inspect the Site prior to the transportation and installation of the Artwork and will notify the CITY of any adverse Site conditions that will impact the installation of the Artwork which are in need of correction.

1.6 Changes to Design

a. Prior to the execution of any change in the approved design, ARTIST will present proposed changes in writing to the CITY for further review and approval. The ARTIST must provide a detailed description of any significant changes in the artistic expression, design, dimensions and materials of the Artwork that is not permitted by nor in substantial conformity with the already approved design. Such notice will also include a detailed description of any additional costs that may be incurred or changes in the budget, if any. A significant change is any change that materially effects installation, scheduling, site preparation, or maintenance of the Artwork or the concept of the Artwork as represented in the Final Design.

b. If the CITY approves the changes, the CITY will promptly notify the ARTIST in writing. If the CITY disapproves of the changes, the CITY will promptly notify the ARTIST in writing and the ARTIST will continue to fabricate the Artwork in substantial conformity with the Final Design.

1.7 Installation

- a. Upon the CITY's final approval of the fabricated Artwork, as being in conformity with the Design, the ARTIST will deliver and install the completed Artwork to the Site in accordance with the schedule provided in the Final Design. The ARTIST will pay transportation fees.
- b. The ARTIST or representative will coordinate closely with the CITY to ascertain that the Site is prepared to receive the Artwork. ARTIST must notify CITY of any adverse conditions at the Site that would affect or impede the installation of the Artwork. The ARTIST is responsible for timely installation of the Artwork. The ARTIST will confer and coordinate with the CITY to ensure timely coordination with the CITY's construction team. ARTIST may not install the Artwork until authorized to do so by the CITY.
- c. The ARTIST will be present to supervise the installation of the Artwork.
- d. Upon written acceptance of the installation, the Artwork will be deemed to be in the custody of the CITY for purposes of Article 3 and Article 5 of this Agreement.
- e. Within 7 days after installation of the Artwork, the ARTIST will furnish the CITY photographs of the Artwork as installed as a set of three digital, 300 dpi, JPG or TIFF files, of the Artwork. Photographs must be labeled with the name of the Artwork, the date upon which the photograph was taken, and the viewpoint from which the photograph was taken. The ARTIST will also furnish the CITY with a full written narrative description of the Artwork.
- f. Upon installation of the Artwork, the ARTIST will provide the CITY with written instructions for the appropriate maintenance and preservation of the Artwork along with product data sheets for any material or finish used and schedule frequency. The Artwork must be durable, taking into consideration that the Site is an unsecured public space that may be exposed to elements such as weather, temperature variation, and considerable movement of people and equipment. ARTIST must ensure that all maintenance requirements will be reasonable in terms of time and expense. The CITY is responsible for the proper care and maintenance of the Artwork.

1.8 Approval and Acceptance

- a. The ARTIST will notify the CITY in writing when all services as required of both Parties by this Agreement prior to this paragraph have been completed in substantial conformity with the Design.
- b. The CITY will promptly notify the ARTIST of its final acceptance of the Artwork within 15 days after the ARTIST submitted written notice pursuant to paragraph (a) above. The effective date of final acceptance will be the date the CITY submits written notice to the ARTIST of its final acceptance of the Artwork. The final acceptance will be understood to mean that the CITY acknowledges completion of the Artwork in substantial conformity with the Design, and that the CITY confirms that all services as required of both Parties by this Agreement prior to paragraph (c) of this section have been completed. Title to the Artwork passes upon final acceptance and final payment.

c. If the CITY disputes that all the services have been performed, the CITY will notify the ARTIST in writing of those services the ARTIST has failed to perform within 30 days after the ARTIST submitted written notice pursuant to paragraph (a) above. The ARTIST will promptly perform those services indicated by the CITY.

d. If the ARTIST disputes the CITY's determination that not all services have been performed, the ARTIST will submit reasons in writing to the CITY within 7 days of the CITY's prior notification to the contrary. The CITY will make reasonable efforts to resolve the dispute with the ARTIST in good faith. However, final determination as to whether all services have been performed will remain with the CITY.

e. Upon the resolution of any disputes that arise under paragraphs (c) and (d) of this section, the CITY will notify the ARTIST of its final acceptance of the Artwork pursuant to paragraph (b).

f. After final acceptance of the Artwork, the ARTIST will be available at such time(s) as may be mutually agreed upon by the CITY and the ARTIST to attend any public meetings and community outreach functions, as well as any inauguration or presentation ceremonies relating to the dedication of the Artwork.

i. During such public presentations by the ARTIST, the ARTIST will acknowledge the CITY's role in funding the Artwork.

ii. The CITY will be solely responsible for coordinating public information materials and activities related to public presentations.

Article 2: Term of Agreement

a. Duration

This Agreement will be effective on the date that this contract has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, will extend until final acceptance by the CITY under Section 1.8(b), or submission of final payment to the ARTIST by the CITY under Exhibit C, whichever is later.

b. Force Majeure

The CITY will grant to the ARTIST a reasonable extension of time in the event that conditions beyond the ARTIST's control render timely performance of the ARTIST's services impossible or unduly burdensome. All such performance obligations will be suspended for the duration of the condition. Both parties will take all reasonable steps during the existence of the condition to assure performance of their contractual obligations when the condition no longer exists. Failure to fulfill contractual obligations due to conditions beyond either Party's reasonable control will not be considered a breach of contract, if such obligations will be suspended only for the duration of such conditions.

Article 3: Risk of Loss

The ARTIST will bear the risk of loss or damage to the Artwork until the CITY's final acceptance of the Artwork under Section 1.8(b). The ARTIST will take such measures as are reasonably necessary to protect the Artwork from loss or damage. Notwithstanding the foregoing, that the risk of loss or damage shall be borne by the CITY prior to final acceptance during such periods of time as the partially or wholly completed Artwork is in the custody, control or supervision of the CITY or its agents for the purposes of transporting, storing, installing or performing any other ancillary services to the Artwork.

Article 4: ARTIST's Representations and Warranties

4.1 Warranties of Title

The ARTIST represents and warrants that:

- a. the Artwork is solely the result of the artistic effort of the ARTIST;
- b. except as otherwise disclosed in writing to the CITY, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- c. the Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- d. the ARTIST has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- e. the Artwork is free and clear of any liens from any source whatsoever;
- f. all Artwork created or performed by the ARTIST under this Agreement, whether created by the ARTIST alone or in collaboration with others, will be wholly original with the ARTIST and will not infringe upon or violate the rights of any third party;
- g. the ARTIST has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- h. all services performed hereunder will be performed in accordance with all applicable laws, regulations, ordinances, etc. and with all necessary care, skill, and diligence; and
- i. these representations and warranties will survive the termination or other extinction of this Agreement.

4.2 Warranties of Quality and Condition

- a. The ARTIST represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for two years after the date of final acceptance by the CITY under Section 1.8(b).
- b. The ARTIST represents and warrants that the Artwork and the materials used are not currently known to be harmful to public health and safety.
- c. The ARTIST represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation recommendations submitted by the ARTIST pursuant to Section 1.7(f).

d. If within two years the CITY observes any breach of warranty described in this Section, the ARTIST will, at the request of the CITY, cure the breach promptly, satisfactorily and consistent with professional conservation standards, at no expense to the CITY. The CITY will give notice to the ARTIST of such breach with reasonable promptness.

e. If after two years the CITY observes any breach of warranty described in this Section, the CITY will contact the ARTIST to make or supervise repairs or restorations at a reasonable fee during the ARTIST's lifetime. The ARTIST will have the right of first refusal to make or supervise repairs or restorations. Should the ARTIST be unavailable or unwilling to accept reasonable compensation under the industry standard, the CITY may seek the services of a qualified restorative conservator and maintenance expert.

f. If within two years the CITY observes a breach of warranty described in this Section that is not curable by the ARTIST, the ARTIST is responsible for reimbursing the CITY for damages, expenses and loss incurred by the CITY as a result of the breach.

g. Acceptable Standard of Display. ARTIST represents and warrants that:

i. General routine cleaning and repair of the Artwork and any associated working parts and equipment will maintain the Artwork within an acceptable standard of public display.

ii. Foreseeable exposure to the elements and general wear and tear will cause the Artwork to experience only minor repairable damages and will not cause the Artwork to fall below an acceptable standard of public display.

iii. With general routine cleaning and repair, and within the context of foreseeable exposure to the elements and general wear and tear, the Artwork will not experience irreparable conditions that do not fall within an acceptable standard of public display, including mold, rust, fracturing, staining, chipping, tearing, abrading and peeling, weld breaks, and polish finish.

iv. Manufacturer's Warranties. To the extent the Artwork incorporates products covered by a manufacturer's warranty, ARTIST will provide copies of such warranties to the CITY.

v. Except as otherwise specifically provided, no other warranty or representation, either express or implied, is included or intended in the ARTIST's proposals, reports, deliverables, and/or communications. The warranties in Section 4.2 are conditional, and shall be voided by the failure of the CITY to maintain the Artwork in accordance with the ARTIST's specifications, including the maintenance manual, and the applicable conservation standards. If the CITY fails to maintain the Artwork in good condition, the ARTIST, in addition to other rights or remedies the Artist may have in equity or at law, shall have the right to disown the Artwork as the ARTIST's creation and request that all credits be removed from the Artwork and reproductions thereof until the Artwork's condition is satisfactorily repaired. THE ARTIST DISCLAIMS ANY WARRANTIES ARISING OUT OF THE CITY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR ANY DAMAGES OR LOSSES TO THE ARTWORK ARISING OUT OF VANDALISM, INTENTIONAL DAMAGES OR OTHER ACTS OUTSIDE THE REASONABLE CONTROL OF THE PARTIES.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE ARTIST MAKES NO WARRANTIES TO CITY, WRITTEN OR ORAL, STATUTORY OR EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.

Article 5: Insurance/Indemnity

5.1 General

- a. Except as provided in Article 3, the ARTIST acknowledges that until final acceptance of the Artwork by the CITY under Section 1.8(b), any injury to property or persons caused by the ARTIST's Artwork or any damage to, theft of, vandalism to, or acts of God affecting the ARTIST's Artwork are the sole responsibility of the ARTIST, including, but not limited to, any loss occurring during the creation, storage, transportation or delivery of the ARTIST's Artwork, regardless of where such loss occurs.
- b. Terms for the procurement and duration of insurance and required insurance policies are described are provided in Exhibit E.

5.2 Indemnity

- a. Loss: For purposes of indemnification requirements, the term "Loss" means any and all loss, damage, liability or expense, of any nature whatsoever, whether incurred as a judgment, settlement, penalty, fine or otherwise (including reasonable attorney's fees and the cost of defense), in connection with any action, proceeding, demand or claim for injury, including death, to any person or persons or damages to or loss of, or loss of the use of, property of any person, firm or corporation, including the parties hereto, which arise out of or are connected with the performance of this Agreement.
- b. Indemnification and Hold Harmless: For purposes of this Agreement, ARTIST agrees to indemnify, defend and hold harmless CITY and its agents from any and all Loss where Loss is caused or incurred as a result of the intentional misconduct, recklessness, negligence, or other actionable fault of ARTIST or subcontractors.
- c. Comparative Fault & Contributory Negligence: It is a specific element of consideration of this Agreement that the indemnity in Section 5.2(b) will apply notwithstanding the joint, concurring or contributory or comparative fault or negligence of CITY or any Third Party and, further notwithstanding any theory of law including, but not limited to, a characterization of CITY's or any Third Party's joint, concurring or contributory or comparative fault or negligence as either passive or active in nature; provided, however, that ARTIST's obligation hereunder will not include amounts attributable to the fault or negligence of CITY or any Third Party for whom ARTIST is not responsible.
- d. Damage Limitations: The indemnification obligation contained in this Agreement will not be limited by any limitation on amount or type of damages, compensation or benefits payable by or for ARTIST or its subcontractors, by the minimum insurance required by this Agreement, nor under workers' compensation acts, disability benefit acts, or other employee benefit acts.
- e. Negligence by the CITY: ARTIST is not required hereunder to defend CITY or its agents from assertions that they were negligent, nor to indemnify and hold them harmless from liability based on CITY's negligence.

Article 6: Ownership and Intellectual Property Rights

6.1 Title

Title to the Artwork will pass to the CITY upon the CITY's written final acceptance and payment for the Artwork pursuant to Sections 1.4 and 1.8. ARTIST will provide CITY with a Transfer of Title upon written final acceptance.

6.2 Ownership of Documents

One set of presentation materials prepared and submitted under this Agreement will be retained by the CITY for possible exhibition and to hold for permanent safekeeping.

6.3 Copyright Ownership

The ARTIST retains all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright.

6.4 Reproduction Rights

- a. In view of the intention that the final Artwork will be unique, the ARTIST will not make any additional exact duplicate reproductions of the final Artwork, nor will the ARTIST grant permission to others to do so except with the written permission of the CITY.
- b. Subject to payment in full of all amounts due hereunder, the ARTIST grants to the CITY and its assigns an irrevocable license to make two-dimensional reproductions of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in advertising, brochures, media, and exhibition catalogues or other similar publications provided that these rights are exercised in a tasteful and professional manner.
- c. Subject to payment in full of all amounts due to the Artist hereunder, the ARTIST hereby grants to CITY a nontransferable, non-exclusive license authorizing CITY to make reproductions, replicas and derivative works based on the Artwork, including, but not limited to, reproductions for books, slides, photographs, postcards, posters, calendars, magazines, books, news services, slides from film strips not intended for a mass audience, and television programs, provided that the Client shall not sell such reproductions or make any other commercial use of the Artwork without either obtaining the prior written consent of the Artist or entering into a separate agreement with the ARTIST to address the terms of the license granted by the ARTIST and the royalty, if any, the ARTIST will receive. Notwithstanding anything contained herein to the contrary, neither party shall be obligated to enter into any further agreements regarding the Artwork.
- d. All reproductions by the CITY will contain a credit to the ARTIST and a copyright notice.
- e. The ARTIST will use the ARTIST's best efforts in any public showing or resume use of reproductions to give acknowledgment to the CITY in substantially the following form: "an original Artwork commissioned by and in the public art collection of the CITY."

- f. The ARTIST will, at the ARTIST's expense, register with the copyright in the Artwork in the ARTIST's name.
- g. Third Party Infringement. The CITY is not responsible for any third party infringement of ARTIST's copyright and is not responsible for protecting the intellectual property rights of ARTIST.

Article 7: ARTIST's Rights

7.1 General

- a. The ARTIST retains all rights under state and federal laws including §106A of the Copyright Act of 1976.
- b. The CITY agrees that it will not intentionally alter, modify, change, destroy or damage the Artwork without first obtaining permission from the ARTIST.
- c. If any alteration or damage to the Artwork occurs, the ARTIST will have the right to disclaim authorship of the Artwork in addition to any remedies the ARTIST may have in law or equity under this contract. Upon written request, the CITY will remove the identification plaque and all attributive references to the ARTIST at its own expense within 30 days of receipt of the notice. No provision of this Agreement will obligate the CITY to alter or remove any such attributive reference printed or published prior to the CITY's receipt of such notice. The ARTIST may take such other action as the ARTIST may choose in order to disavow the Artwork.

7.2 Alterations of Site or Removal of Artwork

- a. The CITY will notify the ARTIST in writing upon construction or alteration of the Site, which would result in the Artwork being destroyed, distorted or modified. The ARTIST will be granted the right of consultation regarding the removal or relocation of the Artwork. If the Artwork cannot be successfully removed or relocated as determined by the CITY, the ARTIST may disavow the Artwork or have the Artwork returned to the ARTIST at the ARTIST's expense.
- b. The Artwork may be removed or relocated or destroyed by the CITY should the ARTIST and the CITY not reach mutual agreement on the removal or relocation of the Artwork after a period not to exceed 90 days after written notice to the ARTIST. During the 90-day period, the Parties will engage in good faith negotiations concerning the Artwork's removal or relocation.
- c. In the event of changes in building codes, zoning laws or regulations that cause the Artwork to be in conflict with such codes, laws or regulations, the CITY may authorize the removal or relocation of the Artwork without the ARTIST's prior permission. In the alternative, the CITY may commission the ARTIST by a separate agreement to make any necessary changes to the Artwork to render it in conformity with such codes, laws or regulations.
- d. If the CITY reasonably determines that the Artwork presents imminent harm or hazard to the public, other than because of the CITY's failure to maintain the Artwork as required under this Agreement, the CITY may authorize the removal of the Artwork without the prior approval of the ARTIST.
- e. This clause is intended to replace and substitute for the rights of the ARTIST under the Visual Artists' Rights Act to the extent that any portion of this Agreement is in direct conflict with those

rights. The parties acknowledge that this Agreement supersedes that law to the extent that this Agreement is in direct conflict therewith.

Article 8: Permanent Record

The CITY will maintain on permanent file a record of this agreement and of the location and disposition of the Artwork.

Article 9: ARTIST as Independent Contractor

The ARTIST agrees to perform all Artwork under this Agreement as an independent contractor and not as an agent or employee of the CITY. The ARTIST acknowledges and agrees that the ARTIST will not hold himself or herself out as an authorized agent of the CITY with the power to bind in any manner. The ARTIST will provide the CITY with the ARTIST's Tax Identification Number and any proof of such number as requested by the CITY.

Article 10: Nondiscrimination

1. Kansas Act Against Discrimination: During the performance of this Agreement, ARTIST agrees that:

- a. ARTIST will observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and will not discriminate against any person in the performance of work under the present contract because of race, religion, color, gender, disability, national origin, ancestry, or age;
- b. in all solicitations or advertisements for employees, ARTIST will include the phrase, "equal opportunity employer," or a similar phrase to be approved by the Kansas Human Rights Commission ("commission");
- c. if ARTIST fails to comply with the way ARTIST reports to the commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, ARTIST will be deemed to have breached the present contract and it may be canceled, terminated or suspended, in whole or in part, by CITY without penalty;
- d. if ARTIST is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the commission which has become final, ARTIST will 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
- e. ARTIST will include the provisions of subsections a. through d. in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

2. Exceptions to Applicability: The provisions of this Section will not apply to a contract entered into by CITY with ARTIST if (a) ARTIST employs fewer than four (4) employees during the term of such contract; or (b) ARTIST's contract with CITY totals Ten Thousand Dollars (\$10,000) or less in aggregate.

3. Kansas Age Discrimination in Employment Act: ARTIST further agrees and acknowledges that it will abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this Project and to furnish any certification required by any federal, state or local governmental agency in connection therewith.

Article 11: Assignment of Artwork

The Artwork and services required of the ARTIST are personal and will not be assigned, sublet or transferred. Any attempt by the ARTIST to assign this Agreement or any rights, duties or obligations arising hereunder will be void and of no effect unless prior written consent is given by the CITY. The CITY will have the right to assign or transfer any and all of the CITY's rights and obligations under this Agreement, subject to the ARTIST's consent, if ownership of the Site is transferred. If the ARTIST refuses to give consent, this Agreement will terminate.

Article 12: Termination

1. Notice: CITY reserves the right to terminate this Agreement for either cause (due to ARTIST's failure to substantially perform its obligations hereunder) or for its convenience and without cause or default on the part of ARTIST, by providing fifteen (15) days' written notice of such termination to ARTIST. Upon receipt of such notice from CITY, ARTIST will, at CITY's option as contained in the notice: (1) immediately cease all Professional Services; or (2) meet with CITY and, subject to CITY's approval, determine what Professional Services will be required of ARTIST in order to bring the Project to a reasonable termination in accordance with the request of CITY. ARTIST will also provide to CITY copies of all drawings and documents completed or partially completed at the date of termination for which ARTIST has been fully paid. If CITY defaults on its obligations under this Agreement, (due to CITY's failure to substantially perform its obligations under this Agreement), ARTIST must notify CITY by written notice of its intent to terminate and CITY will have fifteen (15) days from the date of the notice to cure or to submit a plan for cure acceptable to ARTIST. In no event may ARTIST terminate the contract solely for its convenience without cause.

2. Compensation for Convenience Termination: If CITY terminates for its convenience as provided herein; CITY will compensate ARTIST for all Professional Services completed and accepted and reimbursable expenses incurred to the date of its receipt of the termination notice and any additional Professional Services and reimbursable expenses requested by CITY to bring the Project to reasonable termination. Compensation will not include anticipatory profit or consequential damages, neither of which are allowed.

3. Compensation for Cause Termination: If CITY terminates for cause or default on the part of ARTIST, CITY will compensate ARTIST for the reasonable cost of Professional Services and reimbursable expenses completed and accepted to date of its receipt of the termination notice. Compensation will not include anticipatory profit or consequential damages, neither of which will be allowed. CITY also retains all its rights and remedies against ARTIST including but not limited to its rights to sue for damages, interest and attorney fees.

4. Incomplete Documents: Neither ARTIST nor its subcontractors will be responsible for errors or omissions in documents which are incomplete because of an early termination under this Section, or ARTIST having been deprived of the opportunity to complete such documents and prepare them to be ready for construction.

5. Termination for Lack of Funds: If, for whatever reason, adequate funding is not made available to CITY to support or justify continuation of the level of Professional Services to be provided by ARTIST under this Agreement, CITY may terminate or reduce the amount of Professional Services to be provided by ARTIST under this Agreement. In such event, CITY will notify ARTIST in writing at least thirty (30) days in advance of such termination or reduction of Professional Services for lack of funds. If CITY terminates for lack of funds, the CITY will compensate ARTIST for the reasonable cost of Professional Services and reimbursable expenses completed and accepted to date of its receipt of the termination notice.

Article 13: Death or Incapacity

If the ARTIST becomes unable to complete this Agreement due to death or incapacitation, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the ARTIST for the purpose of this Article. However, nothing in this Article will obligate the CITY to accept the Artwork.

a. In the event of incapacity, the ARTIST will assign the ARTIST's obligations and services under this contract to another ARTIST if the CITY, in the CITY's sole discretion, approves of the new ARTIST. Alternatively, the CITY may elect to terminate this Agreement. The ARTIST will retain all rights under Article 6 and Article 7. The Artwork and any reproductions thereof will contain a credit to the ARTIST and a copyright notice in substantially the following form: Copyright © [Project One Studio, date of publication].

b. In the event of death, this Agreement will terminate effective the date of death. The ARTIST's heirs will retain all rights under Article 6 and Article 7. [The ARTIST's executor will deliver to the CITY the Artwork in whatever form or degree of completion it may be at the time. Title to the

Artwork will then transfer to the CITY. However, the Artwork will not be represented to be the completed Artwork of the ARTIST unless the CITY is otherwise directed by the ARTIST's estate.]

Article 14: Notices and Documents

Notices required under this Agreement will be delivered personally or through certified mail, return receipt requested, postage prepaid, to the addresses stated below, or to any other address as may be noticed by a Party:

For the CITY:

City of Olathe: Attn. Renee Rush, Parks and Rec
PO Box 768
Olathe, KS 66051-0768

For the ARTIST:

Project One Studio: Attn. Adam Buente
3151 Kirkbride Way, Suite C
Indianapolis, IN 46222

Notice will be deemed effective on the date personally delivered or, if mailed, [three (3) days] after the postmarked date.

Article 15: Waiver

The Parties agree that a waiver of any breach of violation of any term or condition of this Agreement will not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term of condition.

Article 16: Audit

The CITY will maintain records of all documents, notices, checks, and other records required or produced under this Agreement or related thereto. The ARTIST agrees to the maintenance of such records for archival purposes. Such records will be made available for inspection or audit, at any time during regular business hours, upon written request by the CITY. Copies of such documents will be provided to the CITY for inspection when it is practical to do so. Access to such records and documents will also be granted to any Party authorized by the ARTIST, the ARTIST's representatives, or the ARTIST's successors-in-interest. The CITY will comply with any open records law applicable to these records.

Article 17: Conflict of Interest

The ARTIST and the CITY will avoid all conflicts of interest or appearance of conflicts of interest in the performance of this Agreement.

Article 18: Dispute Resolution

CITY and ARTIST agree that disputes relative to the Project will first be addressed by negotiations between the Parties. If direct negotiations fail to resolve the dispute, the Party initiating the claim that is the basis for the dispute may take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute, ARTIST will proceed with the Professional Services as per this Agreement as if no dispute existed, and CITY will continue to make payment for ARTIST's completed Professional Services; and provided further that no dispute will be submitted to arbitration without both Parties' express written consent.

Article 19: Amendments

This Agreement, including all documents and exhibits included by reference herein, constitutes the entire Agreement between the parties and supersedes all prior agreements, whether oral or written, covering the same subject matter. This Agreement may not be modified or amended except in writing mutually agreed to and accepted by both Parties to this Agreement.

Article 20: Applicable Law, Jurisdiction, and Venue

Interpretation of this Agreement and disputes arising out of or related to this Agreement will be subject to and governed by the laws of the State of Kansas, excluding Kansas' choice-of-law principles. Jurisdiction and venue for any suit arising out of or related to this Agreement will be in the District Court of Johnson County, Kansas.

CITY OF OLATHE, KANSAS

By: _____
Mayor

ATTEST:

City Clerk

(Seal)

APPROVED AS TO FORM:

City Attorney/Deputy City Attorney/
Assistant City Attorney

Artist:



Name Adam Buente, Owner

Address 3151 Kirkbride Way, Ste C,
Indianapolis, IN 46222

TABLE OF CONTENTS OF EXHIBITS

Exhibit A	Design Proposal
Exhibit B	Budget
Exhibit C	Payment Schedule
Exhibit D	Timeline/Schedule
Exhibit E	City of Olathe Insurance Requirements
Exhibit F	Certificate of Insurance

Exhibit A Design Proposal

Concept Design Proposal:

<https://www.dropbox.com/scl/fi/6ihigs7n1yzo54nhsst37/Luminescence-Proposal-for-Olathe?rlkey=8achd4d3yl8ex2grenc4cvar1&st=844atfkz&dl=0>

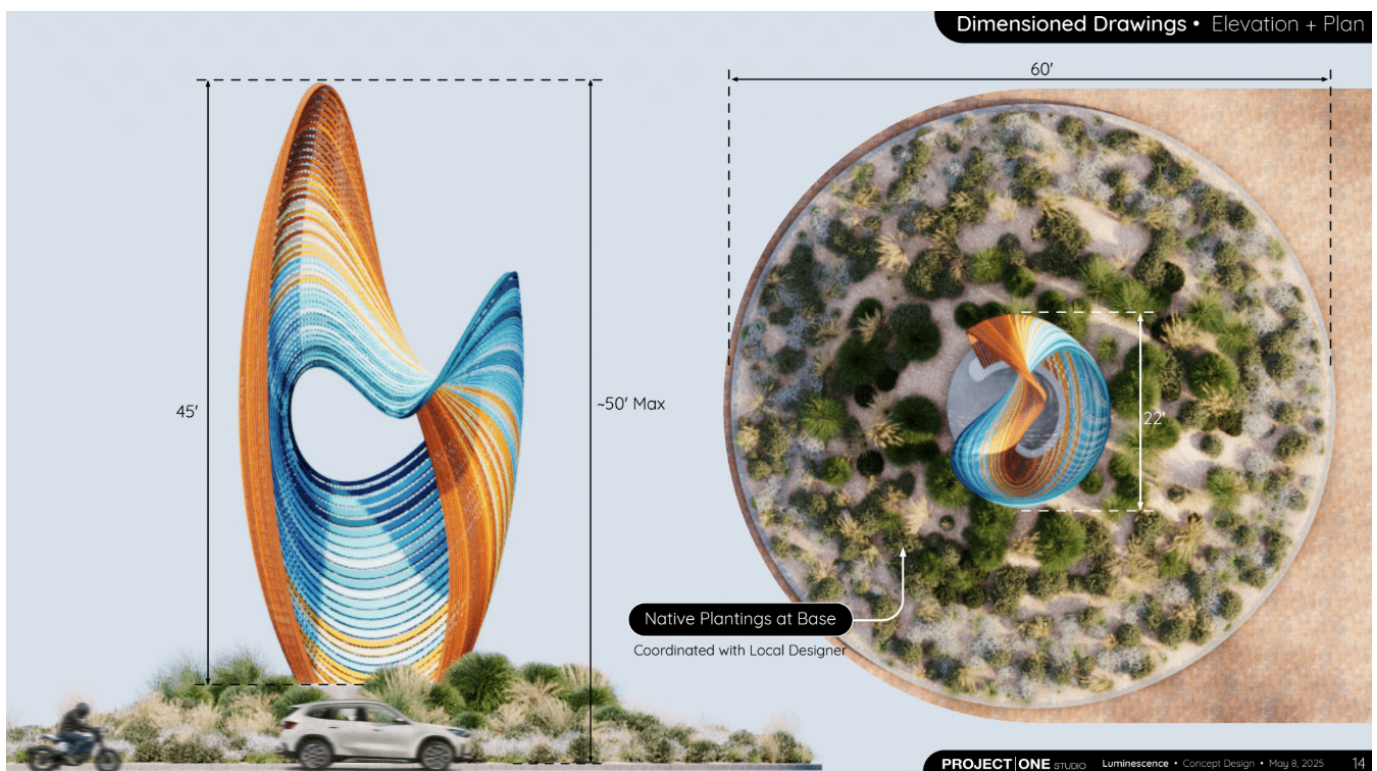


Exhibit B Budget

Budget / Schedule • Preliminary Estimate

Materials / Supplies

Structural Steel Frame	\$ 40,000.00
Lighting	\$ 50,000.00
Cladding Components	\$ 14,000.00

Sub Total \$ 104,000.00

Fabrication / Finishing

\$ 210,000.00

Foundation (By Owner) \$ -

Installation \$ 55,000.00

Subcontracted Services

Structural Engineering	\$ 8,000.00
Lighting Consultant	\$ 5,000.00
Electrical Engineering / Install	\$ 15,000.00
Legal Fees	\$ 3,000.00

Sub Total \$ 31,000.00

Artist Fee 15% \$ 75,000.00

Contingency (Artist held) 5% \$ 25,000.00

TOTAL \$ 500,000.00

Contracting	1 Month	July, 2025
Design Development, Engineering	3 Months	
Fabrication, Finishing	12 Months	
Transport, Installation	2 Weeks	November, 2026

Exhibit C

Payment Schedule

The CITY will pay the ARTIST a fixed fee not to exceed Five Hundred Thousand Dollars (\$500,000.00) which will constitute full and complete compensation for all the services performed and materials furnished by the ARTIST under this Agreement. Payment will be made in accordance with the following scheduled installments, each installment representing full and final payment for all services and materials provided prior to payment thereof:

- a. \$50,000.00 (10%) upon the execution of this Agreement, recognizing the Artist will invest time and expense in preparing the Final Design as set forth under Section 1.3;
- b. \$200,000.00 (40%) within 30 days after the ARTIST provides the CITY the Final Design and engineering structural certification as set forth under Section 1.3;
- c. \$100,000.00 (20%) within 30 days after the ARTIST notifies the CITY that the Artwork fabrication is 50% complete and provides photographic or other reasonable documentation as requested by the CITY;
- d. \$100,000.00 (20%) within 30 days after the ARTIST notifies the CITY that the Artwork is 100% fabricated and ready for delivery and installation at the Site as set forth under Section 1.5(f);
- e. \$25,000.00 (5%) within 30 days after the ARTIST provides the CITY with photographic documentation and written instructions for the maintenance and preservation of the Artwork as set forth under Section 1.7(e) and (f).; and
- f. \$25,000.00 (5%) within 30 days after final acceptance of the Artwork by the CITY as set forth under Section 1.8(e).

Exhibit D

Timeline/Schedule

Targeted Installation Date: March/April, 2027

EXHIBIT E

CITY OF OLATHE INSURANCE REQUIREMENTS

These requirements apply to the vendor or contractor ("Vendor") entering into an Agreement with the City of Olathe ("City").

A. Insurance. Secure and maintain for the term of the Agreement insurance of such types and in at least such amounts as set forth below from a Kansas authorized insurance company which carries a Best's Policyholder rating of "A-" or better and carries at least a Class "VII" financial rating or better, unless otherwise agreed to by City:

1. Commercial General Liability: City must be listed by ISO endorsement or its equivalent as an additional insured on a primary and noncontributory basis on any commercial general liability policy of insurance. The insurance must apply separately to each insured against whom claim is made or suit is brought, subject to the limits of liability.

Limits: Per Occurrence, including Personal & Advertising Injury and Products/Completed Operations: \$1,000,000; General Aggregate: \$2,000,000.

2. Business Auto Insurance: City must be listed by ISO endorsement or its equivalent as an additional insured on a primary and noncontributory basis on any automobile policy of insurance. Insurance must apply separately to each insured against whom claim is made or suit is brought, subject to liability limits.

Limits: All Owned Autos; Hired Autos; and Non-Owned Autos: Per occurrence, combined single limit: \$500,000.

Notwithstanding the foregoing, if Vendor does not own any automobiles, then Vendor must maintain Hired and Non-Owned Auto insurance.

3. Worker's Compensation and Employer's Liability: Workers compensation insurance must protect Vendor against all claims under applicable state Worker's Compensation laws at the statutory limits, and employer's liability with the following limits.

Limits: \$500,000 Each Accident/\$500,000 Policy Limit/\$500,000 Each Employee

4. Professional Liability (if applicable): **Unless excused by the Agreement with the City**, Vendor must maintain for the term of this Agreement and for a period of three (3) years after the termination of this Agreement, Professional Liability Insurance.

Limits: Each Claim: \$1,000,000; General Aggregate: \$1,000,000.

5. Cyber Insurance (if applicable): **IF** accessing the City's network or City's data, **THEN** maintain the following coverages throughout for the term of this Agreement and for a

period of three (3) years after the termination of this Agreement: Cyber Incident/Breach Response and Remediation Expenses, Digital Data Recovery, Privacy and Network Security Liability, and Notification Expense.

Limits: Per claim, each insuring agreement: \$1,000,000; Aggregate: \$1,000,000.

- B. Exposure Limits.** Above are minimum acceptable coverage limits and do not imply or place a liability limit nor imply that the City has assessed the risk that may be applicable to Vendor. Vendor must assess its own risks and if it deems appropriate and/or prudent maintain higher limits and/or broader coverage. The Vendor's insurance must be primary, and any insurance or self-insurance maintained by the City will not contribute to, or substitute for, the coverage maintained by Vendor.
- C. Costs.** Insurance costs must be at Vendor's expense and accounted for in Vendor's bid or proposal. Any deductibles or self-insurance in the above-described coverages will be the responsibility and at the sole risk of the Vendor.
- D. Verification of Coverage**
1. Must provide certificate of insurance on ISO form or equivalent, listing the City as certificate holder, and additional insured endorsements for requested coverages.
 2. Any self-insurance must be approved in advance by the City and specified on the certificate of insurance. Additionally, when self-insured, the name, address, and telephone number of the claim's office must be noted on the certificate or attached in a separate document.
 3. When any of the insurance coverages are required to remain in force after final payment, additional certificates with appropriate endorsements evidencing continuation of such coverage must be submitted along with the application for final payment.
 4. For cyber insurance, the certificate of insurance confirming the required protection must confirm the required coverages in the "Additional Comments" section or provide a copy of the declarations page confirming the details of the cyber insurance policy.
- E. Cancellation.** No required coverage may be suspended, voided, or canceled, except after Vendor has provided thirty (30) days' advance written notice to the City.
- F. Subcontractor's Insurance:** If a part of this Agreement is to be sublet, Vendor must either cover all subcontractors under its insurance policies; **OR** require each subcontractor not so covered to meet the standards stated herein.