

AGREEMENT
FOR SOCCER SCULPTURE IN
COSMO PARK

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 Paul Land and Julaine Stiers (the "Land Family"). City and Land Family are each individually referred to herein as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, the Land Family owns a bronze sculpture ("Sculpture") designed by artist William J Williams ("Artist") of WJW Sculpture:

WHEREAS, the Land Family desire to display the Sculpture in Cosmo Park, 1615 Business Loop 70, West, Columbia MO 65202 ("Cosmo Park"); and

WHEREAS, the City is amenable to allow the display of the Sculpture in Cosmo Park and is willing to provide regular maintenance of the Sculpture.

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

1. Location.
 - a. Initial Installation. The Parties agree that the Sculpture, base and plaque shall be installed at an outdoor location in Cosmo Park as determined by the City's Parks and Recreation Director and the Land Family.
 - b. Change in Location with Prior Consent. With the Land Family's written consent during the Loan Term, the Sculpture, casting forms, and plaque may be relocated, stored and installed at a new location.
 - c. Change in Location without Prior Consent. The Parties agree that the City, in its own discretion and without prior consent of the Land Family, may relocate and store the Sculpture, casting forms, and / or plaque as needed for maintenance and repair. City shall provide notice to the Land Family of the location of the Sculpture, casting forms, and/or plaque while the Sculpture or its base is undergoing maintenance and repair.
 - d. Storage of Casting Forms. City shall store the casting forms at the Parks Management Facility or other secure location.
2. Installation. The Land Family shall pay all costs associated with design and fabrication of the Sculpture, casting forms, and plaque, the design and construction of the base for the Sculpture, and all installation costs for the base, the plaque and the Sculpture. The Land Family shall contract with Professional Contractors & Engineers, Inc. of Columbia, or another engineering firm approved in writing by the City's Parks and Recreation Director. The Parties

agree that the Sculpture and plaque shall be installed on a concrete base sufficiently elevated to protect the Sculpture from damage by lawn care equipment. The Land Family, through its engineering contractor, shall design and build a base for the Sculpture and plaque which is suitable for the display of the Sculpture and plaque throughout the term of the Agreement and which includes the bolts necessary to mount the Sculpture and plaque. The City shall install landscaping as agreed to in writing by the City's Parks and Recreation Director.

3. Title, Warranties and other Rights.

- a. The Land Family warrants that the Land Family owns all right, title, and interest in the Sculpture, casting forms, and plaque, and there are not outstanding liens or other liabilities associated with the Sculpture and plaque. The Land Family represents that the Sculpture, casting forms, and plaque do not infringe upon any copyright, trademark or other intellectual property rights, have not been sold elsewhere, and are free from any liens, and that there are no outstanding disputes in connection with property rights, intellectual property rights or any other rights in the Sculpture and plaque or any parts of the installation, the Sculpture, casting forms, and plaque.
- b. Title and Transfer of Title. The Land Family shall retain title to the Sculpture, casting forms, and plaque during the life time of Paul Land and Julaine Stiers. Upon the death of either person, title to the Sculpture, casting forms, and plaque shall pass to the surviving spouse. Upon the death of the surviving spouse, title to the Sculpture, casting forms, and plaque shall pass to Jacob J. Land, son of Paul Land and Julaine Stiers. Should Jacob L. Land retain title of the Sculpture, casting forms and plaque until his death, then title to the Sculpture, casting forms and plaque shall pass to the City of Columbia, Missouri.
- c. The Land Family grants to City an irrevocable license to make two-dimensional reproductions of the Sculpture and plaque for non-commercial purposes, including but not limited to, reproductions used in advertising, brochures, media, publicity and catalogues.

4. Responsibilities; Repair and Maintenance.

- a. The City shall be responsible for the Sculpture and plaque while the Sculpture and plaque are on display in Cosmo Park, or at any other location agreed to by the parties, or while the Sculpture and plaque are otherwise in the City's possession, custody and control. The City shall, in its sole discretion and cost, maintain and refurbish the Sculpture and plaque when and if necessary, repair or replace the Sculpture and plaque if damaged, and acquire or maintain insurance on the works as appropriate up to the stated value of seventy-five thousand dollars (\$75,000.00) or the replacement value of the Sculpture.
- b. Routine Maintenance and Repair. The City shall be responsible for all costs associated with the routine maintenance and repair of the Sculpture and plaque while it is in possession of the City.
- c. The Parties agree that the temporary life of the Sculpture is approximately sixty years. The Land Family owns the casting forms. Should the Parties decide to cast a repair or replacement for the Sculpture, the Parties shall coordinate with the Artist provided

the Artist is available and able to assist with the replacement casting. Artist shall coordinate with the foundry for the casting. Should the Artist be unavailable or unable to assist with the casting, the Land Family will decide another artist for repair or replacement. Upon title transfer, the owner of title to the casting forms shall decide the artist to assist with additional castings.

- d. The City shall not sell, convey, gift, transfer, mortgage or encumber title or ownership of the Sculpture or plaque unless and until such time as title to the Sculpture and plaque have passed to the City as set forth in 3(b) above. Any purported sale, conveyance, gift, transfer, mortgage or encumbrance of ownership or title by the City while Paul Land, Julaine Stiers or Jacob Land hold title to the Sculpture or plaque shall be null and void. In the event the City transfers or encumbers title or ownership of the Sculpture or plaque in violation of this Section and is unable to rescind such transfer or encumbrance, then the City shall promptly pay to the then-current title holder (Paul Land, Julaine Stiers or Jacob Land, as the case may be) the replacement value of the Sculpture and plaque as defined in paragraph 6 below.
5. Removal of the Sculpture and Forms by Paul Land, Julaine Stiers, or Jacob J. Land. Should the title owner(s) desire to remove the Sculpture and Forms, the title owner(s) shall provide sixty (60) days written notice to the City of Columbia. In addition, the title owner(s) shall pay costs associated with the removal of the Sculpture, base and plaque, forms, and the repair and restoration of the site. Installation and removal shall be done in cooperation with the City so as to not impact peak traffic patterns of the park.
 6. Value. The Parties agree that the value of the Sculpture, base and installation is seventy-five thousand dollars (\$75,000.00).
 7. Indemnification and Liability.
 - a. The Parties agree that the City cannot save and hold harmless and/or indemnify the Land Family or its employees or agents against any liability incurred or arising as a result of any activity of the Land Family or any of the Land Family's employees or agents related to the Land Family's performance under this Agreement.
 - b. Nothing in this Agreement is intended to, nor shall be construed in any manner as creating or establishing an agency relationship or the relationship of employer/employee between the parties. Therefore, the Land Family shall assume all costs, attorney fees, losses, judgments, and legal or equitable imposed remedies associated with the matters outlined in this section in regards to the Land Family's subcontractors, agents, and employees. The Land Family shall have no authority to bind the City for any obligation or expense not specifically stated in this Agreement.
 - c. The Land Family shall be responsible for all claims, actions, liability, and loss (including court costs and attorney fees) for any and all injury and/or damage (including death) occurring as a result of the Land Family's performance or the performance of any subcontractor hired by or on behalf of the Land Family, involving any equipment used or service provided, under the terms and conditions of this Agreement or any subcontract, or any condition created thereby, or based upon any violation of any

state or federal statute, ordinance, building code, or regulation by the Land Family. However, the Land Family shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the City, including its officers, employees and assigns, or by contractors hired by, or on behalf of, the City.

- d. 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.
- e. This requirements set forth in this Section shall survive termination of the Agreement.

8. Termination.

- a. Method of Termination.
 - i. This agreement may be terminated by either party by providing sixty (60) days written notice to the other party.
 - ii. This Agreement shall terminate upon removal of the Sculpture by the Land Family or title owner.
- b. Upon notice of termination of the Agreement, the Land Family or the then title owner of the Sculpture shall promptly remove the Sculpture, the plaque, and base and restore the land to its original contour.
- c. If the Sculpture is not removed within thirty (30) days after the date of termination of the Agreement, the Sculpture is deemed to be abandoned property and City may dispose of the Sculpture, the plaque, and base in the City's sole discretion without any compensation to the Land Family or the title owner of the property.
- d. This requirements set forth in Section 8(b) and (c) shall survive termination of the Agreement.

9. Commissioning of the Sculpture. Whenever the City refers to the Sculpture, and in whatever media context, the City shall credit the Land Family as commissioning the Sculpture.

10. Nature of City's Obligations. All obligations of the City under this Agreement, which require the expenditure of funds, are conditional upon the availability of funds budgeted and appropriated for that purpose.

11. No Assignment. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

12. No Third-Party Beneficiary. Except as set forth herein, no provision of the Agreement is intended to nor shall it in any way inure to the benefit of any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement.

13. Amendment. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.
14. Governing Law and Venue. This Agreement shall be governed, 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 in 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. The Parties agree to waive any defense of forum non conveniens.
15. General Laws. The Parties shall comply with all federal, state, and local laws, rules, regulations, and ordinances.
16. Notices. Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to City:

City of Columbia
Parks and Recreation Department
P.O. Box 6015
Columbia, MO 65205-6015
ATTN: Director

If to Paul Land, Julaine Stiers, and Jacob J. Land:

Paul Land and Julaine Stiers
4104 Joslyn Court
Columbia, MO 65203

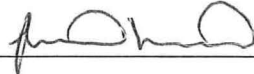
The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending party if delivered by courier or U.S. mail.

17. Electronic Signature. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect as original signatures on this Agreement.

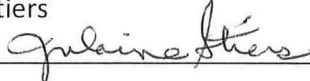
18. Entire Agreement. This Agreement represents the entire and integrated Agreement between Parties relative to the Sculpture, plaque and base. All previous or contemporaneous agreements, representations, promises and conditions relating to the Sculpture, plaque and base described herein are superseded.

(Signature Page Follows)

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

Paul Land
By: 

Date: 5/21/21

Julaine Stiers
By: 

Date: 5-21-21

CITY OF COLUMBIA, MISSOURI



By: _____
John Glascock, City Manager

Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor/rw