

SCULPTURE DONATION AGREEMENT

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 CHILDREN'S GROVE, a Missouri nonprofit corporation (hereinafter, "Children's Grove"). City and Children's Grove are each individually referred to herein as a "Party" and collectively as the "Parties".

WITNESSETH:

WHEREAS, Children's Grove has commissioned a sculpture ("Sculpture") designed by artist Ben Pierce ("Artist");

WHEREAS, the Children's Grove desire to donate the sculpture to the City for display in Stephens Lake Park, 2001 E. Broadway, Columbia MO 65201 ("Stephens Lake Park"); and

WHEREAS, the City is amenable to accept the donation and to display the Sculpture in Stephens Lake 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. Design of Sculpture. The Parties agree that the Sculpture shall be designed and constructed in substantially compliance with the approved design in Exhibit A. Children's Grove represents and warrants that the Sculpture 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 Sculpture. The Parties agree that the Sculpture shall be initially installed on a concrete base in Stephens Lake Park sufficiently elevated to protect the Sculpture from damage by lawn care equipment.
2. Children's Grove Responsibilities.
 - a. The Children's Grove shall pay all costs associated with fabrication of the Sculpture, the construction of the base for the Sculpture, and all installation costs for the base and the Sculpture.
 - b. The Children's Grove shall contract with construction contractor(s) approved in writing by the City's Parks and Recreation Director for the construction of the base and for the installation of the Sculpture.
 - c. The Children's Grove shall contract with the artist for the creation of the Sculpture and said contract shall ensure that the City shall receive all of the rights set forth herein.
3. City's Responsibilities.
 - a. City shall contract for the engineering of the base.
 - b. City shall prepare the area for Children's Grove's contractor to construct the base.
 - c. City shall install landscaping as agreed to in writing by the City's Parks and Recreation Director.
 - d. City will install a plaque.
4. Value of Donation. The Parties agree that the value of the donation is twenty-eight thousand dollars (\$28,000.00).

5. Title, Warranties and other Rights.
 - a. Children's Grove warrants that the Children's Grove owns all right, title, and interest in the Sculpture, and there are not outstanding liens or other liabilities associated with the Sculpture. The Children's Grove represents that the Sculpture does not infringe upon any copyright, trademark or other intellectual property rights, has not been sold elsewhere, and is 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. The Children's Grove shall retain title to the Sculpture until installation on city property, then title to the Sculpture shall pass to the City of Columbia, Missouri.
 - c. Children's Grove 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.
 - d. This requirements set forth in this Section shall survive termination of the Agreement.
6. Outdoor Installation. The Parties agree that the Sculpture, base and plaque shall be installed at an outdoor location in Stephens Lake Park as determined by the City's Parks and Recreation Director and Children's Grove. The Parties further agree that the Sculpture's installation at an outdoor location will result in deterioration of the Sculpture over time. The Parties agree that the temporary life of the Sculpture is approximately 50 years.
7. Relocation of Sculpture. The Parties agree that the City, in its own discretion and without prior consent of the Children's Grove, may relocate and/or store the Sculpture, and/or plaque as needed for maintenance and repair. City shall provide notice to the Children's Grove of the location of the Sculpture, and/or plaque while the Sculpture or its base is undergoing maintenance and repair.
8. Repair and Maintenance. 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 twenty seven thousand dollars (\$27,000.00) or the replacement value of the Sculpture.
9. The City may, in its sole discretion and cost, remove the Sculpture at any time. Upon either the destruction of the Sculpture or upon the expiration of the temporary life, City may dispose of the Sculpture.
10. Indemnification and Liability.
 - a. The Parties agree that the City cannot save and hold harmless and/or indemnify the Children's Grove or its employees or agents against any liability incurred or arising as a result of any activity of the Children's Grove or any of the Children's Grove's employees or agents related to the Children's Grove'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 Children's Grove 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 Children's Grove's subcontractors, agents, and employees. The Children's Grove shall have no authority to bind the City for any obligation or expense not specifically stated in this Agreement.

- c. Children's Grove 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 Children's Grove's performance or the performance of any subcontractor hired by or on behalf of the Children's Grove, 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 Children's Grove. However, the Children's Grove 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.
- 11. Termination. This agreement may be terminated by either party by providing sixty (60) days written notice to the other party.
 - 12. Commissioning of the Sculpture. Whenever the City refers to the Sculpture, and in whatever media context, the City shall credit the Children's Grove as commissioning the Sculpture.
 - 13. 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.
 - 14. 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.
 - 15. 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.
 - 16. 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.
 - 17. 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.

18. General Laws. The Parties shall comply with all federal, state, and local laws, rules, regulations, and ordinances.
19. 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 Children's Grove:

Children's Grove
c/o Board President: Kim Dude Lammy
511 E Walnut Street
P.O. Box 736
Columbia, MO 65201

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.

20. 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.
21. Contract Documents. The Contract Documents include this Agreement and the following Exhibits, which are incorporated herein by reference:

Exhibit	Description
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A	Approved Design for Sculpture
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22. Entire Agreement. This Agreement represents the entire and integrated Agreement between Parties relative to the donation of the Sculpture. All previous or contemporaneous agreements, representations, promises and conditions relating to the donation of 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.

CHILDREN'S GROVE

By:

gm Duke Lamy

Date:

5/17/23

ATTEST:

Name: _____

Title: _____

CITY OF COLUMBIA, MISSOURI

By: _____

De'Carlton Seewood, City Manager

DS

Date: _____

ATTEST:

Sheela Amin, City Clerk

APPROVED AS TO FORM:

Nancy Thompson, City Counselor/rw

EXHIBIT A

Approved Design for Sculpture

Children's Grove, a non-profit organization in Columbia, Missouri is developing Phase 2 of the Children's Grove at Stephens Lake Park. Phase 1 was completed and dedicated in 2014 with the planting of 41 Butterfly Magnolias and Crabapple trees and the installation of an artisan butterfly bench. This garden bears the resolution that our community will be a place where our young people can feel safe - one of the key components of positive mental health. This part of the garden was a community resolve in reaction to the Sandy Hook school shootings.

Phase 2 of the Garden is a sculpture park development across the sidewalk from Phase 1. Children's Grove commences with a

Gift to the City of Columbia of a sculpture by Sculptor Ben Pierce.

Phase 2 will consist of outdoor art installations that distill our mission into sculptural representations:

- to enable our citizens, particularly our youth, to be inspired toward a culture of kindness, and to better adapt to the mental and emotional challenges we all face.
- that showcase our community's value of creating a culture where people thrive through the qualities of cooperation, openness, compassion, kindness, inclusivity and appreciation of our differences, as well as the importance of kindness to our natural environment.
- that nurture our relationships within the human and natural world, finding beneficial commonalities amongst all
- that transform this corner of the park into an enduring installation art grove that "talks" through art of our interdependence upon one another as we live together on this planet
- that contribute to the beauty and interest of a walk around this crown jewel park and the positive mental health benefits of being out interacting within a natural environment, feeding and fostering reflection and imagination

THE SCULPTOR

Sculptor Ben Pierce has been engaged by Children's Grove for a unique design and fabrication of the first sculpture in this area, having been chosen through a nation-wide RFQ solicitation and interview process. Mr. Pierce is a successful sculptor from Cape Girardeau, Missouri.

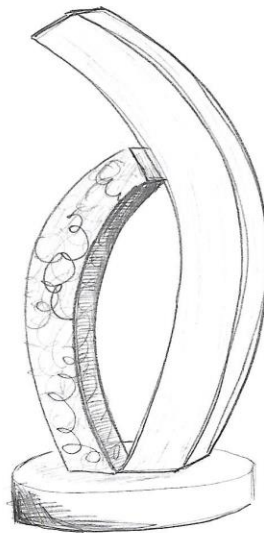
Mr. Pierce said, in his interview: *"When I design and fabricate sculptures I attempt to create from a place of childlike wonder. I want to appeal to the kid who lays on his belly and watches ants come and go from their nest, or climbs trees to see how far he can see from the top. Children understand the world much more than we realize; they are natural creators and explorers. I want my work to be appropriate for all ages. But I especially hope to inspire children and young adults. I want to offer hope. I have a theory I call "the one degree theory". Allow me to explain. In our society we have a "go big or go home" mentality. That sentiment prevents people from doing the small, but still important things because they feel it doesn't change things enough or in a BIG way. I believe that if we can positively shift people just one degree we can change their lives. Think about a compass. It has 360 degrees. If you changed the course of travel of a ship one degree and it travels 1,000 miles, it is going to be in a very different place from where it was heading. So, what if you nudge a person just one degree? This is my hope."*

SCULPTURE

The drawing below is the artist's rendering of the design chosen by Children's Grove. The measurements are 10 feet tall by 4-6 feet wide, made from "low-to-no" maintenance stainless steel. Following the drawing find a photoshopped image of the proposed sculpture in the setting planned though it looks closer to the sidewalk in this picture than in actuality. The site uses the trees on the northeast corner as its backdrop. The next photos are of textures that the artist plans to use to communicate the individuality of the two intersecting pieces. The shared "inner area" will be a polished stainless steel, indicating the purity of that sacred space shared by both pieces as they relate one to the other.

THE ARTIST'S RENDERING

Artist's rendering:



* Possible dimensions:

Height: \approx 10 ft

width: \approx 4 ft

depth: \approx 12-14 inch

Attached metal base: 40-47 inch diameter

* Possible material:

weathering steel

&
stainless steel

or

stainless steel only

* Possible title:

"Be."

Statement:

I see two "figures," maybe one young and one older?... or just Big and smaller... The difference is size/scale And texture by way of surface treatment (See examples on previous works). The larger one leans over the smaller one offering protection and comfort. The smaller one leans into the larger form as if to embrace and accept the gesture.

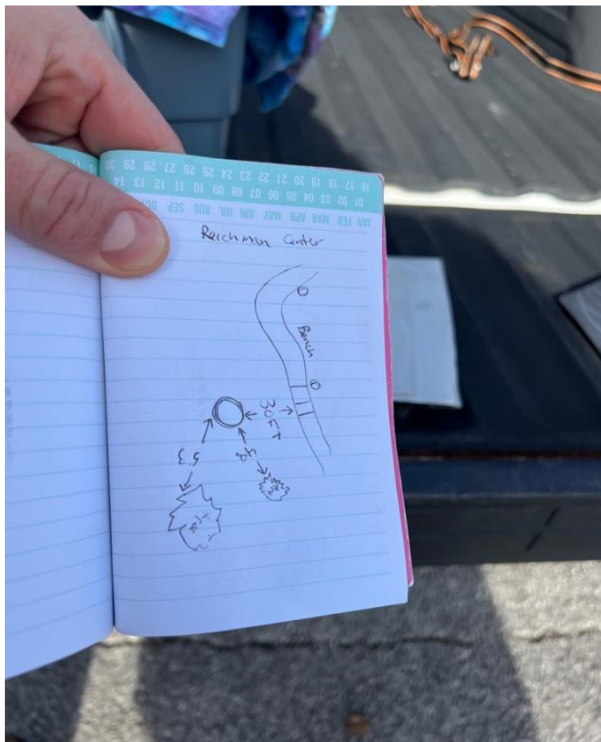
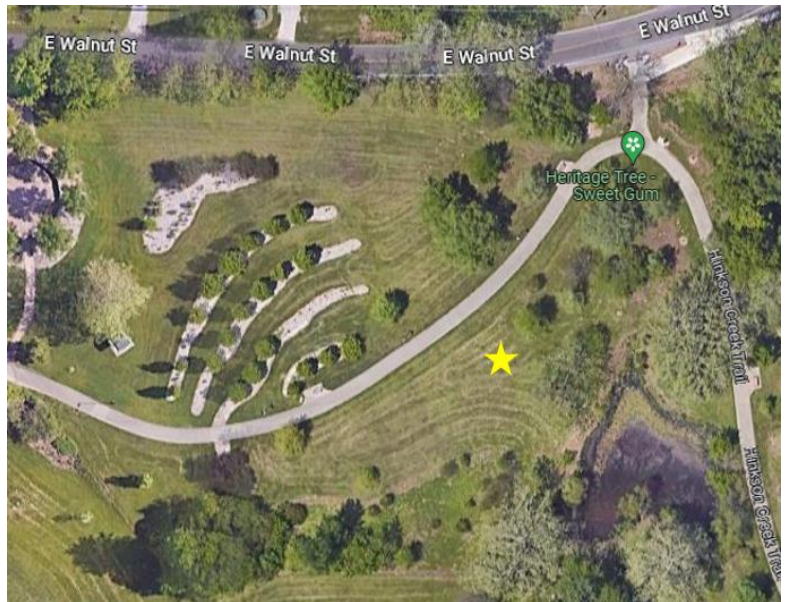
"Be what YOU need for others, and watch how the world changes around you."

"Given the choice to be right or to be kind - Be kind"
"Be yourself"

The following photos are:

- A photoshopped insert of the Sculpture into the planned installation site
- An overhead view of the installation location
- A photo of the materials chosen and their texture
- A sketch of the area in relationship to Reichman Center and the Children's Grove Phase 1

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VALUE OF THE GIFT & PLAN FOR INSTALLATION

The value of this sculpture is \$27,000. If there is any damage to the piece during installation, the sculptor will repair. Approximate cost for fabrication and installation of the base is \$1,000, to be covered by Children's Grove.

MAINTENANCE: CARE OF STAINLESS STEEL SCULPTURE

As with any metal that is outdoors, a gradual darkening may occur over the period of many years. The aging that gradually darkens the metal and makes it less shiny would be a quite acceptable outcome in this natural setting. Generally, metal art only needs the occasional dusting to keep cobwebs or dust from gathering. It is emphasized that the cloth should be soft and clean. A microfiber cloth is excellent for removing dust and small blemishes. A dirty or grimy rag will only cause damage. To clean the sculptures from everyday dirt and grime, simply wash down the sculpture with a mild soap and water. A clean, soft towel can then be used to dry any water spots.