

AGREEMENT BETWEEN PHYLLIS NICHOLS
AND
THE CITY OF COLUMBIA, MISSOURI,
FOR THE DISPLAY OF A BEE SCULPTURE
AT CLARY-SHY COMMUNITY PARK

THIS AGREEMENT (hereinafter "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 Phyllis Nichols (hereinafter, "Nichols"). City and Nichols are each individually referred to herein as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Nichols purchased a bee sculpture designed by Stephen Feilbach;
and

WHEREAS, the Parties desire to display the sculpture at an outdoor location in Clary-Shy Community Park;

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. Sculpture.

- a. The Parties agree that the Sculpture is sculpture of a bee designed by Stephen Feilbach, as further identified in Exhibit A.
- b. The Parties agree that the Sculpture will be installed by the City at outdoor location in Clary-Shy Community Park as further indicated in Exhibit B.
- c. Nichols represents and warrants that the Sculpture is durable and executed and fabricated in a workman-like manner and free from defects in material and workmanship including defects known as "inherent vice" or qualities which cause or accelerate deterioration of the Sculpture, and that the Sculpture is suitable for a display in an unprotected outdoor location, which will be subject to harsh temperatures and weather.
- d. Once installed, City must maintain the Sculpture in a structurally sound condition, reasonable wear and tear excluded.
- e. Temporary Life of the Sculpture. The Parties agree that the temporary life of the Sculpture is approximately 20 years (hereinafter "Temporary Life").
- f. Value. The Parties agree that the value of the Sculpture is six thousand five hundred dollars (\$6,500.00).

2. Change in Location
 - a. With the prior written consent of both Parties during the Term, the Sculpture may be relocated, stored and/or installed at a new location.
 - b. The City may, in its own discretion and without prior consent of the Nichols, relocate and store the Sculpture as needed for maintenance and repair of the Sculpture and/or the site.
 - c. City may, in its discretion, remove and store the Sculpture if emergency repair is needed or if the City has determined, in its sole discretion that a hazardous condition exists or other repairs are needed.
3. Damage; Destruction. If the Sculpture is damaged and/or destroyed during the term or any renewal term, City, in its sole discretion, shall either: (1) repair the damage; (2) provide funding to Nichols so that Nichols may repair the Sculpture; or (3) pay Nichols the depreciated value of the Sculpture, with consideration to the value and Temporary Life of the Sculpture as identified herein.
4. Title, Warranties and other Rights.
 - a. Nichols represents that Nichols owns all right, title, and interest in the Sculpture, and there are not outstanding liens or other liabilities associated with the Sculpture. Nichols represents that the Sculpture does not infringe upon any copyright, trademark or other intellectual property rights, has 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 or any parts of the installation of the Sculpture.
 - b. Title and Transfer of Title. Nichols must retain title to Sculpture. Nichols grants to City an irrevocable license to make two-dimensional reproductions of the Sculpture for non-commercial purposes, including but not limited to, reproductions used in advertising, brochures, media, publicity and catalogues, in any format (electronic, paper or otherwise).
5. Term. The term of this Agreement shall commence on the Effective Date and shall continue until the date that is ten years after the Effective Date. Thereafter, the Parties' Representatives may agree to renew the Agreement for successive terms of one year, unless the Agreement is terminated pursuant to the terms set forth in Section 6.
6. Termination.
 - a. Method of Termination.

- i. By end of Temporary Life. This Agreement shall terminate upon the end of the Temporary Life.
 - ii. By either Party. This Agreement may be terminated by providing thirty (30) days written notice to the other Party.
 - b. Upon notice of termination of the Agreement, City will remove the Sculpture and return it to Nichols.
- 7. Commissioning of the Sculpture. Whenever the City refers to the Sculpture, and in whatever media context, the City must credit Phyllis Nichols as commissioning the Sculpture.
- 8. 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.
- 9. 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.
- 10. 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.
- 11. 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.
- 12. 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.
- 13. 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

With a Copy to:

City of Columbia
Office of Cultural Affairs
P.O. Box 6015
Columbia, MO 65205-6015
ATTN: Manager

If to Nichols:

Phyllis Nichols
1006 West Blvd. N, Suite 102
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.

14. 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.
15. General Laws. Nichols shall comply with all federal, state, and local laws, rules, regulations, and ordinances.
16. 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.

17. Contract Documents. This Agreement includes the following exhibits, which are incorporated herein by reference:

Exhibit	Description
A	Approved Design of Sculpture
B	Approved Location for Placement of Sculpture

In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of this Agreement controls.

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

Phyllis Nichols

By: Phyllis Nichols

Phyllis Nichols

Date: 04/12/2024

CITY OF COLUMBIA, MISSOURI

By:

De'Carlton Seewood, City Manager/sd

Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor/rw

EXHIBIT A

Approved Design of Sculpture

Created by artist Stephen Feilbach, the sculpture depicts a bee, which has been constructed out of metal, industrial foam, Line-X bed liner material and automotive paint. The dimensions are approximately 5 feet long, 3 feet tall and 5 feet wide. Since the sculpture has been created from very durable materials, there is no annual maintenance required.

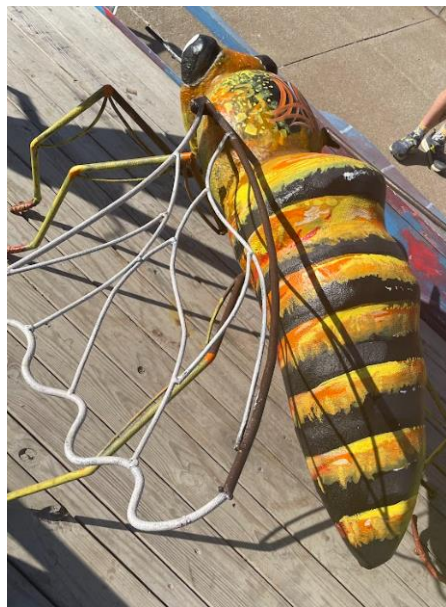


EXHIBIT B

Approved Location for Placement of Sculpture

The proposed display site would be on the roof of the shelter on the southwest corner of the park.



The sculpture has been created with loopholes in its lower four legs that will allow it to be bolted to the roof of the shelter. Parks and Recreation staff would plan to install the sculpture, requiring little cost to the City.