

ARTIST’S CONTRACT

“Percent for Art” Project: Columbia Police Department North Municipal Service Center

THIS AGREEMENT is entered into on the date of the last signatory noted below (the “Effective Date”), between the City of Columbia, Missouri, a municipal corporation (hereinafter “City”) and Beth Nybeck (hereinafter “Artist”).

WHEREAS, the City is implementing a public art program by allocating a percentage of the capital costs of certain public works to the commissioning of public art; and

WHEREAS, the Police Department and Public Works Department project known as “Columbia Police Department North Municipal Service Center” is a Percent for Art project (hereinafter “Project”) and funds are available for public art; and

WHEREAS, the Artist was selected by the City through a competitive process to work with the City’s Artists, engineers and/or architects to design and execute a work of art in conjunction with the project (hereinafter “Work”); and

NOW, THEREFORE, the City and Artist, in consideration of the mutual covenants set out herein, agree as follows:

1. SCOPE OF SERVICES

Artist shall meet with and work cooperatively with the City’s engineer, architect, Artist and all City subcontractors on the above-referenced project so as to execute and fabricate the preliminary design proposal for the Work to be approved by the City Council. The Work shall be an artistic work suitable and appropriate to the Project and site or sites available for the Project.

1.1. GENERAL ASSIGNMENT OF RESPONSIBILITIES

This Project involves the services of an engineer or architect and Artist. The engineer or architect has responsibility to design the Project, produce detailed plans for the construction of the Project, and to oversee construction of the Project as the City’s design professional. The Artist’s responsibility is to construct the Work for the Project as it has been designed in a workman-like and economical manner.

The Artist shall execute and fabricate a work of public art to enhance the project. The Artist shall perform all services and furnish all supplies, materials and equipment necessary for the design, execution, fabrication, transportation and installation of the work.

Architect, Engineer and Artist are expected to meet as necessary so that Artist understands the scope and basic design of the Project and Architect and Engineer understand Artist’s design proposal and all parties understand the requirements of implementing the artistic Work within the scope of the Project.

1.2. ARTIST-IN-RESIDENCE ELEMENT

The Artist understands and agrees that in conjunction with this Project, the City may obtain a Missouri Arts Council Arts Education grant that will require the Artist to be present for a certain amount of time and to interact with the public. For the Artists’ participation in an artist-in-residence program, as additional and separate consideration, the City will pay travel expenses and honorarium, as defined by Missouri Arts Council artist-in-residence guidelines and not to exceed the amount awarded by the

grant for such expenses. The scheduling of the residency program shall be mutually agreed upon by the City and the Artist.

1.3. ARTISTIC EXPRESSION

The Artist shall determine the artistic expression, scope, design, size, color, material and texture of the Work, subject to review and acceptance of the Work by the City as set forth in this Agreement. Location of the Work within the Project will be determined by the City upon the approval of the final Project plans.

1.4. PROPOSAL

A. As promptly as possible after the execution of this Agreement the Artist shall visit the City, make site inspections, meet with the Architect or Engineer and City officials involved with the Project. The Artist shall maintain close contact with the Architect or Engineer and City officials so that the Artist has the necessary knowledge and background relating to the Project and matters affecting the site and potential installation of the Work. The City, Architect and Engineer shall make available to the Artist all plans and proposals for the Project.

B. Within sixty (60) days after the execution of this Agreement, Artist shall prepare and submit a proposal for the artistic Work for the Project. The proposal shall be a detailed explanation of the Work and be accompanied by full color artist's renderings approximately to scale for two-dimensional work or scale model for three-dimensional work. The proposal shall state the materials, dimensions, weight, finish of the Work, suggest the location of the Work, engineering, mounting, lighting and maintenance needs and set out an expected budget. The budget shall include estimated costs for design, execution, fabrication, transportation, installation and the Artist's fee. The budget for the Work and all Artist's fees shall in no case exceed Sixty-One Thousand Seven Hundred Thirty Dollars (\$61,730.00).

1.5. REVIEW OF THE PROPOSAL

A. Immediately upon receipt of the Artist's final design, the Architect or Engineer shall review the proposal and determine whether the proposed work will meet the structural, architectural or engineering parameters of the Project. The proposal shall also be reviewed by the appropriate City officials and/or committees. Comments and recommendations from the Architects or Engineers and others responsible for the preliminary review shall be forwarded to the Artist.

B. The City may require the Artist to make such revisions to the proposal as are necessary for the Work to comply with applicable laws, codes or regulations and to meet structural requirements of the Project. The City may request other changes to the proposal for practical reasons.

C. Within sixty (60) days of receipt of the proposal, the City shall finish its preliminary review and provide the Artist with its written concerns, provide a period of public review of the proposed work and solicit its comments, and the City Council shall set and conduct a public hearing for public input on the work and vote to accept or reject the proposal.

D. If the proposal is rejected, the Artist shall be provided a statement in writing of the reasons for the rejection. Upon a rejection, the Artist shall have thirty (30) days to submit a new or revised proposal which conforms to the requirements of the original proposal approved and the City shall have thirty (30) days to review, consider and accept or reject this second proposal. If the second proposal is rejected, either party may terminate or seek to renegotiate this agreement.

1.6. EXECUTION OF THE WORK

A. Upon acceptance of the Artist's proposal by the City Council, Artist shall furnish to the City for approval a written schedule for the execution, fabrication and installation of the Work, including a listing of and contact information for any and all sub-contractors. The Artist shall complete and install the Work substantially in conformance with the approved proposal and in accordance with the written schedule approved by the City.

B. The City shall have the right to review the Work at reasonable times during the fabrication thereof or to request and receive written progress reports.

1.7. DELIVERY AND INSTALLATION

A. The Artist shall notify the City in writing when fabrication of the Work is completed and shall thereafter deliver and install the completed Work in compliance with the schedule in section 1.6.

B. The City shall be responsible for preparing the site for the Artist's timely installation of the Work. The Artist is responsible for the timely installation of any footings, base, or mounting required for the Work. The City will provide any necessary lighting and plants.

C. Within thirty (30) days after the installation of the Work, the Artist shall furnish the City with digital scans of the completed Work, taken from a sufficient variety of viewpoints so to completely illustrate the Work.

D. After the installation, Artist shall be available for at least one presentation to the public about the Project.

E. The Artist shall provide the City written instructions for the appropriate maintenance and preservation of the Work. The Work shall be designed so as to not routinely require extensive or extraordinary maintenance or conservation measures.

F. The risk of loss or damage to the Work shall remain with the Artist until the Work is installed at the Project site. Upon installation, the risk of loss or damage to the Work shall be borne by the City.

1.8. FINAL ACCEPTANCE

A. The Artist shall advise the City in writing when the Work is delivered and installed and completed to the Artist's satisfaction.

B. The City shall inspect the installed Work and shall present the Artist with a detailed listing of any observed flaws or any service required by this agreement left undone.

C. Upon all the terms of the agreement being satisfied, the City shall notify the Artist in writing of its final acceptance of the Work.

2. PAYMENT AND COMPENSATION

For the design, execution, fabrication and installation of the Work of art contemplated by this Agreement, the Artist shall be paid an amount not to exceed Sixty-One Thousand Seven Hundred Thirty Dollars (\$61,730.00). This amount shall be full compensation for all travel and services rendered by the Artist and all supplies, materials and equipment used by the Artist to design, execute, fabricate and install the Work.

2.1. Payments shall be made to the Artist in the following installments:

Three Thousand Eighty-Six Dollars (\$3,086.00) upon the execution of this Agreement to retain Artist and to meet expenses in preparing final design for the City's review.

Twenty Three Thousand One Hundred Forty-Nine Dollars (\$23,149.00) within 30 days of the City's written approval of Artist's proposal.

Twenty Three Thousand One Hundred Forty-Nine Dollars (\$23,149.00) during fabrication of the Work upon reaching a point roughly 50% completed as set out in the Artist's schedule, provided the Artist has provided the City with a summary of the Work completed and photographic documentation of the Work's progress.

Ten Thousand Eight Hundred Three Dollars (\$10,803.00) within 30 days after the Artist notifies the City that the Work is fabricated and ready for installation at the site.

One Thousand Five Hundred Forty-Three Dollars (\$1,543.00) within 30 days after the final acceptance of the Work by the City.

2.2. ARTIST'S EXPENSES

Artist shall pay any sales, use or excise taxes, and all mailing and shipping charges, the cost of transporting the Work to the City and the costs of all travel by the Artist or any Agent of the Artist, which may be due or necessary in the proper performance of the services required by this Agreement.

3. TIME OF PERFORMANCE

A. The Artist shall complete the Work within the time set out in the schedule approved by the City for the Work's execution. If the Work is completed on time and installation is delayed by the City or because the Project, for which the Work is intended, is not sufficiently complete to permit installation, the Artist shall store and protect the Work. The City shall pay all reasonable storage costs until the Work can be transported and installed at the Project.

B. If the Artist completes the Work prior to the time set out in the approved schedule, the Artist shall protect and store the Work at the Artist's cost.

C. The time of performance may be extended or modified by written agreement between the Artist and the City.

4. TITLE AND WARRANTIES

A. Title to the work shall pass to the City upon final acceptance. Upon final acceptance, the City shall retain the proposal and all written documentation regarding the Work and shall have the right to a copy of all drawings, sketches and designs submitted with the proposal to be used for maintenance and historical documentation purposes only.

4.1. The Artist represents and warrants that the Work is solely the result of the artistic effort of the Artist and is original and unique, does not infringe upon any copyright, has not been sold elsewhere and is free from any liens.

4.2. The Artist represents and warrants that the Work will be durable and executed and fabricated in a workman-like manner and will be free from defects in material and workmanship including defects known as “inherent vice” or qualities which cause or accelerate deterioration of the Work.

4.3. If, within one year of the date of final acceptance, the Work exhibits any structural or cosmetic defect or flaw, the Artist will repair the Work or replace any defective component of the Work at no cost to the City. All repairs or cures to defects shall be consistent with professional conservation standards.

5. COPYRIGHT

The Artist agrees that the City owns the original Work of art. The Artist agrees that this Work shall be a unique example of the Artist’s work and the Artist shall not anywhere else produce such Work in full scale or in three-dimensional models for commercial purposes, nor allow others to do so, without the express written consent of the City. Other than the preliminary design proposal materials, all models, final designs, drawings and other work of the Artist done in preparation for the Work are to remain the Artist’s sole property. Copies of the Work can be made by the Artist for the purposes of display or applications for further commission provided the City is credited with commissioning the original Work. Whenever the Artist sells or displays any model, design work, drawing or copy of the Work, the Artist shall credit the City with commissioning the original Work.

5.1. The City may retain and use a full set of Artist’s copyrighted plans and design drawings and other work for maintenance and repair of the Work. The City may also use a full set of Artist’s copyrighted plans and design drawings for inclusion in an exhibit about the piece or about the City’s “Percent for Art” Project.

5.2. The Artist grants to the City an irrevocable license to make two-dimensional reproductions of the Work for non-commercial purposes, including but not limited to reproductions used in advertising, brochures, media, publicity and catalogues.

5.3. The Artist grants the City the right to use two-dimensional reproductions of the Work as a logo for the City.

5.4. The City of Columbia agrees and acknowledges the Artist retains all copyrights not herein granted to the City. The City agrees not to make any reproductions of the Work for profit, other than those previously granted without prior negotiations with the Artist and having received the Artist’s written permission.

6. ARTIST AS INDEPENDENT ARTIST

The Artist shall perform all work under this Agreement as an independent Artist and not as an agent or an employee of the City. The Artist shall not be supervised by any employee or official of the City nor shall the Artist exercise supervision over any employee or official of the City.

7. EMPLOYMENT OF UNAUTHORIZED ALIENS PROHIBITED

A. Artist agrees to comply with Missouri State Statute section 285.530 in that they shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the state of Missouri.

B. As a condition for the award of this contract the Artist shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. The Artist shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

C. Artist shall require each subcontractor to affirmatively state in its contract with Artist that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the state of Missouri. Artist shall also require each subcontractor to provide Artist with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.

8. INSURANCE AND INDEMNIFICATION

8.1 INSURANCE

Artist shall maintain, on a primary basis and at its sole expense, at all times during the life of the Agreement the following insurance coverages, limits, including endorsements described herein. The requirements contained herein, as well as the City's review or acceptance of insurance maintained by Artist is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by Artist under the Agreement. Coverage to be provided as follows by a carrier with A.M. Best minimum rating of A-VIII.

- a. Workers' Compensation & Employers Liability. Artist shall maintain Workers' Compensation in accordance with Missouri State Statutes or provide evidence of monopolistic state coverage. Employers Liability with the following limits: \$500,000 for each accident, \$500,000 for each disease for each employee, and \$500,000 disease policy limit.
- b. Commercial General Liability. Artist shall maintain Commercial General Liability at a limit of not less than \$2,000,000 Each Occurrence, \$3,000,000 Annual Aggregate. Coverage shall not contain any endorsement(s) excluding nor limiting Product/Completed Operations, Contractual Liability or Cross Liability.
- c. Business Auto Liability. Artist shall maintain Business Automobile Liability at a limit not less than \$2,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event Artist does not own automobiles, Artist agrees to maintain coverage for Hired & Non-Owned Auto Liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
- d. Artist may satisfy the minimum liability limits required for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability. Artist agrees to endorse the City as an Additional Insured on the Umbrella or Excess Liability, unless the Certificate of Insurance state the Umbrella or Excess Liability provides coverage on a "Follow-Form" basis.
- e. The City of Columbia, its elected officials and employees are to be Additional Insured with respect to the project to which these insurance requirements pertain. A certificate of insurance

evidencing all coverage required is to be provided at least 10 days prior to the Effective Date of the Agreement between the artist and the City. Artist is required to maintain coverages as stated and required to notify the City of a Carrier Change or cancellation within two (2) business days. The City reserves the right to request a copy of the policy.

- f. The Parties hereto understand and agree that the City is relying on, and does not waive or intend to waive by any provision of this Agreement, any monetary limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to the City, or its elected officials or employees.
- g. Failure to maintain the required insurance in force may be cause for termination of the Agreement. In the event Artist fails to maintain and keep in force the required insurance or to obtain coverage from its subcontractors, the City shall have the right to cancel and terminate the Agreement without notice.
- h. The insurance required by the provisions of this article is required in the public interest and the City does not assume any liability for acts of the Artist and/or their employees and/or their subcontractors in the performance of this Agreement.

8.2. HOLD HARMLESS AGREEMENT

To the fullest extent not prohibited by law, Artist shall indemnify and hold harmless the City of Columbia, its directors, officers, agents, and employees from and against all claims, damages, losses, and expenses (including but not limited to attorney's fees) for bodily injury and/or property damage arising by reason of any act or failure to act, negligent or otherwise, of Artist, of any subcontractor (meaning anyone, including but not limited to consultants having a contract with Artist or a subcontractor for part of the services), of anyone directly or indirectly employed by Artist or by any subcontractor, or of anyone for whose acts the Artist or its subcontractor may be liable, in connection with providing these services. This provision does not, however, require Artist to indemnify, hold harmless, or defend the City of Columbia from its own negligence.

9. ASSIGNMENT, SUBCONTRACTING

Artist understands and agrees that the essence of this Agreement is the Artist's personal skill, judgment and creativity and that the Agreement is a personal services contract. Artist shall not assign this Agreement to any other person or party. The Artist may subcontract portions of the services to be provided under this Agreement, at the Artist's expense, provided that said subcontracting shall not affect the design, appearance or visual quality of the Work and shall be carried out under the personal supervision of the Artist. Artist represents herein that any and all of Artist's subcontractors have the knowledge and skills either by training, experience or education to adequately and competently perform the tasks assigned.

10. TERMINATION

A. Artist may terminate this agreement if the City is in substantial nonperformance with the terms of this agreement and after thirty (30) days written notice of the noncompliance fails to cure the same.

B. City may terminate this agreement at any time for any reason by giving Artist thirty (30) days written notice of its intent to terminate the agreement. Upon receipt of such notice, the Artist shall cease work and not incur any further expenses on the project.

C. The parties agree that obligations under sections 4, 5 and 8.2 shall survive the completion or termination of this Agreement.

10.1. PAYMENT UPON TERMINATION

A. If the Artist terminates the agreement because of substantial nonperformance of the City, Artist shall be entitled to keep all payments made by the City prior to termination plus an amount equal to the actual out-of-pocket expenses incurred by the Artist in furtherance of the Work which is in excess of the amounts previously paid by the City.

B. If the City terminates the agreement after retaining the Artist and before accepting Artist's proposal for the Work, Artist shall be entitled to keep the amount paid as a retainer.

C. If the City accepts Artist's final design but Artist is unable or unwilling to execute the proposed work plans, drawings, sketches, models and design work shall become the property of the City unless Artist returns all funds paid Artist by City. If Artist refuses to return the funds paid and all plans, drawings, sketches, models and design work becomes City property; neither City nor Artist shall fabricate or execute the Work.

D. If the City does not accept the finished Work, Artist shall keep the work and all design document plans, drawings and sketches, provided Artist returns all funds paid by the City for the execution of the work.

11. DEATH OR DISABILITY OF ARTIST

Should the Artist die or become physically unable to execute or complete the proposed Work, the City may accept the Work as is or if the Work is of the nature that reasonably skilled Artists or Artisans can faithfully execute or complete the Work to the Artist's original design, the City may negotiate with the Artist or Artist's estate for the execution or completion of the Work. If such negotiations are in the City's sole opinion unsuccessful, this agreement shall terminate and the Artist or Artist's estate shall be entitled to no payments from the City other than those made prior to the death or disability of the Artist.

12. THIRD PARTY BENEFICIARIES

Neither the Artist nor City intend to directly or substantially benefit any third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and no third party shall be entitled to assert any claim against Artist or City based upon this Agreement.

13. NOTICE

Whenever either party desires to give notice to the other, or such notice is required by this Agreement to be in writing, such notice shall be delivered to the parties designated below:

FOR THE CITY:

City of Columbia
Office of Cultural Affairs
Sarah Dresser
PO Box 6015
Columbia, MO 65205

THE ARTIST:

Beth Nybeck
3017 DeGroff Way
Kansas City, MO 64108

14. ENTIRE AGREEMENT

This writing embodies the entire agreement and understanding between the parties hereto and there are no other agreements and understandings, oral or written, with reference to the subject matter herein between the parties.

15. MODIFICATION

No modification alteration or change of the terms of this agreement shall be valid unless made in writing, approved by the City, and signed by the parties.

16. GOVERNING LAW

This Agreement shall be governed by, interpreted and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Contract Document, shall be Boone County, Missouri or the United States Western District of Missouri. The parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri and waive any defense of forum non conveniens.

17. NO WAIVER OF IMMUNITIES

In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either party's rights or defenses with regard to each party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement in triplicate the day and the year of the last signatory noted below.

CITY OF COLUMBIA, MISSOURI

By: _____
Michael Matthes, City Manager
Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor *zw*

ARTIST

By: _____
Beth Nybeck, Artist
Date: _____

CERTIFICATION: I hereby certify that the above expenditure is within the purpose of the appropriation to which it is charged, Account No. 44008820-604990 Project #M0641, and that there is an unencumbered balance to the credit of such appropriation sufficient to pay therefor.

Michele Nix, Director of Finance